

Intercreditor Agreement
Section 232

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

OMB Approval No. 2502-0605
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3 **Public reporting** burden for this collection of information is estimated to average 1.5 hours. This includes the time for collecting,
4 reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be
5 submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will
6 use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset
7 management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and
8 you are not required to complete this form unless it displays a currently valid OMB control number.

9
10 **Warning:** Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of
11 the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.
12

13 THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of
14 _____, 20____, by and among (i) _____ a
15 _____, (*if applicable, add the following or similar language,*
16 *as appropriate:* acting individually as lender and as agent acting on behalf of all lenders who are
17 parties from time to time under the AR Loan Agreement,]“**AR Lender**”), (ii)
18 _____, a _____, (“**FHA Lender**”), (iii)
19 _____, a _____ (“**Owner**”), and (iv)
20 _____ [*Operator, Master Tenant, and/or whomever receives the AR*
21 *Financing and holds AR Lender Priority Collateral*], a _____
22 (“**Operator**”). AR Lender, FHA Lender, Owner and Operator are referred to in this Agreement
23 individually as a “**Party**” and collectively as the “**Parties**”.

24
25 WHEREAS, Operator has entered into that certain [*name of Operating Lease, Sub-lease,*
26 *or Owner-Operator Agreement*] with [_____] with respect to the Facility (the
27 “**Owner-Operator Agreement**”), and Operator further entered into a Security Agreement for
28 the benefit of FHA Lender (the “**Operator Security Agreement**”), which security agreement
29 grants a security interest in certain collateral of the Operator which includes the AR Lender
30 Priority Collateral, and entered into a Regulatory Agreement for the benefit of HUD (the
31 “**Operator Regulatory Agreement**”); and
32

33 WHEREAS, AR Lender has made or may in the future make loans and/or extensions of
34 credit to or for the benefit of the Operator, secured by certain collateral of the Operator, which
35 includes the AR Lender Priority Collateral; and
36

37 WHEREAS, FHA Lender has made or may in the future make loans and/or extensions of
38 credit to or for the benefit of Owner secured by the Facility operated by the Operator or to or for
39 the benefit of Operator secured by certain assets of the Operator; and
40

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

46
47 NOW, THEREFORE, in consideration of the mutual covenants set forth below, and
48 intending to be legally bound, the Parties hereto hereby agree as follows:
49

50 **1. DEFINITIONS**

51 All terms used herein which are not specifically defined shall have the meanings
52 provided in Article 9 of the Uniform Commercial Code as in effect in the State of (*Insert*
53 *property jurisdiction*) _____ from time to time (the “UCC”). In addition to the terms defined
54 elsewhere in this Agreement, the following terms shall have the following meanings when used
55 in this Agreement.
56

57 **1.1 “Accounts”** shall mean all right, title and interest of Operator in and to
58 the following, in each case arising from Operator’s operation of the Facility in the
59 ordinary course of Operator’s business: (a) all rights to payment of a monetary obligation,
60 whether or not earned by performance, including, but not limited to, accounts receivable,
61 health-care insurance receivables, Medicaid and Medicare receivables, Veterans
62 Administration receivables, or other governmental receivables, private patient
63 receivables, and HMO receivables, (b) payment intangibles, (c) guaranties, letter-of-
64 credit rights and other supporting obligations relating to the property described in clauses
65 (a) and (b); and (d) all of the proceeds of the property described in clauses (a), (b) and (c).
66 Notwithstanding the foregoing, “Accounts” do not include insurance proceeds,
67 commercial tort claims, or accounts arising from the sale of Operator’s equipment,
68 inventory or other goods, other than accounts arising from the sale of Operator’s
69 inventory in the ordinary course of Operator’s business; provided that “Accounts” shall
70 include any Approved Business Interruption Insurance Proceeds. For purposes herein
71 “Approved Business Interruption Insurance Proceeds” include the proceeds of
72 business interruption insurance payable to Operator to the extent such proceeds support
73 continued funding of the AR Loan, provided, however, that “Approved Business
74 Interruption Insurance Proceeds” shall not include rent loss coverage payable to the FHA
75 Lender.

76 **1.2 “Advances”** shall mean advances under the revolving loan facility
77 provided for in the AR Loan Documents.
78

79 **1.3 “AR Lender Priority Collateral”** shall mean all right, title and interest of
80 Operator in and to the following: (a) all Accounts arising from the delivery of goods and
81 rendering of services by Operator prior to the Cut-Off Time and the proceeds thereof; (b)
82 all Deposit Accounts and the proceeds thereof; and (c) all Accounts arising after the Cut-
83 Off Time and the proceeds thereof solely to the extent of (and in the amount of)
84 Protective Advances made after the Cut-Off Time in accordance with the terms of this
85 Agreement provided that the collateral should be prioritized in accordance with Section
86 2.1.
87

88 **1.4 “AR Loan”** shall mean a revolving loan (including any amounts
89 contemplated as letter of credit obligations) made by AR Lender to Operator pursuant to
90 the AR Loan Agreement. Notwithstanding anything else in the AR Loan Documents,
91 unless otherwise specifically approved in writing by FHA Lender and HUD, the AR Loan

92 shall exclude any term loan facility, equipment loan facility and any indebtedness,
93 liability or obligations arising under a guarantee, except to the extent that the obligations
94 guaranteed consist solely of AR Loan Obligations and such guarantors waive subrogation
95 and similar rights until the FHA-Insured Loan is Paid in Full.
96

97 **1.5 “AR Loan Agreement”** shall mean that certain [*Revolving Credit and*
98 *Security Agreement (enter proper name of document)*], dated as of
99 [_____], by and among AR Lender, as lender, and Operator [*add where*
100 *applicable: and the operators of the Other Facilities*], as borrower, [*add where*
101 *applicable: and _____, as Borrower Representative*] as amended, restated,
102 supplemented or otherwise modified from time to time in accordance with the terms of
103 this Agreement.
104

105 **1.6 “AR Loan Documents”** shall mean any and all promissory notes, security
106 agreements and any and all other documents evidencing or securing the AR Loan as
107 identified on Schedule 1 attached hereto, in each case, as amended, restated,
108 supplemented or otherwise modified from time to time in accordance with the terms of
109 this Agreement, provided that, for purposes of this Agreement, this Agreement shall not
110 be considered an AR Loan Document.
111

