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HUD FORM NO. 2466GP-OHF
 (rev. 05/12)

REGULATORY AGREEMENT

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 FEDERAL HOUSING ADMINISTRATION**

SECTION 242 NONPROFIT HOSPITALS

Project No.

Mortgagee

Amount of [Mortgage] [Deed of Trust] Note \$ Date: as of

[Mortgage] [Deed of Trust] Recorded: State: County: Date:

This Agreement entered into as of the ____ day of _____, between _____, _____, whose address is _____, hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban Development (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described Note or in consideration of the consent of the Secretary to the transfer of the mortgaged property, and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Secretary and his successors shall be the holder or reinsurer of the Mortgage:

(1) It shall promptly make all payments due under the Note and Mortgage, and shall hold the Secretary harmless under his Contract of Mortgage Insurance.

~~(2) * (a) It will establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the Mortgagee _____ or in a safe and responsible depository designated by the Mortgagee, concurrently with the beginning of payments toward amortization of the principal of the Mortgage insured or held by the Secretary of an amount equal to \$ _____ per month unless a different date or amount is approved in writing by the Secretary. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the Mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event of a default~~

* This section is not applicable to §242 nonprofit hospitals and should be deleted.

~~in the terms of the Mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.~~

~~_____ (b) Where Mortgagor is acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Mortgagor acquires such project, and payment hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.~~

(3) The real property covered by the Mortgage and this agreement is described in **Exhibit "A"** attached hereto.

(4) It shall not without the prior written approval of the Secretary:

(a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to and approved by the Secretary, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the Mortgage are required to be filed or recorded, duly assume all obligations under this agreement and under the insured Note and Mortgage;

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including revenues from any source ~~rents~~, and shall not disburse or pay out any funds except for usual operating expenses and necessary repairs;

(c) Remodel, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;

(e) Enter into any contract or contracts for supervisory or managerial services;

(f) Use, or permit the use of, the mortgaged property for any purpose other than the operation of a ~~(nonprofit group practice facility)~~ nonprofit hospital.*

(5) ** ~~The Mortgagor agrees to deposit in a residual receipts fund any residual receipts realized from the operation of the mortgaged property. No distribution from such fund shall be made without the prior written approval of the Secretary. No distribution from such fund,~~

* Delete inapplicable phrase.

** This section is not applicable to §242 nonprofit hospitals and should be deleted.

~~which the party receiving such distribution is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds.~~

(6) It shall maintain the mortgaged premises, accommodations, and the grounds and equipment appurtenant thereto, in good and substantial repair and condition. PROVIDED THAT, in the event all or any of the buildings covered by the Mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured Mortgage.

(7) Mortgagor shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.

(8) It shall immediately satisfy or release any mechanic's lien, attachment, judgment, lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, except as permitted under the Security Agreement of even date between Mortgagor and Mortgagee, and shall dismiss or have dismissed or vacated any receivership or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceedings involving the project or the mortgaged property.

(9) (a) If the Mortgagor has any business or activity other than the project and operation of the mortgaged property, it shall maintain all income and other funds of the project segregated from any other funds of the Mortgagor and segregated from any funds of any other corporation or person. Income and other funds of the project shall be expended only for the purposes of the project and in connection with the mortgaged property.

(b) Mortgagor shall provide for the management of the project in a manner satisfactory to the Secretary. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by the Secretary addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.

(c) It shall make no payment for services, supplies, or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(d) The mortgaged property, equipment, building plans, office apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall be subject

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to examination and inspection at any reasonable time by the Secretary or his duly authorized agents; the Mortgagor shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.

(e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.

(f) Within 60 days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of Mortgagor prepared in accordance with the requirements of the Secretary, certified to and by an officer of the Mortgagor and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.

(g) At the request of the Secretary, his agents, employees, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured Mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.

(h) ~~AA~~¹ receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by ~~F.D.I.C.~~² Such funds shall be withdrawn only in accordance with the provisions of this agreement for expenses of the project. Funds of the project shall be immediately deposited in the project bank account and failing to do so in violation of this Agreement such funds shall be deemed to be held in trust. Property of the project received in violation of this Agreement shall be immediately delivered to the project and failing to do so, such property shall be deemed to be held in trust.

