

**Supplemental Healthcare
Regulatory Agreement –
Operator
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 0.5 hours. 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.

Recording requested by:

After recording return to:

Project Name:

FHA Project No.:

Project Location:

Lender:

Original Principal Amount of Note:

Date of Note:

Originally endorsed for insurance under Section

This Supplemental Healthcare Regulatory Agreement – Operator (this “**Agreement**”) is entered into this ____ day of _____, 20__, between _____, a _____ organized and existing under the laws of _____, whose address is _____, its successors, heirs, and assigns (jointly and severally) (“**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**”). If Operator is also Borrower, references to “Borrower” herein shall refer to Operator and the Borrower Regulatory Agreement, as defined below, is incorporated herein by this reference.

[Use the following language when Operator is not the same legal entity as Borrower:
In consideration of HUD’s consent to the Borrower-Operator Agreement, HUD and Operator agree to the terms of this Agreement.]

HUD and Operator execute this Agreement in order to comply with Program Obligations, with the requirements of the National Housing Act, as amended, and the regulations adopted by HUD pursuant thereto. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note. Upon satisfaction of the Note, as evidenced by the discharge or release of the Borrower Security Instrument, this Agreement shall automatically terminate. However, Operator shall be responsible for any violations of this Agreement which occurred prior to termination.

Violations of this Agreement or Program Obligations may subject Operator and other signatories hereto to adverse actions.

Covenants. Operator and HUD covenant and agree as follows:

1. DEFINITIONS. Any capitalized term or word used herein but not defined shall have the meaning given to such term in the Borrower Security Instrument. The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

“**AR Financing Documents**” means the documents approved by HUD evidencing, securing, and made as a condition to any accounts receivable loan to Operator in connection with the Project.

“**Borrower**” shall mean _____, a _____ organized and existing under the laws of _____, the Borrower in connection with the Project and a party to the Borrower Security Instrument. Borrower is sometimes referred to in the Loan Documents or in Program Obligations as the “Owner” or the “Mortgagor.”

“**Borrower-Operator Agreement**” means any agreement relating to operation of the Healthcare Facility by and between Borrower or Master Tenant, (at any time that the Healthcare Facility is now or hereafter included in a Master Lease) and Operator, including any Operator Lease.

“Borrower Regulatory Agreement” means that certain Supplemental Healthcare Regulatory Agreement – Borrower dated as of _____, relating to the Project, and made by and between Borrower and HUD.

“Borrower Security Instrument” means that certain Supplemental Healthcare [*Mortgage, Deed of Trust, Deed to Secure Debt, or other designation*], Assignment of Leases, Rents and Revenue, and Security Agreement, made by Borrower, relating to the Project.

“Business Day” means any day other than a Saturday or a Sunday, a federal holiday or holiday in the state where the Project is located or other day on which the federal government or the government of the state where the Project is located is not open for business. When not specifically designated as a Business Day, the term “day” shall refer to a calendar day.

“First Lender” has the meaning set forth in the Borrower Security Instrument.

“First Mortgage Documents” has the meaning set forth in Borrower Security Instrument.

“Healthcare Facility” means that portion of the Project operated on the Land as a Nursing Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any other healthcare facility authorized to receive insured mortgage financing pursuant to Section 232 of the National Housing Act, as amended, or other applicable federal law, including any commercial space included in the facility.

“Healthcare Facility Working Capital” means current assets of the Healthcare Facility minus current liabilities of the Healthcare Facility, pursuant to Generally Accepted Accounting Principles, as Program Obligations may further clarify or define.

“Master Lease” means any master lease now or hereafter entered into in which the Healthcare Facility is aggregated with other HUD-insured healthcare facilities and leased to a Master Tenant and any amendments or joinders thereto.

“Master Tenant” means any entity approved by HUD now or hereafter leasing the Healthcare Facility pursuant to a Master Lease.

“Master Tenant Regulatory Agreement” means any Supplemental Healthcare Regulatory Agreement – Master Tenant, now or hereafter, relating to the Project and entered into by Master Tenant for the benefit of HUD.

“Operator Lease” means a lease by between Borrower or Master Tenant, if the project is subject to a Master Lease, and Operator providing for the operation of the Healthcare Facility.

“Operator Security Agreement” means that certain Operator Security Agreement dated as of substantially even date herewith, relating to the Project, and made by Operator for the benefit of HUD.

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

“Project” means any and all assets of whatever nature or wherever situated related to the insured mortgage loan known by the FHA Project Number listed on the first page of this Agreement, including without limitation the Mortgaged Property, the Healthcare Facility, the Improvements, and any collateral owned by Operator securing the insured mortgage loan.

