

**Supplemental Operator
Security Agreement
Section 241(a)**

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

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

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

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

Project Name: _____
FHA Project No.: _____

This Supplemental Operator Security Agreement (this “**Agreement**”) is made, entered into and dated as of the ____ day of _____, 20__, by and between _____, a _____ organized and existing under the laws of _____, who is located (as determined in accordance with the Uniform Commercial Code as now enacted in the State, as that term is defined below, or hereafter amended or superseded (the “**UCC**”)) at _____ (“**Operator**”); and _____, a _____ organized and existing under the laws of _____, and having an address at _____ (“**Lender**”), as follows:

RECITALS:

A. Contemporaneously with this Agreement, Lender has made a loan to _____ (“**Borrower**”) in the principal amount of \$ _____ (the “**Loan**”). The Loan is evidenced by that certain Supplemental Healthcare Facility Note made by Borrower in favor of Lender, dated as of even date herewith (the “**Note**”), which Note is secured in part by the healthcare facility commonly known as _____ (the “**Healthcare Facility**”), authorized to receive mortgage insurance pursuant to Section 241(a) of the National Housing Act, as amended, and located on the real property legally described on Exhibit A, attached hereto and incorporated herein by reference (the “**Land**”) (the Healthcare Facility and any other improvements situated on the Land are referred to herein as the “**Improvements**”) (the Land, the Healthcare Facility, and any of the other Improvements, together with any and all assets of whatever nature or wherever situated related to the Loan, are hereinafter sometimes referred to as the “**Project**”). If Operator is also Borrower, references to “Borrower” herein shall refer to Operator, and references to any Borrower-Operator Agreement shall be inapplicable and of no force or effect.

B. **[IF NO MASTER LEASE, USE THE FOLLOWING:** Operator operates the Healthcare Facility, pursuant to that certain [*title of Operator Lease or other agreement with Borrower*], as now or hereafter amended, and/or renewed or extended (the “**Borrower-Operator Agreement**”)] **[IF THERE IS A MASTER LEASE, USE THE FOLLOWING:** Borrower

has leased the Healthcare Facility to _____ (“**Master Tenant**”) pursuant to that certain [*Name of Master Lease*], dated as of _____, as amended from time to time (“**Master Lease**”). Master Tenant has subleased the Healthcare Facility to Operator to operate the Healthcare Facility, pursuant to that certain [*title of Operator’s sub-lease with Master Tenant*] dated as of _____, as now or hereafter amended, and/or renewed or extended (the “**Borrower-Operator Agreement**”).]

C. Operator is subject to that certain Supplemental Healthcare Regulatory Agreement – Operator between Operator and the U.S. Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (“**HUD**”), relating to the Healthcare Facility and made as of substantially even date herewith, as the same may be amended from time to time (the “**Operator Regulatory Agreement**”). **[IF THERE IS A MASTER LEASE, ADD THE FOLLOWING:** Master Tenant is subject to that certain Supplemental Healthcare Regulatory Agreement – Master Tenant between Master Tenant and HUD relating to the Healthcare Facility and made as of substantially even date herewith, as the same may be amended from time to time (the “**Master Tenant Regulatory Agreement**”). In addition to the Healthcare Facility, Master Tenant is or will be leasing a number of other healthcare facilities (the “**Other Healthcare Facilities**”), pursuant to the Master Lease, and subleasing each in turn to an affiliated operator (collectively, the “**Other Operators**”), each pursuant to a sublease agreement, as now or hereafter amended and/or renewed or extended (collectively the “**Other Subleases**”). Lender has or may extend loans in connection with each of the Other Healthcare Facilities, each such loan insured by HUD pursuant to Section 232 of the National Housing Act, as amended, or subsequent legislation (the “**Other FHA-insured Loans**”).]

D. In connection with the Loan, Borrower, among other things (i) granted to Lender that certain Supplemental Healthcare [*Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed or other Designation as appropriate in Jurisdiction*], Assignment of Leases, Rents and Revenue and Security Agreement, dated as of even date herewith, encumbering the Project, which has been or is concurrently herewith being recorded in the real estate records of the jurisdiction in which the Land is located (the “**Borrower Security Instrument**”), and (ii) entered into a Supplemental Healthcare Regulatory Agreement – Borrower with HUD, dated as of even date herewith (the “**Borrower Regulatory Agreement**”). Operator expects to benefit from the operation of the Supplemental Healthcare Facility and has agreed to enter into this Agreement with Lender as security for the Obligations (as defined below). This Agreement, the Note, the Borrower Security Instrument, the Borrower Regulatory Agreement, [*the Master Tenant Regulatory Agreement,*] the Operator Regulatory Agreement, and all other agreements, instruments, and documents which are now existing or are in the future required by, delivered to, and/or assigned to Lender and/or HUD in connection with or related to the Loan, whether executed or delivered by or on behalf of Borrower or Operator [*or Master Tenant*], as the same may be amended from time to time, are sometimes collectively referred to as the “**Loan Documents**,” provided that the Borrower-Operator Agreement [*and the Master Lease*], and any amendments thereto, shall not be considered to be Loan Documents.

E. As the operator of the Healthcare Facility, Operator acknowledges and agrees that it shall benefit directly or indirectly from the making of the Loan to Borrower. **[If applicable,**

include the following sentence: Further, Operator acknowledges that it has an identity of interest with Borrower.]

F. As used herein, “**Healthcare Assets**” means (i) any and all licenses, permits and/or approvals issued by any governmental authority with respect to the use or operation of the Healthcare Facility for the Approved Use (as that term is defined in the Operator Regulatory Agreement), (ii) any and all Medicare, Medicaid or other governmental insurance provider agreements (“**Provider Agreements**”) and (iii) any and all healthcare insurance receivables including but not limited to private patient receivables, all “**Government Receivables Accounts**” (as defined below) and “**Government Payments**” (as defined below).

G. This Agreement is junior in priority to each of the following documents (collectively, the "First Mortgage Documents"): (i) _____ **[Insert Title of First Security Instrument]** from the Borrower in favor of _____ (in such capacity, together with its successors and assigns, the “First Lender”) dated _____ (the "First Security Instrument"); (ii) _____ **[Insert Title of Borrower Regulatory Agreement]** between the Borrower and HUD dated _____ (the “First Borrower Regulatory Agreement”); **[and]** (iii) **[list Operator and Master Tenant Regulatory Agreements related to First Security Instrument, if applicable]** **[and (iv) add separate security agreements and assignments of leases and rents, as applicable]**. The First Security Instrument secures a certain _____ **[Insert Title of First Note]**, dated _____ from Borrower to First Lender, in the original principal amount of \$ _____ (the “First Note”) given in connection with a first mortgage loan (the “First Loan”) made by First Lender to Borrower.

STATEMENT OF AGREEMENT:

1. SECURITY INTEREST; SETOFF.

(a) To secure the full, prompt and complete payment and performance of all of the Obligations, Operator hereby, to the fullest extent permitted by applicable law with respect to the Healthcare Assets, grants to, and creates in favor of, Lender a continuing security interest in all of Operator’s right, title and interest in and to the property described on Exhibit B, attached hereto and incorporated herein by reference (the “**Collateral**”).

(b) “**Obligations**” means: (1) as of any date, the Loan and all other indebtedness, liabilities, obligations, covenants, debts and amounts owing from Borrower and/or Operator **[and/or Master Tenant]** to Lender and/or HUD arising out of, in connection with, described in, or evidenced by the Loan Documents, whether direct or indirect, absolute or contingent, related or unrelated, now or in the future existing and whether consisting of principal, interest, fees, indemnities, expenses (including attorneys’ fees), charges or other sums, however any of that indebtedness, obligations, or liabilities may be evidenced or acquired, all as now exist or may, after the date of this Agreement, be incurred, renewed, extended, consolidated, adjusted or amended; **[add the following if Borrower is not Operator:** and (2) Operator’s rent (if applicable) or any other payments (including all tax, insurance or other capital, repair or impound reserve payments required under the Borrower-Operator Agreement) and the performance by Operator of its obligations under the Borrower-Operator Agreement.] **[also add**

the following if there is a Master Lease: (3) payment and performance pursuant to any Cross-Default Guaranty of Subtenants executed by Operator in favor of Master Tenant, as now or hereafter amended (individually and collectively, the “**Cross Default Guaranty**”), which Cross-Default Guaranty has been assigned by Master Tenant to Lender; (4) and payment and performance of the Master Tenant’s obligations under the Master Lease, which Master Lease has been assigned by Borrower to Lender.]