112 **1.7 “AR Loan Obligations”** shall mean the AR Loan and all other
113 indebtedness, liabilities and obligations owing to AR Lender under the AR Loan
114 Documents (including without limitation any Over-line Advances and/or Allowable
115 Over-Advances, as permitted pursuant to Section 2.7, and Protective Advances),
116 provided, however, that notwithstanding anything to the contrary set forth in the AR
117 Loan Documents, “**AR Loan Obligations**” shall exclude any and all indebtedness,
118 liabilities and obligations that are not directly related to the benefit of the Facilities or the
119 Other Facilities, or the financing thereof. Notwithstanding the foregoing, the AR Loan
120 Obligations shall also include the following: [*insert any specific obligation requested by*
121 *AR Lender and approved by ORCF, provided such inclusion is consistent with HUD*
122 *Program Obligations or a waiver of such HUD Program Obligations has been obtained*].
123 Notwithstanding anything to the contrary in the AR Loan Documents or this Agreement,
124 this Agreement shall not be deemed an “AR Loan Obligation.”
125

126 **1.8 “Availability”** means [*insert “Revolving Loan Availability” or other*
127 *appropriate defined term*] as defined in the AR Loan Agreement.
128

129 **1.9 “Business Day”** shall mean any day other than a Saturday, a Sunday, or
130 any day that banks in [*insert AR Lender’s Jurisdiction*] _____ or [*insert*
131 *Property Jurisdiction if different from AR Lender’s Jurisdiction*] _____ are
132 required or permitted by law to close.
133

134 **1.10 “Ceased Funding”** means, with respect to the Cut-Off Time, either of the
135 following events: (i) AR Lender (including any co-lenders pursuant to the AR Loan
136 Documents) has received a request for an Advance under the AR Loan Agreement for
137 which there is sufficient Availability and a period of thirty (30) calendar days has elapsed

138 since the date of such request, during which time such Advance is not made or (ii) AR
139 Lender has notified Operator and/or FHA Lender in writing that it has determined to
140 permanently cease making further Advances (at least with respect to the Facility) under
141 the AR Loan Agreement.
142

143 **1.11 “Cut-Off Time”** shall mean, unless subsequently extended in writing by
144 FHA Lender with HUD consent, such time indicated in the written notice (“**Cut-Off**
145 **Time Notice**”) that may be given by the FHA Lender to the AR Lender following the
146 occurrence of an FHA-Insured Loan Triggering Event or an AR Loan Triggering Event,
147 which Cut-Off Time Notice must be: (a) in the form set forth in Exhibit A and
148 designating the Facility as to which the Cut-Off Time applies and (b) given pursuant to
149 Section 4.5. Unless the AR Lender has Ceased Funding, the Cut-Off Time shall be no
150 earlier than thirty (30) calendar days after the Cut-Off Time Notice has been given (as set
151 forth in Section 4.5) by FHA Lender to AR Lender. If the AR Lender has Ceased
152 Funding, the Cut-Off Time may be concurrent with the date on which Ceased Funding
153 occurred, even if the Cut-Off Time Notice is delivered thereafter.
154

155 **1.12 “Deposit Accounts”** shall mean any deposit account (a) holding proceeds
156 of any Accounts, (b) holding any cash of the Operator, (c) into which Advances are
157 funded (d) for which a deposit account control agreement in favor of the AR Lender and
158 approved by HUD, has been entered into, or (e) to the extent permitted by applicable law,
159 for which a deposit account services and instructions agreement or similar agreement,
160 approved by HUD, has been entered into, but excluding all payment accounts (if any)
161 established for the payment of amounts due to Owner pursuant to the Owner-Operator
162 Agreement.
163

164 **1.13 “Facility”** shall mean that certain [*type of facility, e.g., nursing home*]
165 located at [_____] and commonly known as
166 [_____].
167

168 **1.14 “FHA Lender Priority Collateral”** shall mean any and all property
169 (whether real, personal or mixed, tangible or intangible) in which FHA Lender and/or
170 HUD is granted liens, encumbrances, security interests and other rights pursuant to any of
171 the FHA-Insured Loan Documents, except for the AR Lender Priority Collateral, it being
172 understood that FHA Lender and/or HUD has an “all assets” security interest on the
173 assets of Operator including but not limited to (i) the skilled nursing facility licenses and
174 any other healthcare or long term care licenses for the Facility, (ii) all Medicare and
175 Medicaid/state/county provider agreements for the Facility, (iii) the certificates of need
176 for the Facility, (iv) the Owner-Operator Agreement and (v) Operator’s furniture,
177 fixtures, equipment, software and inventory directly related to such Facility.
178

179 **1.15 “FHA-Insured Loan(s)”** shall mean the mortgage loan(s) made by FHA
180 Lender and insured or held by HUD with respect to the Facility.
181

182 **1.16 “FHA-Insured Loan Documents”** shall mean, with respect to the FHA-
183 Insured Loan, any and all promissory notes, deeds of trust, mortgages, regulatory

184 agreements, security agreements and any and all other documents required by FHA
185 Lender and/or HUD as identified on Schedule 2 attached hereto in connection with such
186 FHA-Insured Loan, in each case, as amended, restated, supplemented or otherwise
187 modified from time to time, provided that this Agreement shall not be considered a FHA-
188 Insured Loan Document for purposes of this Agreement.

189
190 **1.17 “FHA-Insured Loan Obligations”** shall mean the FHA-Insured Loan and
191 all other indebtedness, liabilities and obligations owing to FHA Lender and/or HUD
192 under the FHA-Insured Loan Documents.

193
194 **1.18 “HUD”** shall mean the U.S. Secretary of Housing and Urban Development
195 or any successor agency.

196
197 **1.19 “Maximum Commitment Amount”** shall mean \$_____ [insert
198 maximum AR Lender revolving loan commitment amount, inclusive of any contemplated
199 letter of credit amounts, approved by HUD’s Office of Residential Care Facilities
200 (ORCF)].

201
202 **1.20 “Other Facilities”** means any other healthcare facilities financed by the
203 AR Loan, in any case financed by a mortgage loan made by a HUD-approved lender and
204 insured or held by HUD, which facilities are described on Schedule 3 (as such list of
205 Other Facilities may be modified from time to time with the consent of HUD, AR Lender
206 and FHA Lender).