“Reasonable Operating Expenses” means expenses that arise from the operation, maintenance and routine repair of the Project, including all payments and deposits required under this Agreement and any of the Loan Documents, and that comply with the requirements of 24 C.F.R. 232.1007, or successor regulation.

“Residential Agreement” means a lease, admission agreement or other resident agreement between Operator and a resident setting forth the terms of the resident’s living arrangements and the provision of any related services.

2. SUBORDINATION. Any Borrower-Operator Agreement shall be subject and subordinate to the First Mortgage Documents, this Agreement, the Borrower Security Instrument, the Master Tenant Regulatory Agreement, if any, the Operator Security Agreement, and the Borrower Regulatory Agreement. Operator shall make payments under any Borrower-Operator Agreement when due. If and for so long as payments by Operator to Borrower or Master Tenant, as applicable, including without limitation any rent due pursuant to an Operator Lease, are required pursuant to a Borrower-Operator Agreement, such payments shall be sufficient to allow Master Tenant to pay Borrower pursuant to the Master Lease such amounts as shall be sufficient to allow Borrower to pay all Borrower required mortgage loan payments, including without limitation, any payments to reserves or escrows for taxes or insurance, payments to replacement reserves, payments to debt service reserves and/or escrows, and to fund any maintenance and/or repairs for which Borrower has responsibility.

3. APPROVED USE; PERMITS AND APPROVALS.

(a) As used herein, **“Approved Use”** means the use of the Project for the operation of the Healthcare Facility as a _____ [**insert type of facility – include all types of care**] [with _____ licensed [**beds/units – insert total beds/units after completion of the 241(a)**] [of which not less than _____ licensed [**beds/units**] are [**to be**] in use] and such

other uses as may be approved in writing from time to time by HUD based upon a request made by Borrower [, Master Tenant] or Operator, but excluding any uses that are discontinued with the written approval of HUD. Operator shall operate the Healthcare Facility in accordance with the Approved Use.

(b) As used herein, “**Permits and Approvals**” means and includes all certificates of need, bed authority, provider agreements, licenses, permits and approvals reasonably necessary to operate the Healthcare Facility or to fund the operation of the Project for the Approved Use. The security interests granted pursuant to the Operator Security Agreement referred to in Section 21 hereof shall constitute, to the extent permitted by law, a second lien upon all of Operator rights, titles and interest, if any, in the Permits and Approvals subject only to the rights of the First Lender under the First Mortgage Documents. However, in the event of either a monetary or other default under this Agreement, the Borrower Regulatory Agreement, any other regulatory agreement made for the benefit of HUD relating to the Project, or any note or security instrument with respect to the Project that is insured or held by HUD, Operator shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the Healthcare Facility for the Approved Use including, as determined by HUD, in consultation with Lender, the necessary conveyance, assignment or transfer of the Permits and Approvals. For the intents and purposes herein, Operator hereby irrevocably nominates and appoints HUD, and with HUD’s prior written approval, Lender, and the respective successors and assigns of each in its own capacity, as Operator attorney-in-fact coupled with an interest to do all things that any such attorney-in-fact deems to be necessary or appropriate in order to facilitate the continued operation of the Healthcare Facility for the Approved Use, including but not limited to the power and authority to provide any and all information and data, pay such fees as may be required, and execute and sign in the name of Operator, its successors or assigns, any and all documents, as may be required by any governmental entity exercising jurisdiction over the Project. Operator shall not alter or terminate, or suffer or permit the alteration, relinquishment or termination of any of the Permits and Approvals that are issued or held in the name of Operator without the prior written consent of HUD. In the event that any such alteration, relinquishment or termination is proposed, upon learning of such proposed alteration, relinquishment or termination, Operator shall advise HUD and Lender promptly.

(c) Except as otherwise provided below or in Program Obligations, Operator shall electronically deliver, within two (2) Business Days after Operator receipt thereof, to the assigned HUD personnel and Lender electronically, copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by Operator from any governmental entity that includes any statement, finding or assertion that (i) Operator (or any principal, officer, director or employee of Operator), any management agent, the Healthcare Facility, or any portion of the Project is or may be in violation of or default under any of the Permits and Approvals or any governmental requirements applicable to the operation of the Healthcare Facility, (ii) any of the Permits and Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil money penalty is being imposed with respect to the Healthcare Facility, or (iv) Operator (or any principal, officer, director or employee of Operator), any management agent, the Healthcare Facility, or any portion of the Project is subject to any governmental investigation or inquiry involving fraud. Operator shall also deliver to the