(c) In addition to (and without limitation of) any right of setoff, lien or counterclaim Lender may otherwise have, Lender may, at its option, refuse to allow withdrawals by, or, for the benefit of Borrower and/or Operator [**and/or Master Tenant**], of any and all funds, monies, securities and other property held in escrow or in reserves or for the account of Borrower and/or Operator [**and/or Master Tenant**] pursuant to the Loan Documents (collectively, the “**Escrowed Funds**”), and may setoff and retain the Escrowed Funds, against any of the Obligations payable to Lender under any of the Loan Documents which are not paid when due (whether or not any of the funds, monies, securities, or other property are then distributable to, or on behalf of, Operator and/or Borrower [**and/or Master Tenant**]).

(d) Notwithstanding any provisions to the contrary contained in this Agreement, this Agreement shall be construed as granting to Lender a security interest, assigning receivables, giving dominion and control or designating an attorney-in-fact with respect to private patient receivables, Government Receivables Accounts, Government Payments or other Healthcare Assets to the greatest extent permitted by and not in violation of (i) applicable law, now enacted and/or hereafter amended, and (ii) the Provider Agreements.

2. REPRESENTATIONS; GENERAL COVENANTS.

(a) To induce Lender to make the Loan to Borrower and to induce HUD to grant its consent as applicable to the proposed transaction, pursuant to Program Obligations (as such term is defined in the Borrower Security Instrument), Operator certifies and warrants to Lender that the following statements are, and shall continue throughout the term of this Agreement to be, true: (i) except to the extent expressly permitted pursuant to Section 20 hereof, the security interest granted to Lender in the Collateral constitutes a valid, second priority security interest, subject only to the security interests created under the First Mortgage Documents; (ii) Operator has good title to, and is the sole and lawful owner of, the Collateral; (iii) Operator has full power and authority to enter into and perform its obligations under this Agreement; (iv) the Collateral is free and clear of any lien, security interest, claim, interest, pledge, assignment or other encumbrance (a “**Lien**”) except (A) to the extent expressly permitted pursuant to Section 20 hereof, (B) rights granted to Borrower under the Borrower-Operator Agreement, if any, which are subordinate to the liens in favor of Lender (“**Subordinate Agreement Rights**”), (C) taxes that are not yet due and payable, (D) Liens in favor of Lender, (E) Liens granted in favor of First Lender and/or HUD under the First Mortgage Documents, and (F) those Liens, if any, permitted by Program Obligations and/or otherwise approved in writing by Lender and HUD that do not violate statutes or HUD regulations (collectively, the “**Permitted Liens**”); (v) Operator keeps all of the tangible Collateral at the Healthcare Facility; (vi) all trade names, assumed names, fictitious names and other names used by Operator during the five (5) year period preceding the date of this Agreement are set forth on Exhibit C, and Operator has not, during the preceding five (5) year period, except as may be set forth on Exhibit

C, acquired any of its assets in any bulk transfer; (vii) the location of Operator (as determined in accordance with Article 9 of the UCC) is as set forth in the first paragraph of this Agreement; (viii) Operator's jurisdiction of organization is as set forth in the first paragraph of this Agreement; (ix) Operator's exact legal name is as set forth in the first paragraph of this Agreement; (x) Operator's organizational number (if any) as assigned by the state in which Operator is organized is the number identified as such on the financing statements filed in connection with the closing of the Loan; (xi) except as may be set forth on Exhibit C, Operator has no right, title or interest in, or with respect to, any investment property, any letters of credit, any electronic chattel paper, any commercial tort claims, any instruments, including promissory notes, or any deposit accounts; and (xii) the cash flow chart dated as of the date of closing and provided to Lender (attached hereto as Exhibit C-1) accurately and completely discloses the flow of Operator's funds, and all deposit accounts (whether held in the name of Operator or a third party) relevant thereto, including account numbers, depository banks, the names of all parties named on or with an interest in each deposit account, the type of account, and the DAISA (as defined below) or the DACA (as defined below) if any, applicable to each such deposit account. Operator has no rights, title or interest in any deposit accounts other than as disclosed on Exhibits C and C-1. Operator shall not grant, create or permit to exist any Lien on any of the Collateral except for the Permitted Liens. To the extent UCC filings or other evidence of liens are satisfied with the proceeds of or otherwise in connection with the closing of the Loan, such liens and evidence shall be disclosed to Lender and HUD and cleared from title as quickly as possible. Operator, at Lender's request, shall defend the Collateral against the claims and demands of any individual, unincorporated association, partnership, joint venture, trust, business trust, corporation, limited liability company, institution, entity or any governmental authority ("**Persons**") at any time claiming any interest in the Collateral.

(b) The Collateral shall be used by Operator only in the operation of the Project. Until an Event of Default (as defined below) occurs, Operator may have possession of the Collateral and use it in any lawful manner not inconsistent with the Loan Documents or the Borrower-Operator Agreement and any policy of insurance thereon. Operator shall not sell, assign, lease, or otherwise dispose of any of the Collateral without the prior written consent of Lender; however, Operator will have the right, without Lender's consent, to transfer, sell or dispose, in the ordinary course of business of operating the Healthcare Facility for the Approved Use, (i) of any inventory or other of the tangible Collateral utilized in the ordinary course of providing services to the residents of the Healthcare Facility, and (ii) of the Collateral that has become obsolete, worn out, or otherwise inappropriate, unfit or unnecessary for use in operating the Healthcare Facility. Such Collateral shall be known as the "**Consumed Property.**" Operator shall promptly replace the Consumed Property with other property of reasonably equivalent value as necessary or appropriate to maintain the operation of the Healthcare Facility for the Approved Use in compliance with applicable law and Program Obligations. Replacement personal property shall be free and clear of any Liens except for the Permitted Liens. (To the extent of Operator's interest in such property, any such replacement personal property shall automatically become a part of the Collateral under this Agreement). Lender's interests in the proceeds of the Collateral (or notification of its interests in the proceeds of the Collateral in financing statements or otherwise) shall not be construed as modifying this Agreement or as Lender's consent to the disposition of any of the Collateral other than as provided in this Agreement.

(c) All of the tangible Collateral is to be located at the Healthcare Facility (the “**Collateral Location**”), and none of the tangible Collateral may be removed therefrom without the prior consent of Lender unless the Collateral is (i) the Consumed Property under the terms of Section 2(b) above (ii) being removed in accordance with the terms of Section 2(d), or (iii) consists of Books and Records located at Operator’s or Master Tenant’s chief executive office. Immediately on demand therefor by Lender, Operator shall deliver to Lender any and all evidences of ownership of the Collateral (including certificates of title and applications for title). Operator shall give Lender not less than thirty (30) days prior written notice of any change of (A) Operator’s corporate, partnership, limited liability company, doing business, trade or legal name or (B) the Collateral Location. Prior to changing its name, Operator shall provide Lender, not less than thirty (30) days prior to the effective date of such name change (i) written notice of the name change, and (ii) a file-stamped copy of a UCC-3 financing statement that properly reflects the name change, which UCC-3 financing statement must be filed and/or recorded in all appropriate filing offices and any other offices where a UCC-1 financing statement was filed in connection with the closing of the Loan. Additionally, Operator shall not change the Collateral Location, without the prior written consent of Lender, and without taking all such actions necessary to insure such change does not impair or adversely affect any Liens of Lender.

(d) Operator shall, at its own cost and expense, maintain all of the tangible Collateral in good working condition and make all necessary renewals, repairs, replacements, additions, betterments and improvements thereto, and, in connection therewith, Operator may temporarily remove the same, or any part thereof, from the Project if such removal is necessary or advisable in connection with the Operator fulfilling its obligations under this Section 2(d) and does not affect the priority of the security interest created hereby.

