

**Intercreditor Agreement**  
Section 232

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

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

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THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and among (i) \_\_\_\_\_ a \_\_\_\_\_ (“**AR Lender**”), (ii) \_\_\_\_\_, a \_\_\_\_\_, (“**FHA Lender**”), (iii) \_\_\_\_\_, a \_\_\_\_\_ (“**Owner**”), and (iv) \_\_\_\_\_ [Operator, Master Tenant, and/or whomever receives the AR Financing and holds AR Loan Priority Collateral], a \_\_\_\_\_ (“**Operator**”). AR Lender, FHA Lender, Owner and Operator are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Operator has entered into that certain [*name of Operating Lease, Sub-lease, or Owner-Operator Agreement*] with [\_\_\_\_\_] with respect to the Facility (the “**Owner-Operator Agreement**”), and Operator further entered into a Security Agreement for the benefit of FHA Lender (the “Operator Security Agreement”), which security agreement grants a security interest in certain collateral of the Operator which includes the AR Lender Priority Collateral; and

WHEREAS, AR Lender has made or may in the future make loans and/or extensions of credit to or for the benefit of the Operator, secured by certain collateral of the Operator, which includes the AR Lender Priority Collateral; and

WHEREAS, FHA Lender has made or may in the future make loans and/or extensions of credit to or for the benefit of Owner secured by the Facility operated by the Operator or to or for the benefit of Operator secured by certain assets of the Operator; and

WHEREAS, AR Lender and FHA Lender have agreed upon AR Lender’s and FHA Lender’s respective rights in and to the AR Lender Priority Collateral and FHA Lender Priority Collateral which agreements and understandings are set forth below. In the event of a conflict between the terms of this Agreement, and the AR Loan documents, or the HUD Loan Documents, the terms of this document shall govern and control;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and intending to be legally bound, the Parties hereto hereby agree as follows:

## 1. DEFINITIONS

All terms used herein which are not specifically defined shall have the meanings provided in Article 9 of the Uniform Commercial Code as in effect in the State of (*Insert property jurisdiction*) \_\_\_\_\_ from time to time (the “UCC”). In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used in this Agreement.

**1.1 “Accounts”** shall mean all right, title and interest of Operator in and to the following, in each case arising from Operator’s operation of the Facility in the ordinary course of Operator’s business: (a) all rights to payment of a monetary obligation, whether or not earned by performance, including, but not limited to, accounts receivable, health-care insurance receivables, Medicaid and Medicare receivables, Veterans Administration receivables, or other governmental receivables, private patient receivables, and HMO receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of the property described in clauses (a), (b) and (c). Notwithstanding the foregoing, “Accounts” do not include insurance proceeds, commercial tort claims, or accounts arising from the sale of Operator’s equipment, inventory or other goods, other than accounts arising from the sale of Operator’s inventory in the ordinary course of Operator’s business; provided that “Accounts” may include Approved Business Interruption Insurance Proceeds. For purposes herein “**Approved Business Interruption Insurance Proceeds**” may include (i) the proceeds of business interruption insurance payable to operator to the extent such proceeds support continued funding of the AR Loan at a level not otherwise supportable without the inclusion of such proceeds or (ii) as otherwise specifically approved in writing by FHA Lender and HUD, but (iii) shall exclude any insurance proceeds at any time after FHA lender elects under the FHA Loan Documents to apply casualty or condemnation proceeds to the FHA Loan (and any required HUD approval of such election to such application is obtained).

**1.2 “Advances”** shall mean advances under the revolving loan facility provided for in the AR Loan Documents.

**1.3 “AR Loan”** shall mean a revolving loan (including any amounts contemplated as letter of credit obligations) made by AR Lender to Operator pursuant to the AR Loan Agreement.

**1.4 “AR Loan Agreement”** shall mean that certain [*Revolving Credit and Security Agreement (enter proper name of document)*], dated as of [\_\_\_\_\_], by and among AR Lender, as lender, and Operator [*add where applicable: and the operators of the Other Facilities*], as borrower, [*add where applicable: and \_\_\_\_\_, as Borrower Representative*] as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

**1.5 “AR Loan Documents”** shall mean any and all promissory notes, security agreements and any and all other documents evidencing or securing the AR Loan as identified on

Schedule 1 attached hereto, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement, provided that, for purposes of this Agreement, this Agreement shall not be considered an AR Loan Document.

**1.6 “AR Lender Priority Collateral”** shall mean all right, title and interest of Operator in and to the following: (a) all Accounts arising prior to the Cut-Off Time and the identifiable cash proceeds thereof; (b) all Deposit Accounts; and (c) all Accounts arising after the Cut-Off Time and the identifiable cash proceeds thereof solely to the extent of (and in the amount of) Protective Advances made after the Cut-Off Time in accordance with the terms of this Agreement provided that the collateral should be prioritized in accordance with Section 2.1.

**1.7 “AR Loan Obligations”** Notwithstanding anything to the contrary in the AR Loan Documents, only the following obligations shall be secured by AR’s Lender’s liens and/or security interest in the Accounts, Deposit Accounts, or the FHA Lender Priority Collateral (collectively, the “Project Collateral”): (i) the outstanding principal amount of the AR Loan, including amounts of any letters of credit contemplated by the AR Loan Documents, up to the Maximum Commitment Amount; (ii) Protective Advances; (iii) fees associated with the financing that are set forth in the AR Loan Documents; (iv) out of pocket fees and expenses incurred by AR Lender in the administration and enforcement of the AR Loan Documents; and (v) interest on the amounts set forth in clauses (i) – (iv), except to the extent any default interest exceeds limits provided, if any, in Program Obligations. Notwithstanding anything to the contrary in the AR Loan Documents or this Agreement, this Agreement shall not be deemed an “AR Loan Obligation” or “Priority Obligation.” For purposes of this Agreement, no Indemnity Obligation and no Excluded Fee shall be deemed an “AR Loan Obligation.” [Notwithstanding the foregoing, AR Loan Obligations shall also include: *[List any deal-specific additional to AR Loan Obligations requested by AR Lender and approved by ORCF.]*]

**1.8 “Business Day”** shall mean any day other than a Saturday, a Sunday, or any day that banks in [*insert Bank’s Jurisdiction*]\_\_\_\_\_ or [*insert Property Jurisdiction if different from Bank’s Jurisdiction*]\_\_\_\_\_ are required or permitted by law to close.