Project's HUD-assigned personnel and Lender, simultaneously with delivery thereof to any governmental authority any and all responses given by or on behalf of Operator to any of the foregoing and shall provide to the HUD personnel and Lender, promptly upon request, such information regarding any of the foregoing as HUD or Lender may request. Unless otherwise requested by HUD, the reporting requirements of this provision shall not encompass regulators' communications relating solely to licensed nursing facility surveys where the most severe citation level is at the "G" level or its equivalent (pursuant to CMS State Operations Manual, Chapter 7, as may hereafter be edited or updated, or any successor guidance) unless a citation at such level is either (i) unresolved from the two most recent consecutive prior surveys, or (ii) is a repeat violation having the same citation number. Moreover, unless otherwise requested by HUD or Lender, the initial communication from the Operator pursuant to this paragraph shall be a notice by email to the Lender describing the conduct cited, the scope and duration of remedy(ies) imposed, and the timelines for corrective actions. Then, unless otherwise requested by HUD or Lender, the next communication from the Operator shall be notification that the citations have been cleared by the issuing regulatory agency. The receipt by HUD and/or Lender of notices, reports, surveys, correspondence and other information shall not in any way impose any obligation or liability on HUD, Lender or their respective agents, representatives or designees to take (or refrain from taking) any action, and HUD, Lender and their respective agents, representatives and designees shall have no liability for any failure to act thereon or as a result thereof. When providing required information to HUD or Lender, Operator shall be responsible for redacting any and all personally identifiable resident information, per the Health Insurance Portability and Accountability Act (HIPAA) requirements.

(d) Operator shall at all times maintain in full force and effect the Permits and Approvals. Without the prior written consent of HUD, Operator shall not convey, assign, encumber, transfer, relinquish or alienate from the Project any of the Permits and Approvals. Operator shall ensure that the Healthcare Facility is at all times operated in accordance with the requirements of the Permits and Approvals, and that none of the Permits and Approvals is placed at risk of suspension, revocation, rescission, termination or limitation, as evidenced by, without limitation, any communication from regulatory or funding entities so indicating.

(e) Without limiting the generality of any other provision of this Agreement, within two (2) Business Days after written request by HUD or Lender, Operator shall deliver to HUD or Lender, as applicable, any financial or operational reports, or other information relating to the performance of the Healthcare Facility that HUD or Lender, respectively, each in its discretion, deems relevant to risk assessment, including without limitation any Medicare or Medicaid cost reports. To the extent such reports or other information indicate, in HUD's or Lender's respective determination, that mitigating action is necessary in order to preserve the Permits and Approvals or otherwise to provide for operation of the Healthcare Facility in accordance with Program Obligations, Operator shall take such mitigating action immediately.

4. PROFESSIONAL LIABILITY INSURANCE. Operator shall maintain, and/or cause to be maintained, professional liability insurance that complies with Program Obligations. Annually, upon such time periods as set forth in Program Obligations, Operator shall provide, or

cause to be provided, to HUD and Lender, a certification of compliance with such professional liability insurance requirements, as approved by HUD.

5. CONDITION OF THE HEALTHCARE FACILITY.

(a) Operator shall maintain in decent, safe and sanitary condition and good repair the Healthcare Facility and any other parts of the Project for which Operator is responsible for maintaining pursuant to any Borrower-Operator Agreement.

(b) Operator shall not remodel, reconstruct, add to, or demolish, without prior consent of HUD, any part of the Project or subtract from any real or personal property of the Project, except in the ordinary course of business and which do not materially impair the value of the Project.

(c) Operator shall not use any portion of the Project for any purpose except the Approved Use.

(d) Operator shall permit HUD and/or Lender, or the designee of either, to conduct a physical inspection of the Healthcare Facility at any reasonable time upon reasonable notice.

(e) If the Healthcare Facility is an Assisted Living Facility, no more than one person shall occupy any residential unit of the Healthcare Facility unless Operator receives prior written consent from all residents of such unit.