(e) Operator shall operate the Healthcare Facility in accordance with, and in all other ways comply with, the Operator Regulatory Agreement and Program Obligations. In addition, and without limiting the generality of the foregoing, Operator shall deliver to Lender copies of all reports, financial statements and other information which Operator is obligated to provide to HUD pursuant to the Operator Regulatory Agreement or otherwise pursuant to the Loan Documents or Program Obligations, concurrent with the delivery of such reports, financial statements and other information to HUD. In addition, Operator shall provide such other financial statements, reports or other information pertaining to the Project or financial condition of Operator as Lender may reasonably request, to Lender within ten (10) days after Lender makes such request or such other time frame as may be required under the applicable Loan Documents or Program Obligations.

(f) Operator shall not change (i) without thirty (30) days prior notice to Lender, the location of its Chief Executive Office, or (ii) without the prior written consent of Lender, which shall not be unreasonably withheld, its jurisdiction of organization or its “location” (as such term is defined in the UCC) provided that no such change shall be permitted unless Operator has provided all such financing statements or amendments, and/or filed financing statements in such additional jurisdictions, and provided all other assurances necessary to assure the creation, preservation, continuation and/or perfection of any Liens of Lender.

(g) Operator shall not merge or consolidate with or into any other Person without the prior written consent of Lender.

(h) Operator shall not establish any deposit account unless (i) with respect to any proposed deposit account (other than those set forth on Exhibit C), at least thirty (30) days prior written notice of the name and address of the depository bank, the type of account and any other information reasonably requested by Lender is provided to Lender with a revised Exhibit C-1 cash flow chart showing the effect on and the position of such account in the flow of funds and (ii) contemporaneously therewith, if requested by Lender consistent with Operator's obligations under Section 14, and unless otherwise approved by Lender and HUD, a control agreement (each such control agreement, a "**DACA**") or, if one of the Government Receivables Accounts (as hereafter defined), a deposit account instruction services agreement (a "**DAISA**"), in form and substance acceptable to Lender, is entered into among Operator, First Lender, Lender and the depository bank where the deposit account is to be maintained. Notwithstanding the foregoing, a DACA shall not be required on payroll accounts that are funded solely with funds that have first gone through an account subject to a DACA to which FHA lender is a secured party, nor shall a DACA be required on accounts into which funds that belong solely to residents, as opposed to the Healthcare Facility/Operator, are deposited (provided that any portion of any resident funds that are deposited into such accounts and to which the facility or Operator becomes entitled shall be promptly deposited into a DACA account to which FHA lender is a party at the earliest point permitted by applicable law and its contracts with residents). The cash flow chart at Exhibit C-1 reflects the accounts that Lender and HUD are requiring, as of the date of this Agreement, to be governed by DAISAs or DACAs, based on Operator's representations as to their nature and their position in the cash flow process. Upon Lender's request (which request need be made only once and not on a recurring basis), Operator shall take or cause to be taken all reasonable steps to cause each of such depository banks to provide to Lender, (A) whether by internet access or otherwise, on-line screen access to daily activity in such deposit accounts, and (B) a copy of each periodic account statement relating to such deposit accounts ordinarily furnished by the depository bank to the account holder. Operator authorizes and approves of Lender communicating directly with each depository bank that maintains a deposit account for Operator. Operator shall maintain one or more separate deposit accounts into which only Government Payments are deposited (collectively, the "**Government Receivables Accounts**"), and Operator shall not commingle proceeds from non-governmental sources, with proceeds from governmental sources, including Government Payments. Operator shall cause all Government Payments to be paid directly into the Government Receivables Accounts. Prior to the closing of the loan, Operator shall cause a DAISA in form and substance acceptable to Lender to be entered into with respect to each of the Government Receivables Accounts by and among Operator, First Lender, Lender or Eligible AR Lender, and the depository banks that maintain the Government Receivables Accounts. Unless otherwise expressly approved by Lender and HUD, each DAISA shall provide that the depository bank initiate a funds transfer each business day, of all collected and available funds in the applicable Government Receivables Account to a non-Government Receivables Account of Operator that is then subject to a DACA ("**Account Holder's Instructions**"). Not less than thirty (30) days prior to the effective date thereof, Operator shall provide to Lender a copy of (1) any change to any DAISA, or (2) any new or changed Account Holder's Instructions with respect to any of the Government Receivables Accounts issued to a depository bank maintaining any Government Receivables Account, in each case no later than providing the change or directions to the depository bank. To the extent that any representative of Operator or other third party is named on or has an interest in any deposit account now or hereafter established relevant to the flow of funds of Operator, such arrangement

must be acceptable to Lender and HUD and compliant with any restrictions in the Loan Documents. Operator shall cause such deposit accounts to comply with this Section and shall, if required by Lender and/or HUD, cause such third party to execute such security agreements, joinders, DACAs or other documents as may be required for the purpose of granting Lender a security interest in, perfecting or continuing such security interest in, and binding such third party's interest in any such deposit accounts and/or funds or other items deposited therein. Except as otherwise provided in any DACA approved by Lender and HUD, unless a default exists under this Agreement or the Loan Documents, Lender will not provide notice under a DACA to the depository bank that is party to such DACA that Lender is exercising rights of control in the applicable deposit accounts. As used herein, "**Government Payment**" means a payment from a governmental entity and shall include, without limitation, payments governed under the Social Security Act (42 U.S.C. §§ 1395 *et seq.*), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

3. COMPLIANCE WITH LAWS. Operator shall comply with the requirements of all valid and applicable federal, state and local laws.

4. TAXES; EXPENSES. Operator shall pay, when due, all taxes, assessments and other charges lawfully and validly levied or assessed on the Collateral or any part thereof. Operator shall pay and, as applicable, reimburse Lender for (i) any and all fees, costs and expenses, of whatever kind and nature, including any fees, expenses and disbursements of Lender's counsel (including but not limited to fees, expenses and disbursements for preparation of documents, making title examinations and rendering opinion letters) which Lender may incur in connection with filing any financing statements or other public notices to protect its interests hereunder, the enforcement, preservation, foreclosure, and/or protection of Lender's rights and/or remedies under this Agreement or as to the Collateral (including, without limitation, any DACA or DAISA), whether incurred through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or relating to the Collateral or this Agreement (including, without limitation, any DACA or DAISA), and (ii) all filing and recording fees and taxes payable in connection with the Collateral or the transactions contemplated by the this Agreement (including, without limitation, any DACA). All amounts payable by Operator to Lender under this Section 4 shall be paid by Operator upon Lender's demand therefor.

5. INSPECTION; NOTICES. Subject to the privacy rights of the residents or other individuals served by the Healthcare Facility, Lender, or its agents, may enter on the Project and/or the Healthcare Facility and any other Collateral Location at any time during normal business hours, and from time to time, for the purpose of inspecting the Project and/or the Collateral and making copies or abstracts of all of Operator's records pertaining to the Collateral. Operator shall keep accurate and complete records of the Collateral. Operator shall give Lender prompt notice of any new facts which, under the applicable provisions of law, would affect the priority of the security interest granted to Lender herein and of any Event of Default.

6. INSURANCE. Operator shall purchase and maintain insurance at all times with respect to all of the tangible Collateral against risks of fire (including so-called extended coverage), theft, vandalism and such other risks as Lender may require, in such form, for such

periods and written by such companies as may be satisfactory to Lender and required by Program Obligations, such insurance to be payable to Lender as its interests may appear. Operator shall purchase and maintain at all times liability insurance and business interruption insurance in such amounts and issued by such companies as may be required from time to time by Lender and Program Obligations. All policies of insurance shall provide for thirty (30) days advance written notice to Lender of cancellation or any material change in coverages of such insurance. Operator shall furnish Lender with certificates or other evidence satisfactory to Lender of compliance with the foregoing insurance provisions.