**1.9 “Cut-Off Time”** shall mean, unless subsequently extended in writing by FHA Lender with HUD consent, such time indicated in the written notice given by the FHA Lender to AR Lender, which notice shall be: (a) in the form set forth in Exhibit A and (b) given pursuant to Section 4.5. The Cut-Off Time shall be no earlier than thirty (30) calendar days after notice of an FHA Triggering Event has been deemed given (as set forth in Section 4.5) to AR Lender and no earlier than thirty (30) calendar days after an AR Loan Triggering Event. A Cut-Off Time that is based on an AR Loan Triggering Event as to the Facility shall also be deemed a Cut-Off Time as to the Other Facilities, unless otherwise agreed by FHA Lender and approved by HUD prior to such Cut-Off Time. Notwithstanding anything else in this Agreement, a Cut-Off Time shall be deemed to have occurred upon the maturity of the AR Loan, regardless of whether or not FHA Lender issues a Cut-Off Notice.

**1.10 “Deposit Accounts”** shall mean any deposit account (a) holding proceeds of any Accounts, (b) holding any cash of the Operator, (c) into which Advances are funded (d) for which a deposit account control agreement in favor of the AR Lender and approved by HUD, has been entered into, or (e) to the extent permitted by applicable law, for which a deposit account

services and instructions agreement or similar agreement, approved by HUD, has been entered into, but excluding all Lease Payment Accounts (if any) established for the payment of Lease Costs.

1.11 “**Excluded Fees**” shall mean any fees other than those reasonably connected with the administration and enforcement of the AR Loan Documents in the ordinary course of business. By way of example and not of limitation, such Excluded Fees include late charges, prepayment fees and charges, exit fees, breakage fees and charges, unused facility fees, facility fees, commitment fees, closing fees, amendment fees, forbearance fees, extension or renewal fees, and any other such fees.

1.12 “**Facility**” shall mean that certain [*type of facility, e.g., nursing home*] located at [\_\_\_\_\_] and commonly known as [\_\_\_\_\_].

1.13 “**FHA Lender’s Priority Collateral**” shall mean any and all property (whether real, personal or mixed, tangible or intangible) in which FHA Lender and/or HUD is granted liens, encumbrances, security interests and other rights pursuant to any of the HUD Loan Documents, except for the AR Lender Priority Collateral, it being understood that FHA Lender and/or HUD has an “all assets” security interest on the assets of Operator including but not limited to (i) the skilled nursing facility licenses and any other healthcare or long term care licenses for the Facility, (ii) all Medicare and Medicaid/state/county provider agreements for the Facility, (iii) the certificates of need for the Facility, (iv) the Owner-Operator Agreement and (v) Operator’s furniture, fixtures, equipment, software and inventory directly related to such Facility.

1.14 “**HUD**” shall mean the U.S. Secretary of Housing and Urban Development.

1.15 “**HUD Loan(s)**” shall mean the mortgage loan(s) made by FHA Lender and insured or held by HUD with respect to the Facility.

1.16 “**HUD Loan Documents**” shall mean, with respect to the HUD Loan, any and all promissory notes, deeds of trust, mortgages, regulatory agreements, security agreements and any and all other documents required by FHA Lender and/or HUD as identified on Schedule 2 attached hereto in connection with such HUD Loan, in each case, as amended, restated, supplemented or otherwise modified from time to time, provided that this Agreement shall not be considered a HUD Loan Document for purposes of this Agreement.

1.17 “**HUD Obligations**” shall mean the HUD Loan and all other indebtedness, liabilities and obligations owing to FHA Lender and/or HUD under the HUD Loan Documents.

1.18 “**Indemnity Obligations**” shall mean (a) any obligations to pay, reimburse, or indemnify AR Lender or any other person or entity for any costs, fees, expenses, liabilities, claims, judgments, settlements or other costs or expenses of any nature whether or not they relate to any breach of this Agreement or any dispute with FHA Lender or HUD arising hereunder; and (b) indemnity obligations set forth in the AR Loan Documents incurred in connection with the provision of the AR Loan financing for the Facility.

1.19 **“Maximum Commitment Amount”** shall mean \$\_\_\_\_\_ [insert maximum AR Lender revolving loan commitment amount, inclusive of any contemplated letter of credit amounts, approved by the Office of Residential Care Facilities (ORCF)].

1.20 **“Other Facilities”** means any other healthcare facilities, in any case financed by a mortgage loan made by a HUD-approved lender and insured or held by HUD, financed by the AR Loan, which facilities are described on Schedule 3 (as such list of Other Facilities may be modified from time to time with the consent of HUD, AR Lender and FHA Lender).

1.21 **“Paid in Full”** shall mean the final payment in full of loan obligations referred to by the context in which this phrase is used in which the FHA Lender or AR Lender, as applicable, shall have been granted a perfected security interest. With respect to any AR Loan Obligations under the AR Loan Documents consisting of contingent obligations under letters of credit, final payment is considered the setting apart of cash sufficient to discharge such obligations in an account for the exclusive benefit of AR Lender. Provided however, that a reduction in the outstanding balance due under the AR Loan Documents to zero shall not mean that the AR Loan Obligations have been “paid in full” unless and until, pursuant to the AR Loan Documents no additional amounts may be borrowed under the AR Loan Documents or the AR Lender provides notice that no additional amounts may be borrowed under the AR Loan Documents.

1.22 **“Possession Date”** shall mean, with respect to the Facility, the earlier of the date upon which (a) FHA Lender, or its nominee, has taken actual physical possession and control of the Facility, whether by foreclosure, deed in lieu of foreclosure, appointment of a receiver or other legal process, or (b) FHA Lender, or its nominee, has begun the operation and management of the Facility.