6. CONSULTANTS.

(a) If, based on review of financial information, state regulatory communications and/or other data, HUD determines that a Project Operating Deficiency exists, HUD may provide Operator with written notice that the Operator must select and engage (at the Operator expense and subordinate to all Reasonable Operating Expenses of the Healthcare Facility), within ten (10) Business Days of such notice, the services of a management consultant (the “**Consultant**”) who is not an Affiliate with either Borrower or Operator. The Consultant must be approved in writing by HUD (upon selection of the Consultant, Operator will give notice to HUD, who will accept or reject the Consultant within three (3) Business Days), based upon the review of the Consultant’s directly relevant work experience, capacity, costs, and other relevant factors. For purposes herein, any of the following circumstances constitute a Project Operating Deficiency:

- (i) Operator fails to make any payments pursuant to any Borrower-Operator Agreement, if such payments are intended to be used by Borrower to make the required debt service payments pursuant to the Loan Documents and if such failure, in HUD’s sole determination, has a materially adverse effect on the Project;

- (ii) Debt service coverage, as calculated in accordance with HUD underwriting procedures, is below 1.0 for one quarter and if, upon request by HUD or lender, the operator does not promptly provide a plan that is acceptable to HUD to improve financial operations;
- (iii) Centers for Medicare and Medicaid Services (“**CMS**”), or any applicable or successor authority, or its agent, issues a notice to Operator of a denial of payments by CMS (or a fiscal intermediary) for new admissions at the Healthcare Facility and either (1) HUD concludes that the operator is not diligently and adequately working to address such denial of payments or (2) despite operator effort such denial is not released within one hundred twenty (120) days;
- (iv) CMS, or its agent, designates the Healthcare Facility to be a “Special Focus Facility” or another governmental authority has made an equivalent designation;
- (v) A notice is issued to Operator of a proposed denial, proposed refusal to issue, or proposed termination of the Permits and Approvals for the Healthcare Facility and either (1) HUD concludes that the operator is not diligently and adequately working to address the matter or (2) despite operator effort that proposed denial, proposed refusal to issue or proposed termination is not rescinded within 120 days; or
- (vi) A second revisit survey is required as a result of failure to clear deficiencies cited in any survey or equivalent examination by any applicable government authority.

(b) The Consultant shall review the management of the Healthcare Facility and, subject to applicable legal requirements governing the confidentiality of patient records, have complete access to the Healthcare Facility and its records, offices and facilities in order to carry out its duties under such engagement. Operator shall instruct Consultant to prepare and deliver to HUD, the Lender, and Operator a written report, in a format approved by HUD, of the Consultant’s findings and recommendations related to the operational and/or financial deficiencies noted in HUD’s written notice to Operator, within thirty (30) calendar days after its engagement.

(c) Operator shall, within twenty (20) Business Days of receiving Consultant’s report, implement any and all reasonable recommendations, as approved by HUD in consultation with Operator, Lender, and Borrower, made by the Consultant to address any performance deficiencies, provided however, in no event shall Operator implement any recommendations that are in conflict with Program Obligations or otherwise not in compliance with this Agreement or any other legal requirements.

(d) HUD's decision to require or not require the engagement of a Consultant is within HUD's sole discretion and such decision shall not affect or limit any of HUD's other rights and remedies, nor cause HUD to be deemed the operator of the Healthcare Facility.

7. RISK MANAGEMENT PROGRAM. In accordance with Program Obligations, Operator shall implement and maintain a risk management program which incorporates a real-time incident reporting and tracking system that informs Operator senior management of all incidents with the potential to expose the Operator to liability for personal injury or other damages. Each incident must be reviewed by Operator appropriately-trained professional staff, and such staff must follow-up on incidents as necessary. The risk management program must include appropriate training for Operator staff.

8. NOTICE OF VIOLATION AND EVENT OF DEFAULT.

(a) Subject to subsection (c) below, upon any violation of any provision of this Agreement by Operator, HUD may give written notice ("Notice of Violation") thereof to Operator, with a copy to Borrower and Lender. Operator shall have thirty (30) days following receipt of such notice in which to cure any such violation, provided that HUD shall extend such thirty (30) day period by such time as HUD may reasonably determine is necessary to correct the violation for so long as, HUD determines, in its reasonable discretion, that: [***if there is an identity of interest:*** (i) Borrower is timely satisfying all payment obligations in the Loan Documents] OR [***if there is no identity of interest between Borrower and Operator:*** (i) Operator is timely satisfying all payment obligations in the Borrower-Operator Agreement]; (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. If upon the expiration of such cure period, the violation has not been cured to HUD's satisfaction, HUD may, without further notice, declare an Event of Default.

(b) Upon declaring an Event of Default hereunder, HUD may without limitation:

- (i) Terminate or cause the termination of any Borrower-Operator Agreement, seek the appointment of a receiver for the Healthcare Facility, and/or require Borrower to immediately procure a replacement operator (including an interim operator where appropriate).
- (ii) Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, or for such other relief as may be appropriate.