207
208 **1.21 “Paid in Full”** shall mean the final indefeasible payment in full of all AR
209 Loan Obligations or FHA-Insured Loan Obligations, as applicable, and the termination of
210 the AR Loan Documents and the FHA-Insured Loan Documents, as applicable; provided,
211 however, that a reduction in the outstanding balance due under the AR Loan Documents
212 to zero shall not mean that the AR Loan Obligations have been “Paid in Full” unless and
213 until, all commitments of the AR Lender to lend under the AR Loan Documents have
214 been terminated. With respect to any AR Loan Obligations under the AR Loan
215 Documents consisting of contingent obligations under letters of credit, final payment is
216 considered the setting apart of cash sufficient to discharge such AR Loan Obligations in
217 an account for the exclusive benefit of AR Lender.

218
219 **1.22 “Possession Date”** shall mean, with respect to the Facility, the earlier of
220 the date upon which (a) FHA Lender, or its nominee, has taken actual physical possession
221 and control of the Facility, whether by foreclosure, deed in lieu of foreclosure,
222 appointment of a receiver or other legal process, or (b) FHA Lender, or its nominee, has
223 begun the operation and management of the Facility.

224
225 **1.23 “Protective Advances”** shall mean amounts advanced by AR Lender
226 following the Cut-Off Time and prior to the Possession Date that the AR Lender deems
227 reasonably necessary to preserve and protect the AR Lender Priority Collateral and
228 written notice of which is given to FHA Lender within five (5) Business Days after the
229 subject advance is made, provided, however, that failure to provide such notice within

230 five Business Days shall not affect the inclusion of Accounts arising after the Cut-Off
231 Time as AR Lender Priority Collateral, as described more fully in the definition of AR
232 Lender Priority Collateral.

233
234 **1.24 “Triggering Event”** shall mean an FHA-Insured Loan Triggering Event
235 or an AR Loan Triggering Event. An **“FHA-Insured Loan Triggering Event”** shall
236 mean any of (i) a payment default under the FHA-Insured Loan Documents, (ii)
237 acceleration by FHA Lender of the sums due under the FHA-Insured Loan Documents,
238 (iii) an Event of Default (as defined in any of the FHA-Insured Loan Documents) has
239 occurred, or (iv) an event of default under the Owner-Operator Agreement has occurred.
240 An **“AR Loan Triggering Event”** shall mean any event which results in AR Lender
241 having Ceased Funding or accelerating the AR Loan Obligations (provided, however,
242 that any acceleration that occurs automatically pursuant to the terms of the AR Loan
243 Agreement shall not be an AR Loan Triggering Event if such acceleration is timely
244 waived, cured, unwound or otherwise disregarded by the AR Lender who continues to
245 fund).

246 247 **2. PRIORITIES**

248 249 **2.1 AR Lender Priority.**

250 (a) AR Lender and FHA Lender agree that, as between AR Lender and FHA
251 Lender, subject to Section 2.1(b), at all times, whether before, during or after the pendency of
252 any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking
253 of possession of, or other exercise of rights in respect of the FHA Lender Priority Collateral (or
254 any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial
255 Code as enacted in each and every applicable jurisdiction, and as amended from time to time,
256 and other applicable law for the order of granting or perfecting of any security interests referred
257 to herein, AR Lender shall have a first and prior security interest in, upon and to the AR Lender
258 Priority Collateral to secure the AR Loan Obligations; and FHA Lender hereby subordinates to
259 AR Lender’s security interest FHA Lender’s security interest in the AR Lender Priority
260 Collateral. FHA Lender shall abide by the standstill provisions set forth below in Section 2.3(a).
261 FHA Lender, Owner, [insert Master Tenant, if Master Lease involved] and Operator agree, that,
262 in the event AR Lender seeks to enforce any of its remedies under the AR Loan Documents, AR
263 Lender may have reasonable access to the Facility for any inspection and copying of the books
264 and records of Operator relating to the AR Lender Priority Collateral and the FHA Lender
265 Priority Collateral, provided that AR Lender shall promptly repair any damage to the Facility
266 caused by AR Lender or its agents resulting from such inspection and copying. AR Lender
267 agrees that, notwithstanding anything in the AR Loan Documents to the contrary: (i) AR Lender
268 may not require Operator to deliver the books and records of Operator to AR Lender; and (ii) AR
269 Lender’s rights to inspect and copy Operator’s books and records shall be limited to those rights
270 set forth in the preceding sentence.

271 (b) Without limiting the foregoing, following the occurrence of a Triggering
272 Event, FHA Lender may deliver to AR Lender a Cut-Off Time Notice. Notwithstanding the
273 occurrence of a Cut-Off Time, the AR Lender shall have a first and prior security interest in the
274 AR Lender Priority Collateral, and FHA Lender shall have a subordinate lien in the AR Lender
275 Priority Collateral, until the AR Loan Obligations are Paid in Full. Any Accounts arising from

276 the delivery of goods and rendering of services by Operator at the Facility after the Cut-Off Time
277 Notice, but prior to the Cut-Off Time, shall be AR Lender Priority Collateral notwithstanding the
278 collection of the same after the Cut-Off Time. For the avoidance of doubt, FHA Lender shall
279 have a first and prior security interest in any Accounts arising from the delivery of goods and
280 rendering of services by Operator at the Facility on or after the Cut-Off Time with respect to the
281 Facility (except to the extent AR Lender makes Protective Advances), and such Accounts shall
282 be considered FHA Lender Priority Collateral and not AR Lender Priority Collateral. From and
283 after the Cut-Off Time, all amounts received by AR Lender on account of the AR Lender
284 Priority Collateral shall be applied solely to the AR Loan Obligations. Nothing herein shall
285 prevent AR Lender from collecting the full amount of the AR Loan Obligations from any
286 guarantors thereof and/or from collateral other than the AR Lender Priority Collateral and/or the
287 FHA Lender Priority Collateral.

288 (c) If AR Lender's security interest (as now or in the future existing) in the
289 AR Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is
290 judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in
291 whole or in part, and as a result thereof, a creditor subordinate to AR Lender would have or
292 would be entitled to claim, priority over the FHA Lender in the AR Lender Priority Collateral,
293 nothing in this Agreement is intended or shall be construed as a subordination by FHA Lender to
294 such other creditor.

295 (d) Notwithstanding anything else in this Agreement AR Loan Obligations
296 shall not include indemnity obligations relating to any breach of this Agreement or relating to
297 any dispute between AR Lender and FHA Lender or HUD.

298 (e) AR Lender agrees to exercise any rights of setoff against funds on deposit
299 in Deposit Accounts maintained with AR Lender for application to AR Loan Obligations
300 consistently with the priorities and provisions established under this Agreement.