1.23 **“Priority Obligations”** shall mean and include (a) the principal amount outstanding under the AR Loans at the Cut-Off Time, including amounts of any letters of credit contemplated by the AR Loan Documents, up to the Maximum Commitment Amount, (b) Protective Advances, (c) out-of-pocket fees and expenses incurred by AR Lender in connection with the administration and/or enforcement of the AR Loan Documents, (d) any advances made after the Cut-Off Time with the written approval of FHA Lender, and (e) interest accruing on any of the foregoing (except to the extent any default interest exceeds limits provided, if any, in Program Obligations;). Notwithstanding anything else in this Agreement, “Priority Obligations” shall exclude Indemnity Obligations, any default interest in excess of amounts permitted by Program Obligations or otherwise approved by HUD, and any Excluded Fees.

1.24 **“Project Collateral”** means Accounts, Deposit Accounts, and/or the FHA Lender Priority Collateral.

1.25 **“Protective Advances”** shall mean amounts advanced by AR Lender following the Cut-Off Time and prior to the Possession Date that the AR Lender deems reasonably necessary to preserve and protect the AR Lender Priority Collateral and written notice of which is given to FHA Lender within three (3) Business Days after the subject advance is made.

1.26 “**Triggering Event**” shall mean a HUD Triggering Event or an AR Loan Triggering Event. A “**HUD Triggering Event**” shall mean any of (i) a payment default under the HUD Loan Documents, (ii) acceleration by FHA Lender of the sums due under the HUD Loan Documents, (iii) an Event of Default (as defined in any of the HUD Loan Documents) has occurred, or (iv) an event of default under the Owner-Operator Agreement has occurred. An “**AR Loan Triggering Event**” shall mean (v) any declaration of default under the AR Loan Documents which, under the terms of the AR Loan Documents, permits AR Lender to decline to make future AR Loan Advances or (vi) the acceleration or maturity of the AR Loan.

## 2. PRIORITIES

### 2.1 AR Lender Priority.

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.1(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of the FHA Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, AR Lender shall have a first and prior security interest in, upon and to the AR Lender Priority Collateral; and FHA Lender hereby subordinates to AR Lender’s security interest FHA Lender’s security interest in the AR Lender Priority Collateral. FHA Lender, Owner and Operator agree, that, in the event AR Lender seeks to enforce any of its remedies under the AR Loan Documents, AR Lender may have reasonable access to the Facility for any inspection and copying of the books and records of Operator relating to the AR Lender Priority Collateral and the FHA Lender Priority Collateral, provided that AR Lender shall promptly repair any damage to the Facility caused by AR Lender or its agents resulting from such inspection and copying. AR Lender agrees that, notwithstanding anything in the AR Loan Documents to the contrary: (i) AR Lender may not require Operator to deliver the books and records of Operator to AR Lender; and (ii) AR Lender’s rights to inspect and copy Operator’s books and records shall be limited to those rights set forth in the preceding sentence.

(b) If AR Lender’s security interest (as now or in the future existing) in the AR Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, then the subordination by FHA Lender in favor of AR Lender under Section 2.1(a) hereof will not be effective as to the AR Lender Priority Collateral. If any such event occurs, and as a result thereof, a creditor subordinate to AR Lender would have or would be entitled to claim, priority over the FHA Lender in the AR Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by FHA Lender to such other creditor.

(c) Notwithstanding anything else in this Agreement, AR Lender shall not have a first lien on Project Collateral to secure any Indemnity Obligations. For purposes of this Agreement, such obligations shall not be deemed “AR Loan Obligations” or “Priority

Obligations,” and no advance made by AR Lender for such purpose shall be deemed a Protective Advance. Nothing in this section shall preclude AR Lender from securing the aforesaid obligations, including without limitation securing such obligations with non-Project Collateral, guaranties that are not secured by a lien on Project Collateral, or insurance proceeds that are not part of Project Collateral, provided, however, Indemnity Obligations shall not receive the priorities or rights granted to Priority Obligations and AR Loan Obligations pursuant to this Agreement. Notwithstanding anything to the contrary in the AR Loan Documents, AR Lender shall not have any right to conduct, or to require any operator to conduct, environmental remediation or invasive environmental testing of the Facility.

## **2.2 FHA Lender Priority.**

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.2(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of, the AR Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, FHA Lender shall have a first and prior security interest in, upon and to the FHA Lender Priority Collateral; and AR Lender hereby subordinates to FHA Lender AR Lender’s security interest, if any, in the FHA Lender Priority Collateral. AR Lender agrees it shall not foreclose or otherwise exercise any remedy with respect to any second lien it has or may acquire with respect to Accounts or the FHA Lender Priority Collateral, without the prior written consent of the FHA Lender. Promptly upon execution of this Agreement, AR Lender agrees to cause itself to be removed from any insurance policy and insurance certificate that has any designation of AR Lender as (a) loss payee or lender’s loss payee on any insurance with respect to any FHA Lender Priority Collateral upon which AR Lender does not have a subordinate lien as permitted by this Agreement and (b) primary loss payee or primary lender’s loss payee on any insurance with respect to any FHA Lender Priority Collateral upon which AR Lender has a subordinate lien permitted under this Agreement.

(b) If FHA Lender’s security interest (as now or in the future existing) in the FHA Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, then, to the extent FHA Lender has a security interest in the FHA Lender’s Priority Collateral, the subordination by AR Lender in favor of FHA Lender under Section 2.2(a) hereof will not be effective as to the FHA Lender Priority Collateral. If any such event occurs, and as a result thereof, a creditor subordinate to FHA Lender would have or would be entitled to claim, priority over AR Lender in the FHA Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by AR Lender to such other creditor. Notwithstanding the foregoing, FHA Lender shall have a first priority security interest in the FHA Lender’s Priority Collateral applicable to the corresponding Facility, provided however, AR Lender shall have the ability to utilize the FHA Lender’s Priority Collateral solely to the extent necessary to exercise any of AR Lender’s rights and/or remedies (including without limitation billing and collecting the Operator’s accounts receivable and other assets comprising AR Lender Priority Collateral) under the AR Loan Documents.

(c) FHA Lender acknowledges that one or more of the Other Facilities, if any, may be subject to loans made by other HUD-approved lenders and insured or held by HUD. The AR Loan may provide financing for and may be secured by collateral pertaining to any or all of the Other Facilities. This Agreement is intended to set forth the priorities, rights, and responsibilities of FHA Lender vis-à-vis AR Lender, only, and shall not affect priorities of the FHA-Lender vis-à-vis any other lender of any Other Facilities.