7. DISCHARGE OF LIENS. At its option but without any obligation to do so, Lender may (a) discharge any taxes or other Liens at any time levied or placed on the Collateral (other than Liens created under the First Mortgage Documents), (b) pay for insurance on the Collateral, and/or (c) pay for the maintenance and preservation of the Collateral. Operator shall reimburse Lender on its demand for any payment made, or any expense incurred, by Lender pursuant to this Section 7. All of the foregoing sums paid or advanced by Lender shall constitute part of the Obligations and shall be secured by the Collateral.

8. EVENTS OF DEFAULT. Each of the following events or circumstances, whether or not such event or circumstance is caused by or within the control of Operator, shall constitute an “**Event of Default**” under this Agreement:

(a) Any of the Obligations are not paid when due, subject to any grace or cure period provided under the Loan Documents or the Borrower-Operator Agreement;

(b) A violation of the provisions of Section 2(h) hereof occurs;

(c) (i) Any change in or revocation of the Account Holder’s Instructions set forth in any DAISA, and/or (ii) any DACA or DAISA is modified, and/or (iii) any DAISA or DACA is terminated and/or any deposit account subject thereto is closed (unless a replacement DAISA or DACA approved by Lender that complies with this Agreement is entered into on or prior to such termination or closure, funds in such account have been transferred to the appropriate replacement account, and Operator has directed future receivables to be paid into the relevant replacement account in compliance with this Agreement), provided that for any such violation, Lender may, upon HUD’s consent, declare an Event of Default immediately and without thirty (30) days’ notice;

(d) A default or breach of any of the Loan Documents (exclusive of this Agreement which is covered by the other subsections of this Section 8) or First Mortgage Documents has occurred, which default or breach is not cured within any applicable grace or cure period provided for in the applicable Loan Documents, if any; provided that, defaults or breaches under the Borrower Regulatory Agreement, **[Master Tenant Regulatory Agreement,** or the Operator Regulatory Agreement or any regulatory agreement included within the First Mortgage Documents may only be treated as defaults under this Agreement if HUD consents to such treatment or requests Lender to treat them as such;

(e) Operator does not observe, perform or comply with any of the other terms or conditions of this Agreement not covered by other subsections of this Section 8 and not also a

default under any of the other Loan Documents, which continues for a period of thirty (30) days after notice of such failure by Lender to Operator, provided that Lender shall extend such thirty (30) day period by such time as Lender may reasonably determine is necessary to correct the violation for so long as, Lender determines, in its reasonable discretion with HUD consent, that: (i) Borrower is timely satisfying all payment obligations in the Loan Documents; (ii) none of the Permits and Approvals material to the operation of the Healthcare Facility is at substantial and imminent risk of being terminated, suspended or otherwise restricted in such a way that such termination, suspension or restriction would have a materially adverse effect on the operation of the Healthcare Facility; (iii) such violation cannot reasonably be corrected during such thirty (30) day period, but can reasonably be corrected in a timely manner; and (iv) cure is commenced during such thirty (30) day period and thereafter diligently and continuously pursued;

(f) Any warranty, representation or statement made or furnished to Lender by, or on behalf of, Operator proves to have been false in any material respect when made or furnished or when treated as being made or furnished to Lender;

(g) Lender does not have, for any reason, a perfected, second priority security interest in all of the Collateral except to the extent expressly permitted pursuant to Section 20 hereof and except for Permitted Liens;

(h) There occurs any actual or threatened demolition of or injury or waste to the Project, not covered by insurance, or not timely replaced or restored, which materially impairs the value of the Collateral or the Project, including the ability to operate the Healthcare Facility;

(i) Filing by or against Operator of a petition in bankruptcy, for a reorganization, arrangement or debt adjustment, or for a receiver, trustee, or similar creditors' representative for Operator's property or any part thereof, or of any other proceeding under any federal or state insolvency or similar law (and if such petition or proceeding is an involuntary petition or proceeding filed against Operator without its acquiescence therein or thereto at any time, the same is not promptly contested and, within sixty (60) days of the filing of such involuntary petition or proceeding, dismissed or discharged), or the making of any general assignment by Operator for the benefit of creditors, or Operator dissolves or is the subject of any dissolution, winding up or liquidation, each if, for so long as the Loan is insured or held by HUD, HUD consents to the treatment of such as an Event of Default;

(j) Operator is dissolved, and liquidation of Operator is commenced, in accordance with organizational documents of Operator and/or the law of the organizational jurisdiction of Operator; or

(k) Operator changes its name or the jurisdiction in which it is organized or merges or consolidates with or into another Person without the prior written consent of Lender.

9. REMEDIES ON DEFAULT.

(a) Upon the occurrence of an Event of Default, Lender may then, or at any time after the occurrence and during the continuation of such Event of Default, upon written notice to Operator, (i) declare all of the Obligations immediately due and payable, and whereupon, the Obligations shall be due and payable automatically and immediately, without further notice or demand, which Operator expressly waives, and proceed to enforce payment of the Obligations; (ii) exercise all of the rights and remedies afforded to Lender (A) pursuant to the terms of this Agreement and/or any of the Loan Documents, (B) under the UCC, and/or (C) by law and/or in equity (subject, however, to any limitations imposed by applicable law with respect to the Healthcare Assets); (iii) collect and receive the proceeds of all Awards (as defined in Exhibit B), the rights of Operator thereto and shares of Operator therein being hereby assigned to Lender, and give proper receipts and acquittances therefor and apply, at its option, the net proceeds thereof, after deducting expenses of collection, as a credit upon any portion, as selected by Lender, of the Obligations; (iv) require Operator to assemble the Collateral and make it available to Lender at a place to be designated by Lender which is reasonably convenient to both parties; and (v) without limiting the provisions of Section 1(c), apply, or instruct another Person to apply, to the Obligations the balance of any deposit account that is part of the Collateral.

(b) Without limitation of those rights and remedies, Lender may, upon written notice to Operator, take, and publicly or privately sell or convey, full right, title and interest in and to the Collateral, or any part of it, in the name of Lender and/or its designees. Subject to the terms of this Agreement, and subject to any restrictions in applicable law with respect to the Healthcare Assets, Operator hereby constitutes and appoints Lender as its true and lawful attorney in fact to assign and transfer its interest in any or all of the Collateral if an Event of Default occurs. This power is coupled with an interest and is irrevocable.

(c) If any notice is required by law for Lender to make a sale or other disposition of the Collateral, Lender and Operator agree that notice shall not be unreasonable as to time if given in compliance with this Agreement ten (10) days before any sale or other disposition of the Collateral. All reasonable attorneys' and paralegal fees and other legal expenses incurred by Lender to collect the Obligations, to retake, hold, prepare for sale, and to dispose of the Collateral shall be (i) payable to Lender on its demand for payment, (ii) part of the Obligations, and (iii) secured by the Collateral.

(d) Operator further specifically agrees that, in any exercise of the rights of Lender under this Agreement or under any of the Loan Documents, (i) any combination of the Collateral and/or any other security for the Obligations may be offered for sale and (ii) all of the Collateral and/or any other security for the Obligations may be sold for one total price, and the proceeds of any such sale accounted for in one account without distinction among the items of security or without assigning to them any proportion of such proceeds, Operator hereby waiving the application of any doctrine of marshaling.

(e) Operator shall cooperate in any legal and lawful manner necessary or required, to permit Lender or its successors and assigns, or its nominee to continue to operate and maintain the Healthcare Facility for the Approved Use in Operator's name, place and stead. For this purpose, and to the extent not prohibited by applicable law with respect to the Healthcare

Assets, Operator irrevocably appoints Lender, its successors and assigns, as Operator's true and lawful attorney-in-fact, to do all things necessary or required by the state in which the Project is located or any other government authority with jurisdiction over the Project, including, but not limited to, the provision of any and all information and data, the payment of fees and other charges, and the execution of documents, all in the name of Operator. This power is coupled with an interest and is irrevocable.

(f) The rights and remedies of Lender under this Section 9 are subject to the rights and remedies of First Lender under the First Mortgage Documents.