301

302 **2.2 FHA Lender Priority.**

303 (a) AR Lender and FHA Lender agree that, as between AR Lender and FHA
304 Lender, subject to Section 2.2(b), at all times, whether before, during or after the pendency of
305 any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking
306 of possession of, or other exercise of rights in respect of, the AR Lender Priority Collateral (or
307 any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial
308 Code as enacted in each and every applicable jurisdiction, and as amended from time to time,
309 and other applicable law for the order of granting or perfecting of any security interests referred
310 to herein, FHA Lender shall have a first and prior security interest in, upon and to the FHA
311 Lender Priority Collateral; and AR Lender hereby subordinates to FHA Lender AR Lender's
312 security interest, if any, in the FHA Lender Priority Collateral to secure the FHA-Insured Loan.
313 AR Lender shall abide by the standstill provisions set forth below in Section 2.3(b). Promptly
314 upon execution of this Agreement, AR Lender agrees to cause itself to be removed from any
315 insurance policy and insurance certificate that has any designation of AR Lender as (a) loss
316 payee or lender's loss payee on any insurance with respect to any FHA Lender Priority Collateral
317 upon which AR Lender does not have a subordinate lien as permitted by this Agreement and (b)
318 primary loss payee or primary lender's loss payee on any insurance with respect to any FHA
319 Lender Priority Collateral upon which AR Lender has a subordinate lien permitted under this
320 Agreement.

321 (b) If FHA Lender’s security interest (as now or in the future existing) in the
322 FHA Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is
323 judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in
324 whole or in part, and as a result thereof, a creditor subordinate to FHA Lender would have or
325 would be entitled to claim, priority over AR Lender in the FHA Lender Priority Collateral,
326 nothing in this Agreement is intended or shall be construed as a subordination by AR Lender to
327 such other creditor. Notwithstanding the foregoing, FHA Lender shall have a first priority
328 security interest in the FHA Lender Priority Collateral applicable to the corresponding Facility,
329 provided however, AR Lender shall have the ability to utilize the FHA Lender Priority Collateral
330 solely to the extent necessary to exercise any of AR Lender’s rights and/or remedies (including
331 without limitation billing and collecting the Operator’s accounts receivable and other assets
332 comprising AR Lender Priority Collateral) under the AR Loan Documents.

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

339

340 **2.3 Standstill; Possession Date.**

341 (a) Until the AR Loan Obligations have been Paid in Full, FHA Lender and
342 Owner [insert “and Master Tenant” if a Master Lease is involved] shall not exercise any
343 remedies with regard to the AR Lender Priority Collateral (including without limitation any
344 remedies in conflict with Section 2.9(c) below which includes, without limitation, notifying
345 account debtors to redirect payment for such AR Lender Priority Collateral, changing or
346 attempting to change any direction of payment or remittance instructions to account debtors for
347 such AR Lender Priority Collateral to any deposit accounts other than those Deposit Accounts
348 into which Accounts have been paid historically, or any combination of the foregoing); *provided*
349 *however*, that after a Triggering Event, the foregoing shall not prohibit the FHA Lender from (i)
350 taking any action against the Operator with respect to any FHA Lender Priority Collateral (so
351 long as such action does not compromise the AR Lender’s ability to bill and/or collect the AR
352 Lender Priority Collateral), (ii) terminating an Owner-Operator Agreement, (iii) commencing an
353 action for possession or for collection of rent or other monetary amounts due under such Owner-
354 Operator Agreement or for specific enforcement of an Operator’s covenants under such Owner-
355 Operator Agreement, so long as such actions do not comprise the exercise of a remedy with
356 regard to AR Lender Priority Collateral, or (iv) pursuing the remedies specified in the definition
357 of “Possession Date,” (v) taking steps to appoint a receiver or (vi) contacting the necessary
358 authorities, which may include account debtors, to begin the process of transferring the license
359 and/or any other necessary permits or approvals, and the assignment of the provider agreements
360 from the incumbent Operator to a new operator.

361 (b) Until the FHA-Insured Loan Obligations have been Paid in Full, subject to
362 AR Lender’s right to access the FHA Lender Priority Collateral set forth in Section 2.1 above,
363 AR Lender shall not affirmatively exercise any remedies with regard to the FHA Lender Priority
364 Collateral.

365 (c) Without limiting the foregoing, FHA Lender shall deliver to AR Lender
366 ten (10) Business Days’ prior written notice of the commencement of any action or undertaking

367 to take physical possession, control or management of the Facility (the “**Possession Date**
368 **Notice**”). If a Cut-Off Time Notice has previously been issued, the Possession Date Notice shall
369 have no effect on the Cut-Off Time. If no previous Cut-Off Time Notice has been issued, the
370 Possession Date Notice shall serve as a Cut-Off Time Notice. If a Possession Date Notice is
371 serving as Cut-Off Time Notice, notwithstanding the fact that FHA Lender or its designee may
372 take physical possession, control or management of a Facility upon providing ten (10) Business
373 Days’ notice to AR Lender, AR Lender shall have rights to and be entitled to the collections of
374 all Accounts arising from the delivery of goods or rendering of services at the Facility for the
375 period beginning on the date of the Possession Date Notice and continuing until the thirtieth
376 (30th) day following a Possession Date Notice, without regard to whether such Accounts were
377 generated in the name of Operator or in the name of any temporary or permanent replacement
378 operator, manager or receiver.

379 (d) Without limiting any of its rights hereunder or under the AR Loan
380 Documents, at any time after receiving a Cut-Off Time Notice or a Possession Date Notice, AR
381 Lender shall have the right to cease making Advances. Irrespective of whether or not AR Lender
382 makes any Advances (including Protective Advances) after receiving the Cut-Off Time Notice, it
383 shall retain a first priority lien on all AR Lender Priority Collateral.

384 (e) Except as may be expressly set forth herein, including but not limited to in
385 Section 2.6(b) hereof, FHA Lender, Owner, and Operator hereby agree that any AR Lender
386 Priority Collateral and proceeds thereof, which may come into the possession of FHA Lender or
387 Owner or Operator will be held in trust for AR Lender, and FHA Lender and Owner shall turn
388 over any AR Lender Priority Collateral and/or proceeds thereof to AR Lender, in the same form
389 as received with any necessary endorsements, promptly upon receipt, until all of the AR Loan
390 Obligations have been Paid in Full. Any replacement operator or receiver who commences
391 operating the Facility shall agree in writing to abide by the provisions of this Section 2.3(e) to the
392 extent it, or its new lender, if any, comes into possession of any AR Lender Priority Collateral,
393 provided, however, failure to secure such written agreement shall not subject FHA Lender to any
394 liability nor affect the subordination and lien priorities set forth in this Agreement.