### 2.3 **Standstill.**

(a) Until the AR Loan Obligations have been Paid in Full, or following the delivery of the Cut-Off Time notice pursuant to this agreement, until the Priority Obligations have been Paid in Full, FHA Lender and Owner shall not exercise any remedies with regard to the AR Lender Priority Collateral; *provided however*, after a Triggering Event, the foregoing shall not prohibit the FHA Lender from (i) taking any action against the Operator with respect to any FHA Lender's Priority Collateral, (ii) terminating a Owner-Operator Agreement, (iii) commencing an action for possession or for collection of rent or other monetary amounts due under such Owner-Operator Agreement or for specific enforcement of a Operator's covenants under such Owner-Operator Agreement, so long as such actions do not comprise the exercise of a remedy with regard to AR Lender Priority Collateral, (iv) pursuing the remedies specified in the definition of "Possession Date" or (v) applying to the HUD Obligations proceeds of the AR Lender Priority Collateral after repayment in full of the Priority Obligations.

(b) Until the HUD Obligations have been satisfied in full, AR Lender shall not affirmatively exercise any remedies with regard to the FHA Lender Priority Collateral.

(c) Without limiting the foregoing, FHA Lender shall deliver to AR Lender ten (10) Business Days' prior written notice of the commencement of any action or undertaking to take physical possession, control or management of the Facility (the "**Possession Date Notice**").

(d) AR Lender shall have a first and prior security interest in the AR Lender Priority Collateral until the Priority Obligations are Paid in Full, and FHA Lender shall have a subordinate lien in the AR Lender Priority Collateral. From and after the Cut-Off Time, all amounts received by AR Lender on account of the AR Lender Priority Collateral shall be applied solely to the Priority Obligations and AR Lender shall not recover any portion of the AR Loan Obligations, other than the Priority Obligations, from the AR Lender Priority Collateral until the HUD Obligations are paid in full. Nothing herein shall prevent AR Lender from collecting the full amount of the AR Loan Obligations from any guarantors thereof and/or from collateral other than the AR Lender Priority Collateral and/or the FHA Lender Priority Collateral. FHA Lender shall have a first and prior security interest in any Accounts arising after the Cut-Off Time, other than as expressly provided in clause (b) of the definition of AR Lender Priority Collateral.

(e) Without limiting any of its rights hereunder or under the AR Loan Documents, at any time after the Cut-Off Time, AR Lender shall have the right to cease making Advances. To the extent AR Lender makes Protective Advances after the Cut-Off Time and prior to effective delivery of any Possession Date Notice, it shall retain a first priority lien on all



AR Lender Priority Collateral related to the Accounts against which it has made such Protective Advances.

(f) Except as may be expressly set forth herein, including but not limited to in Section 2.6(b) hereof, FHA Lender, Owner, and Operator hereby agree that any AR Lender Priority Collateral and proceeds thereof, which may come into the possession of FHA Lender or Owner or Operator will be held in trust for AR Lender, and FHA Lender and Owner shall turn over any AR Lender Priority Collateral and/or proceeds thereof to AR Lender, in the same form as received with any necessary endorsements, promptly upon receipt, until all of the Priority Obligations have been Paid in Full and the commitments of AR Lender to fund under the AR Loan Documents have terminated.

(g) Any FHA Lender Priority Collateral that may come into the possession of AR Lender, Operator or Owner will be held in trust by AR Lender, Operator or Owner (as applicable), for FHA Lender, and such recipient shall turn over any FHA Lender Priority Collateral so received to FHA Lender in the same form as received, with any necessary endorsements, promptly upon receipt, until the HUD Obligations have been Paid in Full in accordance with the terms of this Agreement. Any replacement operator or receiver who commences operating the Facility shall agree in writing to abide by the provisions of this Section 2.3(g) to the extent it, or its new lender, if any, comes into possession of any FHA Lender Priority Collateral.

#### 2.4 No Contest.

(a) FHA Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to AR Lender with respect to the AR Lender Priority Collateral *provided that*, nothing in this Section 2.4(a) shall prevent FHA Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.1(b). FHA Lender further agrees that, subject to Section 2.2(b), AR Lender's lien and security interest in the AR Lender Priority Collateral shall at all times, while any indebtedness or obligations under the AR Loan Documents are owing from Operator to AR Lender, be superior and prior to the liens and security interests granted to the FHA Lender in such AR Lender Priority Collateral, irrespective of the time, order or method of attachment or perfection of AR Lender's and the FHA Lender's liens and security interests, or the filing of financing statements, or the taking of possession of the FHA Lender's Priority Collateral, or any portion thereof.

(b) AR Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to FHA Lender with respect to the FHA Lender's Priority Collateral; *provided that*, nothing in this Section 2.4(b) shall prevent AR Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.2(b). AR Lender further agrees that FHA Lender's lien and security interest in the FHA Lender's Priority Collateral shall at all times while any indebtedness or obligations under the HUD Loan Documents are owing from the Owner to the FHA Lender, be superior and prior to the liens and security interests granted to AR Lender in such FHA Lender's

Priority Collateral, irrespective of the time, order or method of attachment or perfection of the FHA Lender's liens and security interests, or the filing of financing statements or the taking of possession of the AR Lender Priority Collateral, or any portion thereof.

(c) AR Lender waives, in respect of FHA Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, AR Lender agrees that FHA Lender may (i) proceed directly against any collateral in which FHA Lender has a lien or security interest and/or any guarantor of the HUD Obligations in any particular order and (ii) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement. FHA Lender waives, in respect of AR Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, FHA Lender agrees that AR Lender may (A) proceed directly against any collateral in which AR Lender has a lien or security interest (subject to the terms of this Agreement) and/or any guarantor of the AR Loan Obligations in any particular order and (B) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement.