10. NO WAIVER BY LENDER; CUMULATIVE RIGHTS.

(a) No waiver by Lender of any Event of Default or default under this Agreement or any of the Loan Documents shall be effective unless such waiver is in writing and signed by duly authorized representatives of Lender. No waiver by Lender of any Event of Default or default under this Agreement or any of the Loan Documents shall operate as a waiver of any other Event of Default or default or of the same Event of Default or default on a future occasion. Lender may delay in exercising or omit to exercise any right or remedy under this Agreement, any of the Loan Documents or by law or equity provided without waiving that or any past, present or future right or remedy. All rights and remedies of Lender in this Agreement and the Loan Documents shall be cumulative, and none of these rights or remedies shall be exclusive of any other right or remedy allowed at law or in equity or in any of the other Loan Documents, and all of these rights and remedies may be exercised and enforced concurrently.

(b) Neither Operator nor any other Persons interested in the Collateral or the proceeds of the Collateral shall have any right to require Lender first to resort to or proceed personally against any other Person or to proceed against any other collateral security, or to give priority or preference to any item of the Collateral, or to proceed upon any guaranty, prior to exercising its rights hereunder. No renewal or extension of the Loan, no release or surrender of the Collateral and/or any other security for the Obligations, no release of any obligor with respect to the Obligations, and no delay by Lender in enforcing the Obligations or exercising any right or power with respect to the Obligations shall affect Lender's rights with respect to the Collateral.

11. BINDING EFFECT. All rights and remedies of Lender under this Agreement shall inure to the benefit of Lender's successors and assigns; and all agreements, obligations, and duties of Operator shall bind its heirs, personal representatives and permitted successors and assigns; however, Operator may not assign this Agreement or any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement without the consent of Lender.

12. GOVERNING LAW; CONSTRUCTION; WAIVER OF TRIAL BY JURY.

(a) This Agreement and all rights and obligations under this Agreement, including matters of construction, validity and performance, shall be governed by the laws of the state in which the Healthcare Facility is located (the "State"), except that the law controlling the perfection and priority of Liens of Lender on any deposit account as original collateral designated in a DACA may be governed by the UCC of the jurisdiction of the depository bank,

within the meaning of Section 9-104 of the UCC. If any term of this Agreement is found to be invalid by a court with jurisdiction under the laws of the State or laws of mandatory application, then the invalid term shall be considered excluded from this Agreement and will not invalidate the remaining terms of this Agreement. All uncapitalized terms used herein which are now or hereafter defined in the UCC, as now enacted in the State or as hereafter amended or superseded, shall have the same meaning herein as in the UCC unless the context indicates otherwise. Every power given herein is coupled with an interest and is irrevocable by death, dissolution or otherwise. The definition of any document includes all schedules, attachments and exhibits to that document, and all renewals, extensions, supplements, amendments, modifications, restatements and consolidations of that document, and any document given in substitution for or replacement of that document. The term “**including**” is used by way of example only and not by way of limitation, and the singular includes the plural and, conversely, the plural includes the singular. The captions or headings contained in this Agreement are for reference purposes only and will not affect or relate to the interpretation of this Agreement.

(b) AS A SPECIFICALLY BARGAINED INDUCEMENT FOR LENDER TO ENTER INTO THIS AGREEMENT AND EXTEND CREDIT TO BORROWER, LENDER AND OPERATOR EACH HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT(S) TO A TRIAL BY JURY FOR ANY CAUSE OF ACTION, CLAIM OR DEFENSE RELATING TO, RESULTING FROM OR ARISING OUT OF THE LOAN AND/OR ANY TRANSACTIONS, RIGHTS AND/OR OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT AND/OR ANY OF THE LOAN DOCUMENTS. OPERATOR FURTHER ACKNOWLEDGES THAT SUCH WAIVER OF THE RIGHT TO A TRIAL BY JURY IS MADE AFTER CONSULTATION WITH COUNSEL.

13. TERM OF AGREEMENT. The term of this Agreement will begin on the date of this Agreement and continue in full force and effect and be binding on Operator until the date that all of the Obligations are fully and finally paid and satisfied.

14. PERFECTION; FURTHER ASSURANCES. Operator agrees to comply with all applicable laws and requirements in order to grant to Lender a valid, perfected second lien on the Collateral except to the extent expressly permitted pursuant to Section 20 hereof. At any time and from time to time, Operator, on request of Lender, shall give, authorize, execute, authenticate, file and/or record any notice, financing statement, financing statement amendment, instrument, document or agreement that Lender may consider necessary or desirable to create, preserve, continue, perfect or validate any security interest or other Lien granted under this Agreement or which Lender may consider necessary or desirable to exercise or enforce its rights under this Agreement. Operator shall, at its expense, provide Lender upon its request (and in any event, within forty-five (45) days of the date hereof) with one or more UCC search reports with respect to each office in which a UCC filing may be required in order for Lender to validly perfect its security interest in any or all of the Collateral, confirming that a UCC financing statement has been filed in such office in favor of Lender and that there are no other UCC financing statements in effect with respect to any of the Collateral except those in favor of Lender and the Permitted Liens. Operator shall pay all filing costs, and all costs and expenses of any record searches for financing statements. Without limiting the generality of the foregoing, Lender is authorized to file with respect to the Collateral, and Operator hereby authenticates such

filings, subject to any restrictions in applicable law with respect to the Healthcare Assets, one or more financing statements, financing statement amendments or other documents without the signature of Operator and to name therein Operator as debtor and Lender and/or HUD as secured parties; and correct or complete, or cause to be corrected or completed, any financing statements or other such documents as have been filed naming Operator as debtor and Lender and/or HUD, as their interests may appear, as secured parties. Operator hereby appoints Lender as its attorney-in-fact and authorizes Lender, acting alone on behalf of Operator, to execute, acknowledge, deliver, file and/or record any and all documents requiring execution by Operator and necessary or desirable to effectuate or facilitate the purposes of this Agreement and/or the obligations or covenants of Operator under this Agreement. The power of attorney granted hereby is coupled with an interest and is irrevocable. Lender is also authorized by Operator to give notice to any Person that Lender may consider necessary or desirable under applicable law to preserve, perfect or protect Lender's and or HUD's interests in the Collateral. Without limiting the generality of the foregoing, with respect to any of the Collateral for which control of such Collateral is a method of perfection under the UCC, including all of Operator's rights, titles and interests in deposit accounts, investment property, electronic chattel paper and letter-of-credit rights, Operator shall, on Lender's request, cause to be executed by each Person that Lender determines is appropriate, a control agreement in a form acceptable to Lender. Without limiting any other requirements hereunder, Operator shall immediately notify Lender of any action of Operator that negates, invalidates or otherwise adversely impacts the effectiveness of the financing statements and shall cooperate with Lender with respect to the filing of any amendments or additional financing statements. The foregoing sentence shall not be deemed to permit Operator to take any such action that negates, invalidates or otherwise adversely impacts the effectiveness of the financing statements.

15. OPERATIONS TRANSFER/COOPERATION IN EVENT OF BORROWER-OPERATOR AGREEMENT EXPIRATION OR TERMINATION. Upon the expiration or earlier termination of the Borrower-Operator Agreement, Operator shall cooperate in any legal or lawful manner necessary or required to permit Lender, its successors and assigns, nominee, or a HUD approved replacement operator (“**Successor**”) to continue to operate and maintain the Healthcare Facility for the Approved Use in Operator's name, place and stead, including the execution and delivery of such operations transfer documents and or interim sublease or management agreements as may be necessary or appropriate in order that Successor may bill and operate in name of Operator pending receipt of a new license in Successor's name. Operator shall further execute such documentation as may be required to transfer its Medicare and Medicaid provider agreements to the Successor. For this purpose, and to the extent not prohibited by applicable law with respect to the Healthcare Assets, Operator irrevocably appoints Lender, its successors and assigns, as Operator's true and lawful attorney-in-fact, to do all things necessary or required by the state in which the Project is located or any other government entity with jurisdiction over the Project, including, but not limited to, the provision of any and all information and dates, the payment of fees and other charges, and the execution of documents, all in the name of Operator. This power is coupled with an interest and is irrevocable. The rights and remedies of Lender under this Section 15 are subject to the rights and remedies of First Lender under the First Mortgage Documents.