395 (f) Any FHA Lender Priority Collateral that may come into the possession of
396 AR Lender, Operator or Owner will be held in trust by AR Lender, Operator or Owner (as
397 applicable), for FHA Lender, and such recipient shall turn over any FHA Lender Priority
398 Collateral so received to FHA Lender in the same form as received, with any necessary
399 endorsements, promptly upon receipt, until the FHA-Insured Loan Obligations have been Paid in
400 Full in accordance with the terms of this Agreement. Any replacement operator or receiver who
401 commences operating the Facility shall agree in writing to abide by the provisions of this Section
402 2.3(f) to the extent it, or its new lender, if any, comes into possession of any FHA Lender
403 Priority Collateral.

404

405 **2.4 No Contest.**

406 (a) FHA Lender agrees that it will not make any assertion or claim in any
407 action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity
408 or effectiveness of the liens and security interests granted to AR Lender with respect to the AR
409 Lender Priority Collateral *provided that*, nothing in this Section 2.4(a) shall prevent FHA Lender
410 from taking all appropriate steps to protect and preserve its priority in the circumstances
411 contemplated in Section 2.1(b). FHA Lender further agrees that, subject to Section 2.1(b), AR
412 Lender’s lien and security interest in the AR Lender Priority Collateral shall at all times, while

413 AR Loan Obligations are owing from Operator to AR Lender, be superior and prior to the liens
414 and security interests granted to the FHA Lender in such AR Lender Priority Collateral,
415 irrespective of the time, order or method of attachment or perfection of AR Lender's and the
416 FHA Lender's liens and security interests, or the filing of financing statements, or the taking of
417 possession of the FHA Lender Priority Collateral, or any portion thereof.

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

430 (c) AR Lender waives, in respect of FHA Lender, any and all rights under any
431 theory of marshalling or ordering of the disposition of collateral and accordingly, AR Lender
432 agrees that FHA Lender may (i) proceed directly against any collateral in which FHA Lender has
433 a lien or security interest (subject to the terms of this Agreement) and/or any guarantor of the
434 FHA-Insured Loan Obligations in any particular order and (ii) release, surrender, substitute or
435 exchange any collateral and/or any guarantor at any time without affecting the agreements set
436 forth in this Agreement. FHA Lender waives, in respect of AR Lender, any and all rights under
437 any theory of marshalling or ordering of the disposition of collateral and accordingly, FHA
438 Lender agrees that AR Lender may (A) proceed directly against any collateral in which AR
439 Lender has a lien or security interest (subject to the terms of this Agreement) and/or any
440 guarantor of the AR Loan Obligations in any particular order and (B) release, surrender,
441 substitute or exchange any collateral and/or any guarantor at any time without affecting the
442 agreements set forth in this Agreement.

443

444 **2.5 Releases; Bailee for Perfection.**

445 (a) Notwithstanding anything to the contrary contained herein or in any of the
446 FHA-Insured Loan Documents, the Operator Security Agreement or the Owner-Operator
447 Agreement (or any sublease thereof), but subject to Section 2.5(b) below, FHA Lender agrees
448 that in the event any AR Lender Priority Collateral (but not the AR Loan) is sold, transferred or
449 conveyed or otherwise disposed of in conjunction with the exercise of AR Lender's remedies
450 against Operator under the AR Loan Documents, the FHA Lender shall release all of its rights to
451 and interests in such AR Lender Priority Collateral. Nothing in this Section 2.5(a) shall require
452 any release of the FHA Lender Priority Collateral. FHA Lender shall execute such release
453 documents as AR Lender may reasonably request to effectuate the terms of this Section 2.5(a).
454 Notwithstanding anything to the contrary contained herein or in any of the AR Loan Documents,
455 but subject to Section 2.5(b), AR Lender agrees that in the event any FHA Lender Priority
456 Collateral (but not the FHA-Insured Loan) is sold, transferred or conveyed or otherwise disposed
457 of in conjunction with the exercise of FHA Lender's remedies under the FHA-Insured Loan
458 Documents, AR Lender shall release all of its rights to and interests in (if any) such FHA Lender

459 Priority Collateral and such property shall be transferred free and clear of all liens and security
460 interests in favor of AR Lender. Nothing in this Section 2.5(a) shall require any release of the
461 AR Lender Priority Collateral. AR Lender shall execute such release documents as FHA Lender
462 may reasonably request to effectuate the terms of this Section 2.5(a).

463 (b) Notwithstanding the foregoing, to the extent that the proceeds of any sale
464 of AR Lender Priority Collateral exceed the amount necessary to pay and satisfy in full the AR
465 Loan Obligations, such excess shall be delivered to FHA Lender (to the extent that FHA Lender
466 is otherwise entitled thereto in accordance with the FHA-Insured Loan Documents and/or
467 applicable law) for application by FHA Lender pursuant to the FHA-Insured Loan Documents.
468 To the extent that the proceeds of any sale of FHA Lender Priority Collateral exceed the amount
469 necessary to pay and satisfy the FHA-Insured Loan Obligations in full, such excess shall be
470 delivered to AR Lender (to the extent that AR Lender has a security interest in the FHA Lender
471 Priority Collateral and is otherwise entitled thereto in accordance with the AR Loan Documents
472 and/or applicable law) for application by AR Lender pursuant to the AR Loan Documents.

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

483 (d) With respect to any AR Lender Priority Collateral and/or FHA Lender
484 Priority Collateral that FHA Lender cannot perfect a security interest in by filing a financing
485 statement, and with respect to which AR Lender has perfected a security interest, AR Lender
486 shall be deemed to be holding such AR Lender Priority Collateral and/or FHA Lender Priority
487 Collateral as representative and bailee for FHA Lender for the purposes of perfection of FHA
488 Lender's liens thereon or therein under the Uniform Commercial Code as in effect in each
489 applicable jurisdiction, and as amended from time to time; provided, however, that the failure of
490 AR Lender to hold any such collateral shall not subject such AR Lender to any liability nor
491 affect the subordination and lien priorities set forth in this Agreement.