(c) Notwithstanding any other provisions of this Agreement, if HUD determines at any time that any of the Permits and Approvals are at substantial and imminent risk of being terminated, suspended or otherwise restricted, if such termination, suspension, or other restriction would have a materially adverse effect on the Project, 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, or if HUD determines at any time that the health and safety of the residents of the Healthcare Facility are at substantial and imminent risk, then HUD may immediately (without thirty (30) days notice) declare an Event of Default of this Agreement and may immediately proceed to take actions pursuant to subsections (b)(i) and/or (b)(ii) above.

(d) Operator agrees that, in the event that HUD requires a replacement operator pursuant to this Agreement, Operator shall cooperate with such replacement and take all actions necessary to (i) provide for an orderly transition to the replacement operator of licensed operations with applicable Medicare and Medicaid certifications intact, (ii) maintain normal operations, (iii) avoid displacement of residents, and (iv) transfer all transferable provider agreements to the replacement operator. Upon completion of transition as determined by HUD, Borrower or Master Tenant, as applicable, shall terminate any Borrower-Operator Agreement and Operator hereby agrees to waive any termination fees and penalties due to Operator if the termination is at the direction of HUD. Operator acknowledges that such termination is consistent with the provisions of any Borrower-Operator Agreement.

(e) Notwithstanding any other provisions of this Agreement, upon receipt of a Notice of Violation pursuant to section 8(a), no funds derived from or in connection with the operation of the Healthcare Facility may be distributed, advanced, or otherwise used for any purpose other than, as applicable, (i) making payments to Borrower or Master Tenant, as applicable, due pursuant to any Borrower-Operator Agreement, (ii) making payments required to be made under the Loan Documents and/or the First Mortgage Documents, (iii) making payments pursuant to any of the AR Financing Documents, and (iv) making payments for Goods and Services, provided that payments for Goods and Services shall be subject to the limitations set forth in Section 20 (e).

9. PAYMENT OF DEBTS BY OPERATOR. Operator acknowledges that the viable operation of the Healthcare Facility, and thus the preservation of the security for the insured Loan, depends upon timely satisfaction of debts incurred related to the operation of the Healthcare Facility. In addition to fully complying with any payment obligations in any Borrower-Operator Agreement, Operator shall timely pay all debts incurred related to the operation of the Healthcare Facility, provided, Operator may withhold payments of amounts due vendors for operational expenses that Operator, in good faith, disputes.

10. PAYMENTS FOLLOWING NOTICE OF DEFAULT. In the event that Operator receives a written notice from HUD, First Lender or Lender (i) stating that a default exists under the Borrower Regulatory Agreement, any Master Tenant Regulatory Agreement, the

First Mortgage Documents or any note or security instrument with respect to the Project that is insured or held by HUD, and (ii) directing Operator to make future payments due under any Borrower-Operator Agreement to HUD, First Lender or Lender, Operator shall thereafter make all future payments under any Borrower-Operator Agreement to HUD, First Lender or Lender as so directed. In the event that Operator receives conflicting directions from HUD, First Lender and/or Lender: (i) any directions provided by HUD shall control over any directions provided by First Lender or Lender and (ii) any directions provided by First Lender shall control over any directions provided by Lender.

11. TRANSFERS. The prior written approval of HUD shall be required for (a) any assignment of a Borrower-Operator Agreement; (b) any change in or transfer of the management agent of the Project or the Healthcare Facility or (c) any change in the ownership or control of Operator which requires HUD approval under Program Obligations.

12. BORROWER-OPERATOR AGREEMENT TERMINATION AND/OR AMENDMENT. This Section 12 shall not apply if Borrower is Operator.

(a) Without the prior written approval of HUD, a Borrower-Operator Agreement shall not be assigned or terminated prior to the expiration date thereof. In the event of any assignment of a Borrower-Operator Agreement, as a condition to such assignment, the new Operator must execute a Supplemental Healthcare Regulatory Agreement – Operator (Form HUD-92467A-ORCF), as approved by HUD, a Supplemental Operator Security Agreement (Form-HUD-92323A-ORCF), deposit account control agreements in form and substance satisfactory to Lender and HUD and any and all documents required by HUD and/or First Lender with respect to the First Mortgage Documents.

(b) Without the prior written approval of HUD, a Borrower-Operator Agreement shall not be amended so as to (i) materially increase any management fees or other payments paid by Borrower or Master Tenant, as applicable, thereunder, (ii) materially increase the obligations of Borrower or Master Tenant, as applicable, or the rights of Operator, (iii) materially decrease the rights of Borrower or Master Tenant, as applicable, or the obligations of Operator, or (iv) alter any provision of any Borrower-Operator Agreement that HUD required to be included therein. Prior written notice of and subsequent executed copies of all amendments to any Borrower-Operator Agreement shall be promptly provided to HUD and the Lender.