(i) Mortgagor or its lessee shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the state and/or other licensing authority. Mortgagor shall not lease all or part of the project except on terms approved by the Secretary.

~~(10)³ The Mortgagor shall make its project and services, if any, available to eligible occupants at charges approved in writing by the Secretary. Such charges shall be subject to annual review by the Secretary. If the Secretary determines in his review that some adjustment (either upward or downward) of charges is required, the Mortgagor shall immediately comply with such requirements.~~

~~(11)⁴ (a) The Mortgagor shall be required to suitably equip the project for group practice operations: Mortgagor agrees to perform all obligations of any chattel mortgage,~~

¹ Except as may otherwise be required by the Secretary, all

² the United States or an agency or instrumentality thereof.

³ This section is not applicable to §242 nonprofit hospitals and should be deleted.

⁴ This section is not applicable to §242 nonprofit hospitals and should be deleted.

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~~conditional sale, lease or lease purchase agreement, or other type of financing arrangement designed to acquire equipment for the project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the mortgagee and the Secretary and shall contain provision extending to the mortgagee, its successors or assigns, the option to assume such financing (or leasing) obligation of the Mortgagor upon default; further, such financing (or leasing) arrangement shall require the vendor lessor to furnish written notice of default to the mortgagee and the Secretary before exercising any of its rights or remedies.~~

~~_____ (b) The Mortgagor shall execute and record a chattel mortgage in favor of the mortgagee covering the Mortgagor's interest in all equipment used for the group operation except for such equipment as the Secretary may exempt from such coverage. Said chattel mortgage shall provide that a default in the terms of the Note and Mortgage upon the realty shall also constitute a default thereunder.~~

(12) Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. 2000d-1), Title VIII of the Civil Rights Act of 1968 (P.L. 90-284, 42 U.S.C. 3601), and Executive Order 11063 (27 F.R. 11527), and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development (24 CFR) issued pursuant to Title VI, Title VIII, or Executive Order 11063.

(13) Upon a violation of any of the above provisions of this Agreement by Mortgagor, the Secretary may give written notice, thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within 30 days after the date of such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration and upon such default the Secretary may:

(1) (a) If the Secretary holds the Note – declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the Mortgage.

(b) If said Note is not held by the Secretary – notify the holder of the Note of such default and request holder to declare a default under the Note and Mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the Mortgage, or assign the Note and Mortgage to the Secretary as provided in the Regulations;

(2) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Mortgage, and the necessary expenses of preserving the property and operating the project.

(3) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage.

(4) Apply to any court, State or Federal, for specific performance of this Agreement, for any injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this agreement would be irreparable and the amount of damage would be difficult to ascertain.

(14) ~~As security for the payment due under this Agreement to the Reserve Fund for Replacements, and~~ ^{**} To secure the Secretary because of his liability under the endorsement of the Note for insurance, and as security for the obligations under this Agreement, the Mortgagor respectively assigns, pledges and mortgages to the Secretary its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the Mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such profits, income, and charges, but upon default this permission is terminated.

(15) As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the Note identified herein, and endorsed for insurance or held by the Secretary;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgaged Property" includes all property, real, personal, or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;

(d) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said property;

(e) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for mortgage payments or for payment of reasonable expenses incident to its construction operation and maintenance;

** Delete this portion of the first sentence of this section where project is §242 nonprofit hospital.

(f) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;

(g) "Residual Receipts" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary of Housing and Urban Development;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Secretary unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held;

(h) "Group practice facility" means an establishment designed for operation primarily by a medical or dental group which provides preventive, diagnostic, and treatment service to ambulatory patients under professional supervision of persons licensed to practice dentistry, medicine, or optometry;

(i) "Hospital" means a facility --

(1) Which provides community service for inpatient medical care of the sick or injured, including obstetrical care;

(2) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(3) Which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure to the benefit of any private shareholder or individual.

(16) The Secretary shall not be liable for any of his acts hereunder except for flagrant misfeasance.

(17) This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner or reinsurer of the Mortgage.

(18) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(19) Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

SEE RIDER I ATTACHED HERETO AND MADE A PART HEREOF FOR CONTINUATION OF PARAGRAPHS.

[DOCUMENT EXECUTION OCCURS ON THE FOLLOWING PAGES]