492 **2.6 Return of Payments**

493 (a) AR Lender agrees that, upon the AR Loan Obligations being Paid in Full,
494 any AR Lender Priority Collateral and the proceeds thereof which may come into AR Lender’s
495 possession will be held by it in trust for FHA Lender and it shall turn over any such AR Lender
496 Priority Collateral and/or proceeds thereof to FHA Lender (or, at FHA Lender’s direction, to a
497 new lender who has entered into an intercreditor agreement with FHA Lender), in the same form
498 as received with any necessary endorsements or in an amount equal to the proceeds received,
499 promptly upon receipt.

500 (b) FHA Lender agrees that upon the FHA-Insured Loan Obligations being
501 Paid in Full, except to the extent the FHA-Insured Loan Obligations are Paid in Full with the
502 proceeds of replacement mortgage financing by a new lender that has entered into an
503 intercreditor agreement with AR Lender, any FHA Lender Priority Collateral securing the AR
504 Loan Obligations and proceeds thereof, which may come into FHA Lender’s possession, will be
505 held by it in trust for AR Lender and it shall turn over any such FHA Lender Priority Collateral
506 and/or proceeds thereof to AR Lender, in the same form as received with any necessary
507 endorsements or in an amount equal to the proceeds received, promptly upon receipt.

508
509 **2.7 AR Loan Documents; Over-line Advances; Allowable Over-Advances;**
510 **Collateralization.**

511 (a) AR Lender represents and warrants that as of the date hereof Schedule 1
512 sets forth a list of the material documents evidencing or securing the AR Loan(s) and that true,
513 correct and complete copies of the documents listed thereon have been provided to FHA Lender
514 and its counsel.

515 (b) Notwithstanding anything else in this Agreement or the AR Loan
516 Documents, AR Lender shall not make Over-line Advances without prior written consent of
517 FHA Lender and HUD (provided that HUD may be deemed to have given consent as set forth
518 below in this Section 2.7(b)), except for Protective Advances. **“Over-line Advance”** means an
519 Advance in excess of the Maximum Commitment Amount. Upon the written request by AR
520 Lender to FHA Lender to make an Over-line Advance, FHA Lender shall promptly (within two
521 (2) Business Days) make such request of HUD and HUD will make commercially reasonable
522 efforts to respond within ten (10) Business Days to any written request for consent to an Over-
523 line Advance if such request is sent to the Director of HUD’s Office of Residential Care
524 Facilities (or successor office) and supported by a documented collateral analysis provided by
525 the AR Lender showing sufficient eligible collateral so as to not exceed the borrowing base
526 formula set forth in the AR Loan Documents; provided, however, that if HUD fails to respond
527 within ten (10) Business Days of receiving such request from FHA Lender, such failure to
528 respond shall be deemed to be a consent to the making of such Over-line Advance.

529 (c) Notwithstanding anything else in this Agreement or the AR Loan
530 Documents, AR Lender shall not make any Over-Advance, other than Allowable Over-
531 Advances, without prior written consent of FHA Lender and HUD.

532 (i) **“Over-Advance”** means any Advances made by AR Lender
533 pursuant to the AR Loan Documents in excess of the borrowing base formula provisions
534 set forth in the AR Loan Documents.

535
536 (ii) **“Allowable Over-Advances”** shall mean one or more Over-
537 Advances which: (1) are advanced by AR Lender solely to be used by Operator for

538 working capital purposes and/or to pay for costs and expenses incurred by the Operator
539 relating to the operation of the Facility or Other Facilities (including, but not limited to
540 payroll and related expenses, food and other dietary goods, pharmaceuticals, rent due
541 pursuant to the Owner-Operator Agreement (if any), debt service on the FHA-Insured
542 Loan Documents, or other amounts due pursuant to the Owner-Operator Agreement
543 and/or FHA-Insured Loan Documents), (2) are due within 180 days; and (3) are
544 accompanied by documentation (which documentation may include an amendment to the
545 AR Loan Documents or letter to the Operator) dictating the amount and duration/due date
546 of such Over-Advance and documentation (which may be from the Operator) indicating
547 why such Over-Advance is necessary, provided that AR Lender gives notice pursuant to
548 Section 4.5 of this Agreement to FHA Lender within five (5) Business Days of such
549 Over-Advance and any extension of such Over-Advance; and provided further that
550 failure by AR Lender to provide notice (or any required accompanying documentation) to
551 FHA Lender within 5 Business Days shall not subject AR Lender to any liability
552 hereunder nor affect the subordination and lien priorities set forth in this Agreement, and
553 shall not cause any Over-Advance to not constitute an “Allowable Over-Advance”
554 hereunder. FHA Lender will give HUD notice of any notice of an Over-Advance it
555 receives. In no event shall the due date for an Allowable Over-Advance be extended
556 beyond 180 days from the making of the Over-Advance without prior written consent
557 from FHA Lender, provided that FHA Lender shall not provide consent without receiving
558 HUD consent.

559 (d) Until the AR Loan Obligations are Paid in Full, without the prior written
560 consent of FHA Lender, AR Lender shall not amend, restate, supplement or otherwise modify
561 the AR Loan Documents in any way which, and AR Lender shall not take any action which, (i)
562 results in the creation of any lien, security interest or other encumbrance in any collateral related
563 to the Facility other than the security interests and liens in existence as of the date of this
564 Agreement pursuant to the AR Loan Documents listed on Schedule 1, (ii) conflicts in any way
565 with this Agreement, (iii) adds a term loan facility, equipment loan facility, or any additional
566 credit facility other than the revolving loan facility and letter of credit subfacility set forth in the
567 AR Loan Documents in existence as of the date of this Agreement, (iv) amends the definition of
568 “Obligations” set forth in the AR Loan Agreement on the date hereof, or (v) materially and
569 adversely affects the rights or interests of FHA Lender.

570 (e) For the avoidance of doubt, but without limiting in any way the agreement
571 of AR Lender set forth in subsection (d) immediately above, FHA Lender agrees that its consent
572 shall not be required for any amendment or modification of any AR Loan Documents that
573 increases the amount of the AR Loan in connection with the joinder of a co-borrower thereunder
574 that is an operator of a nursing and/or assisted living facility that is encumbered by a mortgage
575 loan held or insured by HUD; it being agreed and understood that, such joinder must be
576 approved by HUD.