16. INTEREST. Any amounts payable by Operator under this Agreement shall bear interest at the lesser of (i) the rate of interest provided in the Note or (ii) the maximum rate

permitted by Program Obligations or applicable law, from the date on which such amounts are payable under this Agreement until the date on which such payments are made by Operator to Lender; however, nothing in this Agreement will be deemed to give to Operator the right to withhold payment in consideration of the payment of such interest.

17. DELIVERY OF NOTICES. All notices must be in writing and sent (a) in person, (b) by certified or registered mail or (c) by overnight delivery carrier for next or second day delivery in each case to the address listed below (or if notice of a new address is given in accordance with this Agreement, the new address). Notice given in any other manner shall not be considered delivered or given unless and until actually received. A notice period will start (i) if mailed, three (3) business days after notice was sent by certified or registered mail, (ii) the next or second (2nd) business day after being delivered to a recognized overnight courier service, with arrangements and payments of charges for next or second (2nd) business day delivery, respectively, and (iii) the day the notice was delivered in person. Notwithstanding the foregoing, if applicable law requires or permits a particular method of notice in order to enforce the assignment of leases and/or rents hereunder, then a notice given in compliance therewith shall also be deemed effective.

Operator:

Lender:

18. REVIVAL OF SECURITY INTEREST. If Operator makes a payment or payments to Lender (or Lender receives any payment or proceeds of the Collateral) that are subsequently voided, avoided, set aside, annulled, or disregarded under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of the payment or proceeds received, the Obligations or part intended to be satisfied shall be revived and shall continue in full force and effect as if these payment(s) or proceeds had not been received by Lender, and the security interest granted herein shall be enforceable as to the Obligations as fully as if such payments had never been made.

19. CLAIMS AGAINST LENDER.

(a) **Notification.** Lender shall not be in default under this Agreement, unless a written notice specifically setting forth the claim of Operator shall have been given to Lender within one hundred eighty (180) days after the occurrence of the event which Operator alleges gave rise to such claim and Lender does not remedy or cure the default, if any, with reasonable promptness thereafter.

(b) **Limitations.** In no event, however, shall Lender be liable to Operator, or to any other party claiming through Operator, for any damages other than actual, direct, compensatory damages sustained by Operator as a result of such default, including, without limitation, indirect, speculative, consequential or punitive damages, whatever the nature of the breach by Lender of its obligations. In no event shall Lender be liable to Operator, or to any other party making a claim through Operator, unless a written notice specifically setting forth the nature of the claim shall have been given to Lender within the time period specified above.

20. PROVISIONS REGARDING ACCOUNTS RECEIVABLE LOANS.

(a) **Definitions.** The following words and terms shall have the meanings hereinafter set forth:

“**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 Healthcare Facility in the ordinary course of Operator’s business: (i) all rights to payment of a monetary obligation, whether or not earned by performance, including, but not limited to, accounts (including, but not limited to accounts receivable, healthcare insurance receivables, Medicaid and Medicare receivables, Veterans Administration receivables, or other governmental receivables, private patient receivables, and HMO receivables), (ii) payment intangibles, (iii) guaranties, letter-of-credit rights and other supporting obligations relating to the property described in clauses (i) and (ii), and (iv) all of the proceeds of the property described in clauses (i), (ii) and (iii). Notwithstanding the foregoing, “Accounts” do not include 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.

“**Eligible AR Lender**” means a bank, financial institution or other institutional lender which is in the business of making loans to provide working capital to businesses and which is satisfactory to Lender and approved by HUD.

“**Eligible AR Loan**” means a loan or line of credit obtained by Operator from an Eligible AR Lender (a) for the sole purpose of providing working capital for the operation of the Project and, with the approval of HUD and Lender, other projects that are encumbered by mortgage loans insured or held by HUD and (b) which satisfies all of the requirements of this Section 20.

“**Required Intercreditor Agreement**” means an intercreditor agreement executed by, *inter alia*, First Lender, Lender and Eligible AR Lender, in form and substance satisfactory to Lender and approved by HUD.

(b) **Eligible AR Loan.** Subject to the written approval of Lender and HUD, Operator may obtain and maintain at any time one, and only one, subject to subsection (vi) below, Eligible AR Loan, which Eligible AR Loan may be secured by a first lien on the “**AR Lender Priority Collateral**” (composed of Accounts and as further defined in the Required Intercreditor Agreement), subject to the following limitations and requirements:

- (i) except as expressly permitted in the Required Intercreditor Agreement in no event shall the principal amount of the Eligible AR Loan ever exceed such amount as may be approved in writing by Lender and HUD;
- (ii) without the written approval of Lender, none of the Collateral, except the AR Lender Priority Collateral, shall be given as security for any Eligible AR Loan unless: (A) such interest (including any set-off rights) is expressly subordinated to Lender’s interest pursuant to the Required Intercreditor Agreement; (B) Eligible AR

Lender agrees in the Required Intercreditor Agreement that it shall not foreclose or exercise any remedies with respect to such Collateral without Lender's consent; and (C) such items of the Collateral do not include any items required to be excluded from the Eligible AR Lender's collateral by the Required Intercreditor Agreement or by Program Obligations;

- (iii) with respect to any existing Eligible AR Loan, the Eligible AR Lender, Operator, First Lender and Lender shall have executed, and HUD shall have approved, the Required Intercreditor Agreement prior to closing of the Loan. With respect to any other Eligible AR Loan, the Eligible AR Lender, Operator, First Lender and Lender shall have executed, and HUD shall have approved, the Required Intercreditor Agreement before such Eligible AR Loan is closed, any funds are disbursed thereunder, any UCC financing statements are filed in connection therewith or any security interest in connection therewith is granted or perfected;
- (iv) the Eligible AR Loan, the collateral therefor and all of the terms and conditions thereof shall at all times comply with all of the terms and conditions of the applicable Required Intercreditor Agreement;
- (v) until the Eligible AR Loan is paid in full, the written approval of Lender and HUD is required for any proposed modifications, extensions, renewals or amendments to a Material Term (as defined in the Operator Regulatory Agreement) of the Eligible AR Loan or the related security agreement, prior to the effective date of such amendments; and
- (vi) An Eligible AR Loan that is being syndicated or participated may, subject to the written approval of Lender and HUD, be deemed "one" Eligible AR Loan for purposes hereof, provided that the administrative agent or lead: (A) is an Eligible AR Lender, (B) signs a Required Intercreditor Agreement and (C) provides assurances therein that such agent or lead has the authority to execute the Required Intercreditor Agreement and bind such other parties thereto, that such agent or lead shall be the sole party entitled to enforce the Required Intercreditor Agreement and any rights in the Collateral, that Lender and HUD shall be entitled to rely on any consent, amendment or other document signed by such agent or lead, and that none of the other lenders or participants have or will have an identity of interest with Operator, and such other assurances as HUD or Lender may reasonably require.

(c) **Required Intercreditor Agreement.** The Required Intercreditor Agreement shall not be considered one of the Loan Documents. Nonetheless, Operator shall comply at all times with the Required Intercreditor Agreement then in effect.

(d) So long as the AR Loan is outstanding, or is replaced with one or more loans from another Eligible AR Lender, whether before, concurrent with or at any time after the Eligible AR Loan is indefeasibly satisfied in full, the relative priorities of Lender and the Eligible AR Lender in and to the Accounts and certain other assets of Operator shall be established and governed by the terms of the Required Intercreditor Agreement.

(e) **Information.** Operator shall, from time to time, promptly following a request by Lender or HUD, provide to Lender and/or HUD (i) any and all information and documents available to Operator regarding the Eligible 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 Eligible AR Loan) and (ii) copies of any and all documents evidencing, securing and/or related to any Eligible AR Loan and/or any amendments thereto.

21. ASSIGNMENT OF LEASES AND RENTS.

Operator shall execute and record an assignment of leases and rents in favor of Lender in the form required by HUD [HUD Form # _____].