## **2.5 Releases; Bailee for Perfection.**

(a) Notwithstanding anything to the contrary contained herein or in any of the HUD Loan Documents, the Operator Security Agreement or the Owner-Operator Agreement (or any sublease thereof), but subject to Section 2.5(b) below, FHA Lender agrees that in the event any AR Lender Priority Collateral (but not the AR Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of AR Lender's remedies against Operator under the AR Loan Documents, the FHA Lender shall release all of its rights to and interests in such AR Lender Priority Collateral. Nothing in this Section 2.5(a) shall require any release of the FHA Lender Priority Collateral. FHA Lender shall execute such release documents as AR Lender may reasonably request to effectuate the terms of this Section 2.5(a). Notwithstanding anything to the contrary contained herein or in any of the AR Loan Documents, but subject to Section 2.5(b), AR Lender agrees that in the event any FHA Lender Priority Collateral (but not the HUD Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of FHA Lender's remedies under the HUD Loan Documents, AR Lender shall release all of its rights to and interests in (if any) such FHA Lender Priority Collateral and such property shall be transferred free and clear of all liens and security interests in favor of AR Lender. Nothing in this Section 2.5(a) shall require any release of the AR Lender Priority Collateral. AR Lender shall execute such release documents as FHA Lender may reasonably request to effectuate the terms of this Section 2.5(a).

(b) Notwithstanding the foregoing, to the extent that the proceeds of any sale of AR Lender Priority Collateral exceed the amount necessary to pay and satisfy in full the AR Loan Obligations (or, after the Cut-Off Time, the Priority Obligations), such excess shall be delivered to FHA Lender (to the extent that FHA Lender is otherwise entitled thereto in accordance with the HUD Loan Documents and/or applicable law) for application by FHA Lender pursuant to the HUD Loan Documents. To the extent that the proceeds of any sale of FHA Lender Priority Collateral exceed the amount necessary to pay and satisfy the HUD Obligations in full, such excess shall be delivered to AR Lender (to the extent that AR Lender

has a security interest in the FHA Lender Priority Collateral and is otherwise entitled thereto in accordance with the AR Loan Documents and/or applicable law) for application by AR Lender pursuant to the AR Loan Documents.

(c) In the event FHA Lender or its nominee purchases any AR Lender Priority Collateral (which it shall have no obligation to purchase), AR Lender agrees that upon receipt of the purchase price (i) all such AR Lender Priority Collateral so sold, and all liens or security interests therein, and all proceeds thereof, shall be deemed to be held by AR Lender as agent for the purchaser until effectively transferred to such purchaser's ownership and control, (ii) AR Lender shall continue to receive such AR Lender Priority Collateral and proceeds thereof in existing lockbox or controlled deposit accounts until such purchaser has made alternative collection and deposit arrangements (which it shall arrange within thirty (30) days), and (iii) AR Lender shall remit all collections of such purchased AR Lender Priority Collateral in the same manner as provided in Section 2.6.

(d) With respect to any AR Lender Priority Collateral and/or FHA Lender Priority Collateral that FHA Lender cannot perfect a security interest in by filing a financing statement, and with respect to which AR Lender has perfected a security interest, AR Lender shall be deemed to be holding such AR Lender Priority Collateral and/or FHA Lender Priority Collateral as representative and bailee for FHA Lender for the purposes of perfection of FHA Lender's liens thereon or therein under the Uniform Commercial Code as in effect in each applicable jurisdiction, and as amended from time to time.

## **2.6 Return of Payments**

(a) **Upon the AR Loan Obligations being Paid in Full.** AR Lender agrees that, upon the AR Loan Obligations being Paid in Full and the termination of AR Lender's commitment under the AR Loan Agreement, any AR Lender Priority Collateral and proceeds thereof, which may come into AR Lender's possession, will be held by it in trust for FHA Lender and it shall turn over any such AR Lender Priority Collateral and/or proceeds thereof to FHA Lender, in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt.

(b) **Upon the Priority Obligations being Paid in Full.** AR Lender agrees that, after the Cut-Off Time, and upon receipt of the Priority Obligations being Paid in Full, any AR Lender Priority Collateral and proceeds thereof, which may come into AR Lender's possession, will be held by it in trust for FHA Lender and it shall turn over any such AR Lender Priority Collateral and/or proceeds thereof to FHA Lender, in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt. Notwithstanding anything else in this Agreement, a Cut-Off Time shall be deemed to have occurred upon the maturity of the AR Loan, regardless of whether or not FHA Lender issues a Cut-Off Time Notice.

## **2.7 AR Loan Documents**

(a) AR Lender represents and warrants that as of the date hereof Schedule 1 sets forth a list of certain material documents evidencing or securing the AR Loan(s) and that

true, correct and complete copies of the documents listed thereon have been provided to FHA Lender and its counsel. Until the AR Loan is paid in full, without the prior written consent of FHA Lender, AR Lender shall not amend, restate, supplement or otherwise modify the AR Loan Documents in any way which, and AR Lender shall not take any action which, (i) results in the creation of any lien, security interest or other encumbrance in any collateral related to the Facility other than the security interests and liens in existence as of the date of this Agreement pursuant to the AR Loan Documents listed on Schedule 1, (ii) increases the AR Loan to an amount in excess of the Maximum Commitment Amount (other than (A) with respect to advances made by AR Lender prior to the Cut-Off Time that are reasonably necessary to preserve and protect the AR Lender Priority Collateral and (B) Protective Advances,) (iii) conflicts in any way with this Agreement, the Operator Security Agreement and/or any applicable HUD rules, regulations or requirements, (iv) directly or indirectly increases the amount that Operator is permitted to borrow under the AR Loan Documents, including, but not limited to, changes in the calculation of the borrowing base or any components thereof, (v) materially and adversely affects the rights or interests of FHA Lender. For the avoidance of doubt, but without limiting in any way the agreement of AR Lender set forth in the immediately prior sentence, FHA Lender agrees that its consent shall not be required for any amendment or modification of any AR Loan Documents that increases the amount of the AR Loan in connection with the joinder of a co-borrower thereunder that is an operator of a nursing and/or assisted living facility that is encumbered by a mortgage loan held or insured by HUD; it being agreed and understood that, such joinder must be approved by HUD. AR Lender agrees to provide FHA Lender with true, correct and complete copies of any AR Loan Documents within 30 days of said amendment and/or modification. Operator shall provide copies of any and all amendments to the AR Loan Documents to FHA Lender prior to the effective date of any amendment.