577 (f) AR Lender agrees to provide FHA Lender with true, correct and complete
578 copies of any AR Loan Documents, including any amendments thereto, upon written request
579 from FHA Lender. Operator shall provide copies of any and all amendments to the AR Loan
580 Documents to FHA Lender prior to the effective date of any amendment. Nothing in this
581 paragraph shall limit any Operator obligations to receive any necessary consents pursuant to the
582 FHA-Insured Loan Documents.

583 (g) Notwithstanding anything to the contrary in this Agreement or the FHA-
584 Insured Loan Documents, it is hereby agreed that, without further approval by FHA Lender or
585 HUD: *[INSERT CHANGES/AMENDMENTS TO MATERIAL TERMS, IF ANY, THAT ORCF*
586 *HAS PRE-APPROVED AND AGREED DO NOT REQUIRE FURTHER HUD CONSENT. FOR*
587 *EXAMPLE:]*

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

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

595 (iii) A modification or extension entered into in accordance with this
596 Section 2.7(g) shall not be deemed to violate the requirement in the Operator Regulatory
597 Agreement to obtain prior HUD consent to such modification; *provided that*, nothing
598 herein shall be deemed to waive or limit the requirement to obtain such prior consent for
599 any other modification of a Material Term (as defined in the Operator Regulatory
600 Agreement) or any other extensions or interest rate change except as set forth in this
601 Section 2.7(g).

602 (h) **“Cross-Collateralization between HUD Projects and AR Loan”:**

603 *[Insert ONE of the following three choices, as applicable, and intentionally omit the other two]*

604 (i) *[Alternative 1]* The parties acknowledge that, pursuant to the AR Loan
605 Documents, the Operator and each operator of the Other Facilities is jointly and severally
606 liable for repayment of the AR loan and that the operator collateral related to the Facility
607 and each of the Other Facilities secures the AR Loan; i.e. that the operator collateral
608 regarding the Facility and each of the Other Facilities are cross-collateralized to secure
609 the AR Loan. Such cross-collateralization has been approved by HUD.

610 (ii) *[Alternative 2]* *[Describe any alternative arrangement approved by*
611 *HUD. For example, if any operator’s access to AR loan is expressly limited to a*
612 *particular dollar amount, then the extent of cross-collateralization against such operator*
613 *may be required to be similarly limited]*

614 (iii) *[Alternative 3]* *[If the HUD projects are not cross-collateralized*
615 *insert “Not Applicable”]*

616 (i) **“Use of HUD projects to Pay or Collateralize Non-HUD Affiliated**
617 **Obligations Not Permitted”** Notwithstanding anything to the contrary in the AR Loan
618 Documents, unless approved by HUD and set forth in Section 1.7 hereof, AR Lender agrees that
619 AR Lender shall not use or apply any income of or property of any project with an FHA-Insured
620 Loan to pay or collateralize any Non-HUD Affiliated Obligations. For purposes hereof, **“Non-**
621 **HUD Affiliated Obligations”** shall include any mortgage loan, term loan, line of credit,
622 accounts receivable financing loan, or other credit arrangement from AR Lender (including any
623 syndicate lenders) or its affiliates, to parties that are affiliated with the Operator, the operators of
624 the Other Facilities, the owners of the Facility or Other Facilities, or the Master Tenant.

625 (j) AR Lender certifies and agrees that (i) the AR Loan Documents do not,
626 and shall not, include any Non-HUD Affiliated Obligations as part of the AR Loan Obligations,
627 and shall not amend its documents to include any such terms at any time without express,
628 specific prior HUD written approval, and (ii) neither the Operator, nor the operators of the Other

629 Facilities, nor any Owner or Master Tenant of the Facility or the Other Facilities (A) are or at
630 any time shall become obligors or guarantors of any such Non-HUD Affiliated Obligations or
631 (B) have granted or shall grant any liens or security interests to secure such Non-HUD Affiliated
632 Obligations.

633 (k) **“Use of Non-HUD project collateral to Secure HUD AR line”**

634 Notwithstanding anything to the contrary in the AR Loan Documents, AR Lender agrees that, if
635 and to the extent that non-HUD project collateral secures the AR Loan or any guarantee thereof,
636 the costs of entering into, negotiating, administering and enforcing the documents evidencing
637 such non-HUD collateral, including any protective advances thereunder, shall not be charged to
638 the AR Loan or to the Operator or operators of the Other Facilities.

639

640 **2.8 FHA-Insured Loan Documents.** FHA Lender represents and warrants
641 that as of the date hereof, Schedule 2 sets forth a list of certain material documents evidencing or
642 securing the FHA-Insured Loan(s) and that true, correct and complete copies of the documents
643 listed thereon have been provided to AR Lender and its counsel. FHA Lender agrees to provide
644 AR Lender with true, correct and complete copies of any FHA-Insured Loan Documents,
645 including any amendments thereto, upon written request from AR Lender.

646

647 **2.9 Deposit Account Control Agreements; Lien Releases.**

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

652 (b) Upon the AR Loan Obligations being Paid in Full, AR Lender agrees to
653 promptly notify the FHA Lender of such event, and AR Lender further agrees that it will execute
654 any and all such termination statements or releases as may be necessary to release any lien on the
655 Operator’s assets, including but not limited to the termination of (or, if FHA Lender and AR
656 Lender are both a party to the same such agreement, release of AR Lender from) any deposit
657 account control agreement, provider account agreement, blocked account agreement or lockbox
658 agreement with any depository bank of Operator which holds or receives Operator’s Accounts.
659 In the event any Party to this Agreement that has been Paid in Full fails to file any required
660 releases and/or termination statements within ten (10) Business Days of the other Party’s timely
661 demand therefor, the requesting Party hereby is authorized to file a copy of this Agreement in
662 any appropriate UCC financing office as conclusive evidence of such (non-complying) Party’s
663 release of its security interest in the AR Lender Priority Collateral, and any third Party shall be
664 entitled to rely upon the filing of this Agreement as a full and complete release of such Party’s
665 security interest.