13. MANAGEMENT AGREEMENTS. No property management agreement relating to the Healthcare Facility or any portion of the Project (“**Management Agreement**”) shall be executed unless such Management Agreement is approved by HUD and includes HUD-92701-ORCF Management Agreement Addendum. Any management agent must be approved by HUD and must execute and deliver a Management Agent Certification – Residential Care Facilities (form HUD-9839-ORCF, or successor form) in such form as approved by HUD. Any Management Agreement shall contain the following provisions: (1) the Management Agreement shall terminate without penalty upon failure to comply with the provisions of the Management Agent Certification to HUD, or for other good cause, including without limitation for violations of the Borrower Regulatory Agreement, Operator Regulatory Agreement, and/or

Master Tenant Regulatory Agreement, if any, thirty (30) days after HUD has mailed the Operator a written notice of its desire to terminate the Management Agreement; (2) in the event that HUD determines that any of the Permits and Approvals reasonably necessary to operate the Healthcare Facility is at substantial and imminent risk of being terminated, suspended or otherwise restricted, if such termination, suspension or other restriction would have a materially adverse effect on the Project, the Management Agreement shall terminate immediately without penalty upon HUD's issuance of a notice of termination to Operator and Agent; and (3) the Management Agreement may not be assigned without the prior written approval of HUD. Upon request for termination, Operator shall immediately arrange to terminate any such Management Agreement and shall make arrangements satisfactory to HUD for the continuing proper management of the Healthcare Facility and the Project. Any material amendment to the management agreement must be acceptable to HUD, in accordance with Program Obligations.

14. PROHIBITION OF CERTAIN FEES. Except as permitted by Program Obligations or otherwise approved by HUD, Operator shall not charge any resident of the Healthcare Facility an admission fee, key fee, finder's fee, continuing care retirement community fee, life-care fee or similar fee pursuant to any agreement to furnish residential units or services to persons making such payments.

15. SECURITY DEPOSITS AND OTHER FEES. Except as permitted by Program Obligations or otherwise approved by HUD, Operator shall not require as a condition of occupancy or leasing of any unit in the Healthcare Facility, any consideration or deposit, provided that Operator may require the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent, to guarantee the performance of any tenant lease terms. Operator may charge (i) application processing fees such as credit check or criminal background fees, (ii) fees for assessing the condition of potential residents in order to determine their suitability for residing in the Healthcare Facility, and/or (iii) pet deposits, but not deposits or fees for service or assistance animals.

16. SUBLEASES. Except for Residential Agreements and as provided in Section 17, Operator shall not lease or sublease the Project or any part thereof without the prior written consent of HUD.

17. COMMERCIAL (NON-RESIDENTIAL) LEASES. No portion of the Project shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount, except for commercial leases for support or ancillary services which are subordinate to the First Security Instrument and Borrower Security Instrument, have terms of not more than five (5) years and otherwise comply with Program Obligations. Operator shall deliver an executed copy of any commercial lease to HUD and Lender within thirty (30) days after its effective date.

18. AUDITS AND INSPECTIONS. All portions of the Project, including without limitation all of the Mortgaged Property and any other equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating to the operation of the Healthcare Facility shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD, Lender,

or the duly authorized agents of either. Operator 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 HUD or its duly authorized agents. The obligations of Operator under this Section shall be limited to the extent necessary in order for Operator to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

19. NON-DISCRIMINATION. There shall be full compliance with the provisions of (1) any state or local laws prohibiting discrimination in housing on the basis of race, color, national origin, religion, sex, familial status or disability; and (2) the regulations of HUD providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD to take any corrective action it may deem necessary including, but not limited to, the refusal to consent to a further renewal of any Borrower-Operator Agreement, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which Operator is identified; and further, if Operator is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, HUD shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of Operator; and (2) with respect to any other type of business association or organization with which the officers, directors, trustee, managers, partners, associates or principal stockholders of Operator may be identified.

20. BOOKS, ACCOUNTS, FINANCIAL REPORTS, AND FINANCIAL COVENANTS.

(a) Operator shall keep the books and accounts of the operation of the Healthcare Facility in accordance with Program Obligations, to the extent not inconsistent with state requirements, which would allow for the audit of the Project. Financial records of Operator and the Healthcare Facility shall be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. All expenditures in connection with the Healthcare Facility must be fully documented so as to provide reasonable assurance to all persons or entities that review such expenditures that such expenditures are Reasonable Operating Expenses. Undocumented expenses shall not be considered Reasonable Operating Expenses.