(b) Notwithstanding the foregoing, it is hereby agreed that, without further approval by FHA Lender or HUD: *[INSERT CHANGES/AMENDMENTS TO MATERIAL TERMS, IF ANY, THAT ORCF HAS PRE-APPROVED AND AGREED DO NOT REQUIRE FURTHER HUD CONSENT. FOR EXAMPLE: ]*

(i) The AR Loan may be extended, for an additional period or periods, but not beyond *[insert date approved by ORCF]*, and provided that any such extension must be on the same terms and conditions except as set forth in subdivision (ii) hereof, if applicable;

(ii) *[if interest rate change parameters are also approved by ORCF add the following]* Each such extension may be accompanied by an interest rate change, but solely within the following parameters: *[insert parameters approved by ORCF]*;

(iii) A modification or extension entered into in accordance with this Section 2.7(b) shall not be deemed to violate the requirement in the [Operator Regulatory Agreement] to obtain prior HUD consent to such modification; *provided that*, nothing herein shall be deemed to waive or limit the requirement to obtain such prior consent for any other modification of a Material Term (as

defined in such [Operator Regulatory Agreement ) or any other extensions or interest rate change except as set forth in this Section 2.7(b).

**2.8 HUD Loan Documents.** FHA Lender agrees to provide AR Lender with true, correct and complete copies of any HUD Loan Documents upon written request from AR Lender.

**2.9 Deposit Account Control Agreements.** To the extent required by HUD, any deposit accounts into which the proceeds of Accounts are deposited, shall be subject to deposit account control agreements and/or deposit account instructions and services agreements, with each depository bank maintaining such deposit accounts (each, a “**Depository Bank**”) on terms approved by HUD.

(a) **Release upon the AR Loan Obligations being Paid in Full.** Upon receipt by the AR Lender of payment in full and upon the AR Loan Obligations being Paid in Full and the termination of AR Lender’s obligation to make Advances, AR Lender agrees to promptly notify the FHA Lender of such event, and AR Lender further agrees that it will execute any and all such termination statements or releases as may be necessary to release any lien on the Operator’s assets, including but not limited to the termination of any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank of Operator which holds or receives Operator’s Accounts. In the event any Party to this Agreement fails to file any required releases and/or termination statements within ten (10) Business Days of the other Party’s timely demand therefore, the requesting Party hereby is authorized to file a copy of this Agreement in any appropriate UCC financing office as conclusive evidence of such (non-complying) Party’s release of its security interest in the AR Lender Priority Collateral, and any third Party shall be entitled to rely upon the filing of this Agreement as a full and complete release of such Party’s security interest.

(b) **Release upon Priority Obligations being Paid in Full.** After the Cut-Off Time and until the Priority Obligations are Paid in Full, AR Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank and (b) at such time that the Priority Obligations are paid in full, FHA Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank, and AR Lender will take all necessary steps to effectuate the foregoing, including, but not limited to, providing appropriate instructions to the applicable Depository Bank or terminating any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank of Operator which holds or receives Operator’s Accounts. The Parties acknowledge and agree that FHA Lender may require the establishment of separate Deposit Accounts into which payments with respect to Accounts arising after the Cut-Off Time are to be deposited (the “**Post Cut-Off Time Deposit Accounts**”). Each Post Cut-Off Time Deposit Account will be subject to a deposit account control agreement in favor of FHA Lender or its designee in form and substance satisfactory to FHA Lender which will give FHA Lender or its designee exclusive authority (unless prohibited by law) to exercise control over the Post Cut-Off Time Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank.

### 3. REPRESENTATIONS; COVENANTS

3.1 Operator operates the Facility. Operator has granted or will grant a security interest in its Accounts and certain other assets to FHA Lender and HUD (collectively, the “**Senior Secured Parties**”) pursuant to a Security Agreement executed by Operator in favor of one or more Senior Secured Parties (the “**Operator Security Agreement**”) in connection with one or more loans provided to Owner by FHA Lender and insured by HUD (the “**HUD Loan**”).

3.2 AR Lender consents to the Operator Security Agreement and the liens granted in favor of the Senior Secured Parties notwithstanding any contrary provisions of the AR Loan Documents. This Intercreditor Agreement sets forth the relative priorities of AR Lender and the Senior Secured Parties in and to the assets of Operator.

3.3 Subject to the provisions of Section 3.4 below, Operator agrees that funds received by Operator from AR Lender (“**AR Loan Advances**”) shall be utilized (i) first, to pay current debt service obligations of Operator to AR Lender with respect to the Facility, (ii) second, to pay Operator’s costs of operations with respect to the Facility including, but not limited to, rent and all other payment obligations due under the Owner-Operator Agreement, payroll and payroll taxes, ordinary maintenance and repairs and management fees (“**Current Operating Costs**”) and (iii) after the payment of Current Operating Costs, subject to applicable restrictions, if any, in the AR Loan Documents and the Operator Regulatory Agreement, AR Loan Advances may be distributed to Operator’s shareholders, partners, members or owners, as the case may be. Notwithstanding anything to the contrary herein (but subject to any limitations in the AR Loan Documents and the Operator Regulatory Agreement), any distributions made by Operator to Operator's shareholders, partners, members or owners, as the case may be, shall be permitted to the extent, and only to the extent, allowed by that certain Healthcare Regulatory Agreement – Operator executed by Operator in connection with the Facility.

**[Revise Section 3.4 as appropriate for deal-specific circumstances.]**

#### 3.4 **AR Loan Advances Payment Structure**

(a) Control of Operator’s deposit accounts. Operator, FHA Lender and AR Lender agree and certify to the existence of deposit account control agreements or like agreements relating to Operator’s deposit accounts: [*Describe deal-specific arrangement as to who has primary control of Operator’s deposit accounts.*]

(b) AR Lender funds AR Loan Advances. Operator, FHA Lender and AR Lender agree that no later than the [eighth (8<sup>th</sup>)] day of each calendar month (*provided that if such day is not a Business Day then on the immediately preceding Business Day*), [*upon AR Lender’s receipt of a request for an AR Loan Advance from Operator*] and [*upon the satisfaction of all applicable requirements, conditions, and provision set forth in the AR Loan Documents*] AR Lender shall disburse [*by wire transfer of immediately available funds or by direct deposit*] an AR Loan Advance (to the extent of available funds). Such AR Loan Advance shall be made [*to the account designated in writing to AR Lender by [FHA Lender] OR [Operator]*].