22. WAIVERS.

(a) No act or thing need occur to establish the liability of Operator hereunder, and no act or thing, except full payment and discharge of all of the Obligations, shall in any way exonerate Operator or modify, reduce, limit or release the liability of Operator hereunder.

(b) Operator shall not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to Operator against any Person liable for payment of the Obligations, or as to any collateral security therefor, unless and until all of the Obligations shall have been fully paid and discharged.

(c) Whether or not any existing relationship between Operator and Borrower has been changed or ended and whether or not this Agreement has been terminated, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of the Obligations without any consent or approval by Operator and without any notice to Operator. The liability of Operator shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after termination of this Agreement, without notice to or consent or approval by Operator): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all of the Obligations; (ii) any one or more extensions or renewals of the Obligations (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any of the Obligations; (iii) any waiver or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of the Obligations, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any of the Obligations; (iv) any full or partial release of, settlement with, or agreement not to sue any

Person liable in respect of any of the Obligations; (v) any discharge of any evidence of the Obligations or the acceptance of any instrument in renewal thereof of substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for the Obligations, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any of the Obligations or any evidence thereof; (ix) any order of application of any payments of credits upon the Obligations; (x) any election by Lender under §1111(b)(2) of the United States Bankruptcy Code.

(d) Operator waives any and all defenses, claims and discharges of any obligor, pertaining to the Obligations, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, Operator shall not assert, plead or enforce against Lender any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to any Person liable in respect of any indebtedness, or any setoff available against Lender to any such other Person, whether or not on account of a related transaction. Operator expressly agrees that it shall be and remain liable, to the extent of the Collateral, for any deficiency remaining after foreclosure of any security interest securing the Obligations, whether or not the liability of any obligor for such deficiency is discharged pursuant to statute or judicial decision.

(e) Operator waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing the Obligations. To the extent of the Collateral, this Agreement constitutes an absolute, unlimited, unconditional and continuing guaranty of payment, not collection. Lender shall not be required first to resort for payment of the Obligations to any other Persons or their properties, or first to enforce, realize upon or exhaust any collateral security for the Obligations, before enforcing this Agreement.

(f) The liability of Operator under this Agreement is in addition to and shall be cumulative with all other liabilities of Operator to Lender as obligor or otherwise, without any limitation as to amount, and all other liabilities of any other Person who guarantees all or any portion of the Obligations, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

(g) This Agreement shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender. Any invalidity or unenforceability of any provision of application of this Agreement shall not affect other lawful provisions and application hereof, and to this end the provisions of this Agreement are declared to be severable.

(h) Operator hereby covenants that this Agreement shall not be discharged except by complete performance of the obligations contained in this Agreement. Operator waives all setoffs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of, and reliance on, this Agreement. Operator further waives all (i) notices of the existence, creation or incurring of new or additional indebtedness, arising either from additional loans extended to Operator or Borrower, or otherwise, (ii) notices that the principal amount, or any portion thereof

(and any interest thereon), of the Loan or any of the other Obligations is due, (iii) notices of any and all proceedings to collect from Operator and/or Borrower of all or any part of the Obligations, or from anyone else, (iv), to the extent permitted by law, notices of exchange, sale, surrender or other handling of any security or collateral given to Lender to secure payment of all or any part of the Obligations, and (v) defenses based on suretyship or impairment of collateral.

23. MISCELLANEOUS.

(a) This Agreement is intended to be supplemental to and not in substitution or in derogation of any security agreement contained in any of the other Loan Documents.

(b) In any instance where the consent or approval of Lender may be given or is required or any determination is to be rendered by Lender hereunder, except as may be otherwise specifically provided herein the granting, withholding or denial of such consent or approval and the rendering of such determination shall be made or exercised by Lender at its sole and exclusive option.

(c) It is understood and agreed that no judgment or decree which may be entered on any debt secured or intended to be secured by the Borrower Security Instrument shall operate to abrogate or lessen the effect of this Agreement, but that this Agreement shall continue in full force and effect until the payment and discharge of the Obligations.

(d) This Agreement, any Required Intercreditor Agreement and the other Loan Documents represent the entire agreement between Lender (in its capacity as such under the Loan Documents) and Operator with respect to the subject matter of this Agreement and supersede all previous agreements, negotiations, and understandings with respect to the subject matter of this Agreement. Neither this Agreement nor any of the other Loan Documents may be amended, altered or changed other than in a writing signed by Lender and Operator. Operator's warranties and representations in this Agreement shall be treated as being continuing warranties and representations, made by Operator with the same effect as though the representations and warranties had been made again on, and as of, each day of the term of this Agreement.

(e) This Agreement may be executed in several counterparts and each counterpart shall be considered an original of this Agreement.

24. RIGHTS OF HUD.

(a) Operator and Lender hereby agree that HUD shall be an additional secured party under this Agreement together with Lender, as their interests may appear, and that HUD shall be listed on the UCC financing statements to be filed contemporaneously herewith; provided, however, that nothing herein or in the UCC financing statements shall require the execution, now or at any future time, of any amendment, extension, or other document by HUD.

(b) To the extent any party herein is required or desires to give notice to HUD hereunder, such notice shall be delivered in accordance with the provisions hereof, as follows: U.S. Department of Housing and Urban Development, c/o Office of Residential Care Facilities, 451 7th Street S.W., Washington, DC 20410.

25. **RIDER TO OPERATOR SECURITY AGREEMENT.** [*Include this section if the Operator is unrelated to the Borrower and it is otherwise applicable.*] A Rider to Operator Security Agreement is attached hereto. The terms of the Rider are incorporated by reference into this Agreement as if set forth in full at this point.

IN WITNESS WHEREOF, Operator and Lender have signed this Agreement as of the date in the first paragraph of this Agreement.

OPERATOR:

By: _____

Name: _____

Title: _____

LENDER:

By: _____

Name: _____

Title: _____

Exhibit A
Legal Description

[Description of the Land]

Exhibit B

All of the following described property and interests in property, whether now in existence or hereafter arising, and relating to, situated or located on or used or usable in connection with the maintenance and/or operation of the property described in Exhibit A (hereafter referred to as the “**Land**”):

(a) All fixtures, furniture, equipment and other goods and tangible personal property of every kind and description whatsoever now or hereafter located on, in or at the Land, including, but not limited to, all lighting, laundry, incinerating and power equipment; all engines, boilers, machines, radiators, motors, furnaces, compressors and transformers; all power generating equipment; all pumps, tanks, ducts, conduits, wire, switches, electrical equipment, and fixtures, fans and switchboards; all telephone equipment; all piping, tubing and plumbing equipment and fixtures; all heating, refrigeration, air-conditioning, cooling, ventilating, sprinkling, water, power, waste disposal and communications equipment, systems and apparatus; all water coolers and water heaters; all fire prevention, alarm and extinguishing systems and apparatus; all cleaning equipment; all lift, elevator and escalator equipment and apparatus; all partitions, shades, blinds, awnings, screens, screen doors, storm doors, exterior and interior signs, gas fixtures, stoves, ovens, refrigerators, garbage disposals, dishwashers, kitchen and laundry fixtures, utensils, appliances and equipment, cabinets, mirrors, mantles, floor coverings, carpets, rugs, draperies and other furnishings and furniture now or hereafter installed or used or usable in the operation of any part of the buildings, structures or improvements erected or to be erected in or upon the Land and every replacement thereof, accession thereto, or substitution therefor, whether or not all of the above are now or hereafter acquired or attached to the Land in any manner;

(b) All articles of tangible personal property not otherwise described herein which are now or hereafter located in, attached to or used in, on or about the buildings, structures or improvements now or hereafter located, placed, erected, constructed or built on the Land and all replacements thereof, accessions thereto, or substitution therefor, whether or not the same are, or will be, attached to such buildings, structures or improvements in any manner;