(b) Except as provided in the AR Financing Documents or as otherwise approved by HUD, Operator must deposit in an operating account in the Operator name, in trust for the Project, (the “**Healthcare Facility Operating Account**”) all revenue it receives in connection with the business it conducts with respect to the Healthcare Facility or in a general collection account maintained for Operator and affiliated operators, provided deposits to such general collection account can be traced to the applicable facility that generated such deposit. If HUD determines that such deposits cannot be reliably and readily so traced, HUD may direct Operator to deposit such funds in a segregated operating account. The account must be with a financial institution whose deposits are insured by an agency of the federal government, provided

that an account held in an institution approved by the Government National Mortgage Association may have a balance that exceeds the amount to which such deposit insurance is limited. Operator may transfer funds from the Healthcare Facility Operating Account to one or more central disbursement or other accounts (which need not be in the name of Operator) in which such funds are commingled with other funds, provided that a complete and accurate accounting of such funds (including deposits and disbursements) is maintained.

(c) Unless otherwise specified by HUD, Operator shall submit to HUD and Lender, on a quarterly and year-to-date basis (or more frequently if specified by HUD), prepared and certified by an authorized representative or agent of Operator, such financial reports relating to the operation of the Healthcare Facility (including, but not limited to, financial statements, accounts receivable/payable aging reports and occupancy reports) in the formats and at such times as may be approved by HUD in accordance with Program Obligations. Such reports must be submitted no later than sixty (60) days after the period covered by the reports, except for reports relating to the final quarter of each year, which shall be submitted no later than ninety (90) days after end of the fiscal year. Such reports are subject to the sanctions contained in 18 U.S.C. Sections 1001, 1010, and 1012. Operator shall submit to HUD and Lender, simultaneously with any such report that demonstrates negative Healthcare Facility Working Capital, a plan to restore positive Healthcare Facility Working Capital.

(d) If Operator (or any direct or indirect principal of Operator) is required to provide an audited financial statement to any lender, Operator shall simultaneously provide copies of such audited financial statements to HUD and Lender. If HUD has reason to believe that particular Operator-certified statements may be unreliable (for example, indicate a likely prohibited use of funds of the Project), or are presented in a manner that is inconsistent with Program Obligations, HUD may, on a case-by-case basis, require audited financial statements from Operator. Such audited financial statements shall be certified by an independent public accountant, at Operator expense, and delivered to HUD and Lender within ninety (90) days after HUD's notice to Operator requiring such statements.

(e) Consistent with Program Obligations, Operator shall obtain, or cause to be obtained, contracts for goods, materials, supplies, and services ("**Goods and Services**") at costs, amounts, and terms that do not exceed reasonable and necessary levels and those customarily paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods and Services shall be based on quality, durability and scope of work. Reasonable Operating Expenses do not include amounts paid for betterments as defined in the Project's jurisdiction or improvements unless determined by HUD to be prudent and appropriate. If the Operator is acquiring Goods and Services whose costs exceed five percent (5%) of the gross annual revenue of the Healthcare Facility, Operator shall solicit written cost estimates. Operator shall keep copies of all written cost estimates and contracts or other instruments relating to the Project, all or any of which may be subject to inspection and examination by HUD at the Healthcare Facility or other mutually agreeable location.

(f) If a quarterly/year-to-date financial statement demonstrates negative Healthcare Facility Working Capital as defined by HUD, or if Operator fails to timely submit

such statement, then until a current quarterly, year-to-date financial statement demonstrates positive Healthcare Facility Working Capital or until otherwise authorized by HUD, no funds derived from or in connection with the operation of the Healthcare Facility may be distributed, advanced, or otherwise used for any purpose other than, as applicable, making payments due pursuant to any Borrower-Operator Agreement and/or Master Lease (if any), making payments required to be made under the First Mortgage Documents and/or the Loan Documents, making payments pursuant to any of the AR Financing Documents, and making payments for Goods and Services, provided that payments for Goods and Services shall be subject to the limitations set forth in subsection (e) above.

(g) At request of HUD, Operator shall give specific answers, satisfactory to HUD, to questions posed from time to time relating to income, assets, liabilities, contracts, operation, and condition of the Healthcare Facility, and shall provide to HUD copies of all books, contracts, records, documents and other papers relating to the Healthcare Facility from time to time as HUD may request.