(c) AR Lender agrees that it shall make such disbursement in accordance with the provisions of the foregoing subsection unless (i) there is not sufficient availability under and in accordance with the AR Loan Documents, or (ii) a default or event of default shall exist or be continuing under the AR Loan Agreement. AR Lender's obligation to make each such AR Loan Advance is subject to the satisfaction of all conditions precedent thereto as set forth in the AR Loan Documents. After payment of the Current Impositions and subject to applicable restrictions in the AR Loan Documents, any remaining AR Loan Advances may be made as directed by Operator.

(d) Use of AR Loan Advances to satisfy FHA Loan Current Impositions. [AR Loan Advances shall first be used to pay Current Impositions, as defined below. [FHA shall receive by automatic debit or FHA Lender shall have a right to withdraw from the account to which the AR Loan Advances are made] amounts at least equal to the Current Impositions. FHA Lender agrees to apply amounts received on account of Current Impositions toward payment of Owner's monthly debt service obligation under the FHA Loan and to fund applicable escrow and reserve requirements, with the balance remaining of the payment so collected, if any, to be remitted by FHA Lender to [Owner] promptly after receipt by FHA Lender.]

For purposes of this Agreement, **Current Impositions** shall mean: [(i) the aggregate base rent payable under the Owner-Operator Agreement for such month,] [(ii) taxes and insurance due and owing under the Owner-Operator Agreement for such month,] and [(iii) deposits to escrows and/or reserves required under the Owner-Operator Agreement].

(e) Notwithstanding anything in this Agreement (whether express or implied) to the contrary, Senior Secured Parties, Operator and Owner acknowledge and agree that (i) AR Lender shall have no liability to any Senior Secured Parties, Operator or Owner for computation or verification of the Current Impositions and (ii) none of Senior Secured Parties nor Owner shall be deemed to be a third party beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured Parties and Owner hereby expressly waive and relinquish their respective rights to claim otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be entitled to retain the same and shall not be required to hold the same in trust or to disgorge the same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority Collateral.

(f) The signatures of Owner and Operator below shall confirm their respective agreement to the collection, payment and disbursement of the amounts set forth herein.

3.5 Except as set forth herein, Operator certifies that there are no proposed agreements, arrangements, understandings or transactions (side deals) outside of the AR Loan Documents that utilize the Accounts of Operator as security for any other obligations. Operator agrees that Operator shall not be a guarantor or party to any other accounts receivable financing agreement without the consent of FHA Lender and HUD.

3.6 Except as set forth herein or as otherwise disclosed to and approved by HUD in writing, (a) AR Lender and Operator certify and agree that there are no existing or proposed

agreements, arrangements, understandings or transactions that involve the Facility (side deals) between (i) Operator (or any of Operator's officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or its parent entity), and (ii) AR Lender; (b) FHA Lender and Operator certify and agree that there are no existing or proposed agreements, arrangements, understandings or transactions that involve the Facility (side deals) between (i) Operator (or any of Operator's officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or its parent entity), and (ii) FHA Lender; and (c) AR Lender and Operator certify that the Project Collateral does not secure any obligations to the AR Lender, or any of its affiliates, relating to projects other than the Facility or Other Facilities. AR Lender and Operator certify and agree that any and all cross-default provisions have been disclosed to and approved in writing by HUD.

#### 4. MISCELLANEOUS

**4.1 Beneficiaries.** This Agreement is entered into solely for the benefit of AR Lender, FHA Lender, HUD, and their respective successors and assigns, and neither Operator, Owner nor any other persons or entities whatsoever, including but not limited to any third party donee, investor, incidental beneficiary or any creditor of Operator or Owner (other than HUD), shall have any right, benefit, priority or interest under or because of the existence of this Agreement.

**4.2 Amendment.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and shall not be modified, amended or terminated orally but only in writing signed by AR Lender, FHA Lender, Owner and Operator.

**4.3 Bankruptcy Financing.** In the event of the commencement of a bankruptcy, insolvency or similar type of proceeding filed by or against the Operator ("**Proceeding**"), AR Lender shall have the non-exclusive option (in its sole and absolute discretion) to continue to provide financing (on terms acceptable to AR Lender) to the trustee, other fiduciary or to the Operator as a debtor-in-possession, if AR Lender deems such financing to be in its best interests. The subordination and lien priority provisions of this Agreement shall continue to apply to all AR Lender Priority Collateral arising upon the commencement and during the pendency of such Proceeding, so that AR Lender shall have a prior lien on all AR Lender Priority Collateral, created before and during such Proceeding (to the extent AR Lender provides such financing during the Proceeding or to the extent Operator is granted the right to use, sell, or otherwise dispose of cash collateral during any such Proceeding), to secure the AR Loans, whether advanced before or during such Proceeding.

#### **4.4 Relative Rights; Amendment to Loan Documents; Cure.**

(a) This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, neither AR Lender nor FHA Lender assumes any other duties or responsibilities to the other regarding the financial condition of Operator, Owner or any other party, or regarding any of Operator's property, or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Operator or Owner under any of the agreements referred to herein. Each of AR Lender and FHA Lender shall be responsible for



managing its financial relationships with Operator and Owner, and neither shall be deemed to be the agent of the other for any purpose.

(b) AR Lender and the FHA Lender agree to notify the other of any notice of a “material default” given to their respective borrower under any of the AR Loan Documents or any of the HUD Loan Documents as applicable; provided, that the failure to provide such notice shall not subject such Party to any liability. AR Lender and the FHA Lender shall have the right (but not the obligation) to cure any payment default under the other Party’s documents within ten (10) days after notice thereof. “Material default” for purposes of this Section shall mean (i) with regard to FHA Lender and the HUD Loan Documents, a default by the borrower thereunder triggering FHA Lender’s commencement of assignment to HUD of the HUD Loan, a foreclosure, or an action for the appointment of a receiver or similar remedy; and (ii) with regard to AR Lender and AR Loan Documents, a default thereunder which allow AR Lender to cease making Advances or results in the acceleration or maturity of the AR Loan.