(c) All awards now or hereafter made (“**Awards**”) with respect to the Land as a result of (i) the exercise of the power of condemnation or eminent domain, or the police power, (ii) the alteration of the grade of any street, or (iii) any other injury or decrease in the value of the Land (including but not limited to any destruction or decrease in the value by fire or other casualty), whether or not any of the property described in this item (d) constitutes accounts, chattel paper, documents, general intangibles, instruments, investment property, deposit accounts, or money;

(d) All land surveys, plans and specifications, drawings, briefs and other work product and other papers and records now or hereafter used in the construction, reconstruction, alteration, repair or operation of the Land;

(e) All certificates and agreements for the provision of property or services to or in connection with, or otherwise benefiting, the Land and/or the Healthcare Facility;

(f) All licenses, permits, and/or approvals issued by any governmental authority with respect to the use or operation of the Healthcare Facility for the Approved Use as that term is defined in the Operator Regulatory Agreement, to the greatest extent permitted by and not in violation of applicable law now enacted or hereafter amended, and any and all Medicaid/Medicare/TRICARE/CHAMPUS or other governmental insurance provider agreements. Provided that this Agreement shall be construed as granting to Lender a security interest, assigning receivables, giving dominion and control or designating an attorney-in-fact with respect to the Government Receivables Accounts, Government Payments and other Healthcare Assets to the greatest extent permitted by and not in violation of (i) applicable law, now enacted and/or hereafter amended, and (ii) the Provider Agreements. For purposes herein, “**Government Receivables Accounts**” shall mean separate deposit account(s) into which only Government Payments are deposited, and “**Government Payments**” shall mean a payment from a governmental entity and shall include, without limitation, payments governed under the Social Security Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicaid Services of U.S. Department of Health and Human Services;

(g) All funds, monies, securities and other property held in escrow, lock boxes, depository or blocked accounts or as reserves and all rights to receive (or to have distributed to Operator) any funds, monies, securities or property held in escrow, lock boxes, depository or blocked accounts or as reserves including but not limited to all of Operator’s rights (if any) to any funds or amounts in those certain reserve funds and/or residual receipts accounts created under any regulatory agreement required by the Secretary of Housing and Urban Development or the Federal Housing Administration Commissioner;

(h) All accounts, accounts receivable, general intangibles, chattel paper, instruments, rights to payment evidenced by instruments, documents, inventory, goods, cash, cash proceeds, bank accounts, deposit accounts, certificates of deposits, securities, insurance policies, letters of credit, letter of credit rights, deposits, judgments, liens, causes of action, warranties, guaranties and all other properties and assets of Operator, tangible or intangible, whether or not similar to the property described in this item (h). As used herein, the term “**accounts receivable**” shall include (i) all healthcare insurance receivables, including, but not limited to Medicaid and Medicare receivables, Veterans Administration or other governmental receivables, private patient receivables, and HMO receivables; (ii) any payments due or to be made to Operator relating to the Land or (iii) all other rights of Operator to receive payment of any kind with respect to the Land;

(i) All books, records and files of whatever type or nature relating to any or all of the property or interests in property described herein or the proceeds thereof, whether or not written, stored electronically or electromagnetically or in any other form, and whether or not such books, records, or files constitute accounts, equipment or general intangibles;

(j) Any and all security or other deposits which have not been forfeited by any tenant under any lease; and

(k) All products and proceeds of any and all of the property (and interests in property) described herein including but not limited to proceeds of any insurance, whether or not in the

form of original collateral, accounts, contract rights, chattel paper, general intangibles, equipment, fixtures, goods, securities, leases, instruments, inventory, documents, deposit accounts or cash.

Exhibit C

Other Names Used by Operator in Previous Five Years (see Section 2(a) of Agreement):

Assets Acquired in Bulk Transfer in Previous Five Years (see Section 2(a) of Agreement):

Operator’s Rights in the Following (see Section 2(a) of Agreement):

Investment property:

Letters of Credit:

Electronic Chattel Paper:

Commercial Tort Claims:

Instruments (including promissory notes):

Deposit Accounts:

<u>Account Number</u>	<u>Depository Bank</u>	<u>Account Type</u> (e.g., operating or payroll)	<u>Government Receivables Accounts</u> (see note below)

Note: Designate if deposit account receives deposits of proceeds of accounts from federal, state or local governments (e.g., Medicare and Medicaid), and if so, whether such deposit account is solely for such deposits or whether the deposit account commingles other non-governmental deposits. See Section 2(h) for Operator’s obligations in this regard.

Exhibit C-1
Cash Flow Chart

RIDER TO OPERATOR SECURITY AGREEMENT

- A. Notwithstanding any provision in the Supplemental Operator Security Agreement (the Agreement) to the contrary, upon the occurrence of an Event of Default under the Loan Documents, provided that (i) the Operator is not in violation of any Tenant Documents or this Agreement, (ii) Operator's lease payments continue to be made (whether directly or indirectly, pursuant to any escrow agreements or other agreements among the parties) to the satisfaction of the Lender; (iii) Operator is not in violation of any provision of the Borrower-Operator Agreement, and (iv) there is no Material Risk of Termination, the Lender, on behalf of itself, its successors and assigns, agrees that it will not exercise any remedies available to it under Section 9 of the Supplemental Operator Security Agreement against Operator or the Collateral.
- B. Should the Lender, its successors or assigns, whether through judicial or non-judicial foreclosure, public or private sale, deed or assignment in lieu of foreclosure, or otherwise, take title to the Land, Improvements and/or other assets of the Borrower (including the Borrower's rights as landlord under the Borrower-Operator Agreement), provided the Healthcare Facility remains in operation and the Operator is not in violation of the Operator Regulatory Tenant Documents or this Agreement, the Lender and its successors and assigns agree that the term "Obligations" in the Supplemental Operator Security Agreement shall be limited to the definitions set forth in subsections 1(b)(2), (3) and (4).
- C. Furthermore, Lender agrees that so long as the Operator is not in violation of the Operator Regulatory Agreement, to the extent Operator has (i) funded Escrowed Funds, tax and/or insurance impounds, and (ii) provided written notice and evidence satisfactory to Lender that it has funded and is funding such amounts as required. Lender, on behalf of itself, its successors or assigns, will permit withdrawals by, or utilization of such funds by or on behalf of, Operator for their intended purpose. The provisions of this Paragraph C shall supersede any set-off or lien rights of the Lender under Section 1(c) of the Operator Security Agreement.
- D. Upon indefeasible payment in full of the Loan, as determined by Lender, in its sole discretion, and written request by the Operator to do so, Lender agrees to promptly release its lien on the Collateral.
- E. To the extent there is an inconsistency between the provisions of this Rider and the provisions of the Operator Security Agreement, the provisions of this Rider shall be controlling.
- F. Operator certifies that no individual with a financial interest in Operator (direct or indirect, including without limitation any individual with an interest in an entity that has a direct or indirect financial interest in Operator) has a financial interest in Borrower (direct or indirect, including without limitation any individual with an interest in an entity that has a direct or indirect financial interest in Borrower), except as specifically identified to and approved in writing by HUD for the specific purpose of using this Rider. Operator shall remake such certification at (i) within seven (7) days after requested at any time by Lender

or HUD, and (ii) at any time that Operator seeks to enforce its rights under this Rider and if Operator does not make such certification at such time, or HUD otherwise determines in its sole discretion, that such certification is false or inaccurate, this Rider shall be of no force or effect.

“Material Risk of Termination” for purposes of this Rider shall be deemed to occur when any of the applicable Permits and Approvals material to the operation of the Healthcare Facility is at substantial and imminent risk of being terminated, suspended or otherwise restricted in such a way that such termination, suspension or restriction would have a materially adverse effect on the operation of the Healthcare Facility, including without limitation, HUD’s determination that there is a substantial risk that deficiencies identified by applicable state and/or federal regulatory and/or funding agencies cannot be cured in such manner and within such time periods as would avoid the loss, suspension, or diminution of any Permits and Approvals that would have a materially adverse effect on the Project.

“Tenant Documents” for purposes of this Rider shall mean this Agreement [and] [, the Operator Regulatory Agreement] [, the Operator Regulatory Agreement, the Master Tenant Security Agreement, and the Master Tenant Regulatory Agreement].