(h) Operator acknowledges that the financial information referenced above is necessary for HUD to review from time to time, given the risk inherent in the operation of the Healthcare Facility, and given the necessity of the Operator financial and operational stability in order to ensure timely payment of amounts due under the Loan Documents (whether directly from Operator where Operator is the Borrower, or indirectly from amounts due under any Borrower-Operator Agreement where Operator is not Borrower). At HUD's option, HUD may direct that any financial or operational reports required by this Agreement be submitted to Lender and/or another third party, as directed by Lender or HUD to review such report(s), in addition to or in lieu of submission to HUD.

21. UNIFORM COMMERCIAL CODE/LIENS. Operator shall execute and deliver a Supplemental Operator Security Agreement (Form HUD-92323A-ORCF) in accordance with Program Obligations. Operator shall execute and deliver such deposit account control agreements as may be required by Lender and/or HUD. Operator hereby authorizes each of the Lender and HUD to file such UCC financing statements, amendments and continuation statements as either of them may deem to be necessary or appropriate in connection with the security interests granted pursuant to the Operator Security Agreement. Except as provided in this Section 21 and/or the First Mortgage Documents, without the prior written approval of Lender and HUD, Operator shall not be permitted to grant any other liens on any of the property related to the Project. [If the Project includes government receivables, Operator shall be permitted to pledge the Healthcare Facility's accounts receivable to an accounts receivable lender pursuant to AR Financing Documents consented to by Lender and HUD.] In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such terms as consented to by Lender and HUD, including any HUD-required rider, and (ii) Operator and Borrower shall agree to comply with the terms required by Lender and HUD in connection therewith.

22. ACCOUNTS RECEIVABLE FINANCING. No accounts receivable or receipts from the Healthcare Facility may be pledged without prior written approval of Lender and HUD

of the terms of such financing and the documents evidencing and securing such financing. In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such terms as consented to by Lender and HUD, and (ii) Operator and Borrower shall agree to comply with the terms required by Lender and HUD in connection therewith. Until the Loan is paid in full, no modifications, extensions, amendments, or renewals on different terms and conditions, to a Material Term, as defined below, of the accounts receivable loan or any accounts receivable related loan document shall take effect without prior written consent of HUD and Lender. For purposes herein, "**Material Term**" shall mean any term of an accounts receivable loan or in any document evidencing or securing such financing that: (1) extends the maturity date of the loan; (2) adds guarantors to the loan; (3) releases guarantors from the loan; (4) adds borrowers to the loan; (5) adds an interest reserve to the loan; (6) amends the interest rate payable on the outstanding principal balance of the loan; (7) increases or decreases the principal amount of the loan; (8) adds collateral as additional security for the loan; and/or (9) amends or expands the type of obligations secured by the loan. In the event of conflict between this Section 22 and any HUD-approved intercreditor agreement, the HUD-approved intercreditor agreement shall control.

23. NOTICE.

(a) All notices, demands and other communications ("**Notice**") under or concerning this Agreement shall be in writing. A courtesy copy of any Notice, not affecting the validity of such Notice, given by Operator or HUD shall be sent simultaneously to Lender. Any Notice shall be addressed to the intended recipients at their respective addresses set forth herein, and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first or second Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made and payment of charges for next or second Business Day delivery, respectively; or (3) the third (3rd) Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

(b) Any party to this Agreement and Lender may change the address to which Notices intended for it are to be directed by means of Notice given in accordance with this Section 23. Any Notice hereunder shall be addressed as follows:

OPERATOR:

HUD:

LENDER:

24. MASTER LEASE SUBORDINATION [NON-DISTRUBANCE AND ATTORNMENT] AGREEMENT. If, at any time, the Project is subject to a Master Lease, such Master Lease shall be subordinate to the First Mortgage Documents and the Loan

Documents pursuant to the then applicable HUD form of Supplemental Master Lease Subordination, Non-Disturbance and Attornment Agreement (a “**Master Lease SNDA**”) or a Supplemental Master Lease Subordination Agreement (a “Master Lease Subordination Agreement”), as determined by HUD in accordance with Program Obligations. HUD agrees to honor (a) the provisions of Section 4 and 7 of any Master Lease SNDA, and (b) the provisions of Section 5 of the Master Lease SNDA or Master Lease Subordination Agreement, insofar as such sections call for HUD’s consent or the release of the Project from the Master Lease and/or the Loan Documents, on the terms and subject to the limitations set forth in such sections.

25. COUNTERPARTS. This document may be signed in counterparts.

26. LEGAL DESCRIPTION. The legal description of the Land is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

Operator hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this instrument. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

OPERATOR

(Insert signature block)

BY: _____

Name of Authorized Agent

Title

**U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,**
acting by and through the **Secretary:**

By: _____

Name: _____

Authorized Agent
Office of Residential Care Facilities

NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (i.e., NOTARY/ ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).