**4.5 Notices.** Any notice or service of process given, or required to be given, pursuant hereto and in connection herewith, including without limitation any notice of any Cut-Off Time, shall be in writing and shall be deemed to be properly given: (a) when personally delivered; (b) the first or second Business Day after the notice is deposited with a nationally recognized overnight courier service with arrangements made for payment of charges for next or second Business Day delivery, respectively; or (c) two Business Days after the date sent by certified mail return receipt requested, in each case addressed to the Party for whom it is intended at its address hereinafter set forth.

If to AR Lender to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

If to FHA Lender to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

If to Owner to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

If to Operator to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

**4.6 Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together constitute one and the same agreement. Signature transmitted by facsimile or other electronic means shall bind the Parties hereto.

**4.7 Authorization.** Each individual signatory hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of his or her principal and that he or she executes the Agreement in such capacity and not as a Party.

**4.8 Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their legal representatives, successors and assigns. Each of the parties hereto agrees not to assign their rights to the AR Loan and/or the HUD Loan Documents to Operator or any affiliate of Operator.

**4.9 Governing Law.** This Agreement and all matters arising out of or related to this Agreement shall be deemed to have been made under, and shall be governed and construed in all respects by, the substantive laws of the State of [*enter property or organizational jurisdiction*] \_\_\_\_\_ without regard to principles of conflicts of laws.

**4.10 Jurisdiction and Venue.** FHA Lender and AR Lender hereby irrevocably consent to the nonexclusive jurisdiction of the State and Federal Courts located in the State of [*enter property or organizational jurisdiction*] \_\_\_\_\_ in any and all actions and proceedings arising under or in connection with this Agreement.

**4.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST ANY OTHER PARTY(IES) WITH RESPECT TO THE RIGHTS AND OBLIGATIONS SET FORTH HEREIN.**

**4.12 Severability.** If a court of competent jurisdiction in a final determination deems any provision of this Agreement invalid, prohibited or unenforceable, such invalidity, prohibition or unenforceability shall apply only to such provision and only to the extent of such invalidity, prohibition or unenforceability, and shall not render this Agreement or any other provision of this Agreement wholly or partially invalid, prohibited or unenforceable.

**4.13 Headings.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the previous hereof. The statements set forth in the Recital paragraphs are incorporated herein by reference.

**4.14 Implementation of Agreement; Information; Further Assurances.** Subject to this Agreement, AR Lender and Operator hereby agree to immediately effectuate amendments to the AR Loan Documents as and to the extent necessary to conform the AR Loan Documents to this Agreement. AR Lender and Operator hereby authorize FHA Lender and its agents to file amendments to all presently effective financing statements listing AR Lender as secured party and Operator as a debtor amending the collateral description set forth in such presently effective financing statements to reflect the agreements set forth in this Agreement. AR Lender shall, from time to time, promptly following a request by FHA Lender or HUD provide (and Operator hereby authorizes AR Lender to provide) to FHA Lender or HUD any and all information and documents available to AR Lender regarding the AR Loan and/or the AR Lender Priority Collateral (including, but not limited to, histories of draws upon, payments on account of, and outstanding balances with respect to, the AR Loan). AR Lender and Operator will, from time to time, promptly execute and deliver all further instruments and documents, and take all further actions, that may be reasonably necessary or desirable or that FHA Lender or HUD may reasonably request, to protect any right or interest granted by this Agreement or to enable the Parties to exercise and enforce their rights and remedies granted or provided for in this Agreement.

4.15 **Entire Agreement.** This Agreement is the entire agreement among the Parties regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

**AR LENDER:**

*[insert appropriate signature block]*

**FHA LENDER:**

*[insert appropriate signature block]*

**OPERATOR:**

*[insert appropriate signature block]*

**OWNER:**

*[insert appropriate signature block]*

[Include if this Project is part of a master lease portfolio but Master Tenant is not the subject party to the AR Financing loan documents:]

*The undersigned Master Tenant, pursuant that certain [Master Lease] dated as of \_\_\_\_\_, acknowledges and consents to this Agreement, including without limitation the provisions set forth in Sections 3.*

**Master Tenant:**

*[insert appropriate signature block]*

**Schedule 1**  
**AR Loan Documents**

**Schedule 2**  
**HUD Loan Documents**

**Schedule 3**  
**List of Other Facilities**



**Exhibit A**  
**Form of Cut-Off Time Notice**

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Re: Intercreditor Agreement Dated as of \_\_\_\_\_, 20\_\_ by and among  
\_\_\_\_\_ ("AR Lender"), \_\_\_\_\_ ("FHA Lender"),  
\_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Operator") (the  
"Intercreditor Agreement")

Ladies and Gentlemen:

This letter constitutes the notice of the Cut-Off Time described in the Intercreditor Agreement. All capitalized terms used, and not otherwise defined, herein shall have the meanings provided for in the Intercreditor Agreement.

**[If a HUD Triggering Event has occurred:** Please be advised that a HUD Triggering Event has occurred as a result of \_\_\_\_\_ and that the Cut-Off Time is **[omit the following if previous notice of a HUD Triggering Event has been given to AR Lender:** the later of (a) thirty (30) days after the date of this notice or (b)] \_\_\_\_\_ [a.m./p.m.], \_\_\_\_\_ time, on \_\_\_\_\_, 20\_\_, unless extended by HUD. ]

**[If an AR Loan Triggering Event has occurred:** Please be advised that, as a result of the following AR Loan Triggering Event: \_\_\_\_\_, occurring on \_\_\_\_\_, the Cut-Off Time is \_\_\_\_\_ [a.m./p.m.], \_\_\_\_\_ time, on \_\_\_\_\_, 20\_\_ (which time is no sooner than thirty (30) days following the AR Loan Triggering Event), unless extended by HUD. ]

All provisions of the Intercreditor Agreement applicable after the Cut-Off Time shall govern the future relationship of AR Lender, FHA Lender, HUD, Owner, and Operator under the Intercreditor Agreement.

Please contact the undersigned at \_\_\_\_\_ if you have any questions.

Sincerely,

\_\_\_\_\_

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

cc: \_\_\_\_\_