666 (c) Until the AR Loan Obligations are Paid in Full, AR Lender will have the
667 exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and
668 to provide appropriate instructions to the applicable Depository Bank. At such time that the AR
669 Loan Obligations are Paid in Full, FHA Lender will have the exclusive authority to exercise
670 control (unless prohibited by law) over the Deposit Accounts and to provide appropriate
671 instructions to the applicable Depository Bank, and AR Lender will take all necessary steps to
672 effectuate the foregoing, including, but not limited to, providing appropriate instructions to the
673 applicable Depository Bank or terminating any deposit account control agreement, provider
674 account agreement, blocked account agreement or lockbox agreement with any depository bank

675 of Operator which holds or receives Operator’s Accounts. After a Cut-Off Time, the parties
676 agree to coordinate the timing of instructions given to residents and third-party payors that
677 identify new deposit accounts into which payments should be made. Without limiting anything
678 set forth in Section 2.3(a), each of the parties to this Agreement hereby agrees to cooperate and
679 work in good faith with each other in order to effectively and efficiently bill, invoice and collect
680 all Accounts due from Operator’s account debtors and to promptly turn over any proceeds of
681 Accounts to the party entitled to such proceeds.
682

683 3. REPRESENTATIONS; COVENANTS

684
685 **3.1** Operator operates the Facility. Operator has granted or will grant a
686 security interest in its Accounts and certain other assets to FHA Lender and HUD (collectively,
687 the “**Senior Secured Parties**”) pursuant to the Operator Security Agreement in connection with
688 one or more FHA-Insured Loans provided to Owner.
689

690 **3.2** AR Lender consents to the Operator Security Agreement and the liens
691 granted in favor of the Senior Secured Parties notwithstanding any contrary provisions of the AR
692 Loan Documents. This Intercreditor Agreement sets forth the relative priorities of AR Lender
693 and the Senior Secured Parties in and to the assets of Operator.
694

695 **3.3** Subject to the provisions of Section 3.4 below, the Parties acknowledge
696 that funds received by Operator from AR Lender (“**AR Loan Advances**”) shall be utilized (i)
697 first, to pay current debt service obligations of Operator to AR Lender with respect to the
698 Facility, (ii) second, to pay Operator’s costs of operations with respect to the Facility including,
699 but not limited to, rent and all other payment obligations due under the Owner-Operator
700 Agreement, payroll and payroll taxes, ordinary maintenance and repairs and management and
701 consulting fees to unaffiliated management agents or consultants (“**Current Operating Costs**”);
702 (iii) third, provided that no Event of Default exists under the Owner-Operator Agreement or
703 FHA-Insured Loan Documents, to pay management and consulting fees to affiliated management
704 agents and (iv) after the payment of Current Operating Costs, and consulting fees to affiliated
705 management agents, subject to applicable restrictions, if any, in the AR Loan Documents and the
706 Operator Regulatory Agreement, AR Loan Advances may be distributed to Operator’s
707 shareholders, partners, members or owners, as the case may be. [The parties acknowledge that
708 such utilization of Advances may include and is subject to the Master Tenant’s rights to
709 reallocate rent payments and the Operator’s obligations pursuant to that certain Cross-Default
710 Guaranty entered into by Operator relating to the Facility (“**Cross-Default Guaranty**”) and that
711 such reallocated rent payments or payments pursuant to the Cross-Default Guaranty shall be
712 deemed Current Operating Costs for purposes of this Agreement.] Notwithstanding anything to
713 the contrary herein (but subject to any limitations in the AR Loan Documents and the Operator
714 Regulatory Agreement), any distributions made by Operator to Operator’s shareholders, partners,
715 members or owners, as the case may be, shall be permitted to the extent, and only to the extent,
716 allowed by that certain Operator Regulatory Agreement executed by Operator in connection with
717 the Facility. AR Lender makes no representations or covenants with respect to Operator’s
718 compliance with the terms of this Section 3.3.
719

720 *[The terms of this Section 3.4 are not standardized and are meant to be revised by the Closing*
721 *Attorney, with ORCF Closer consent, as agreed to by all parties to reflect the deal-specific*
722 *circumstances and agreements. Some common provisions are suggested below.]*

723
724 3.4 **AR Loan Advances Payment Structure.**

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

729 (b) **AR Lender funds AR Loan Advances.** Operator, FHA Lender and AR
730 Lender agree that no later than the [eighth (8th)] day of each calendar month (*provided that if*
731 *such day is not a Business Day then on the immediately preceding Business Day*), [upon written
732 request from Operator in accordance with the AR Loan Agreement, AR Lender shall disburse [,
733 by wire transfer of immediately available funds as an Advance (to the extent of [*Availability*]) to
734 [the account of FHA Lender designated in writing by Operator to AR Lender] [a payment
735 account designated in writing by Operator and from which FHA Lender will either receive an
736 automatic wire or access via the automated clearinghouse system], an amount equal to the
737 Current Impositions, as defined below, as designated in writing to AR Lender by FHA Lender,
738 provided, however, that any Advance made pursuant to this subsection (b) shall be subject to the
739 restrictions set forth in subsection (d) below.

740 (c) **“Current Impositions”** equals the sum of: [(i) the aggregate rent payable
741 under the Owner-Operator Agreement for such month, [including any reallocated rent payments
742 pursuant to the Master Lease and/or any payments due pursuant to the Cross-Default Guaranty]],
743 [(ii) taxes and insurance due and owing with respect to the Owner-Operator Agreement for such
744 month,] [and] [(iii) deposits to reserves required under the Owner-Operator Agreement.]

745 (d) AR Lender agrees that it shall make the Advance as described in
746 subsection (b) above unless (i) there is not sufficient [*Availability*], or (ii) a default or event of
747 default shall exist or be continuing under the AR Loan Agreement, or (iii) Operator fails to
748 satisfy all conditions precedent thereto as set forth in the AR Loan Documents. After payment of
749 the Current Impositions and subject to applicable restrictions in the AR Loan Documents, any
750 remaining Advances may be made as directed by Operator. *[Operator agrees to promptly, but in*
751 *no event later than the eighth (8th) day of each calendar month (or the immediately preceding*
752 *Business Day if such day is not a Business Day), notify FHA Lender and Owner in accordance*
753 *with Section 4.5 if there is not sufficient Availability for AR Lender to make the disbursement set*
754 *forth in this Section 3.4].*

755 (e) **Use of AR Loan Advances to satisfy FHA-Insured Loan Current**
756 **Impositions.** *[The parties acknowledge that AR Loan Advances shall first be used to pay Current*
757 *Impositions.]* [FHA Lender shall receive by automatic debit or FHA Lender shall have a right to
758 withdraw from the account to which the AR Loan Advances are made] amounts at least equal to
759 the Current Impositions. FHA Lender agrees to apply amounts received on account of Current
760 Impositions toward payment of Owner’s monthly debt service obligations under the FHA-
761 Insured Loan and to fund applicable escrow and reserve requirements, with the balance
762 remaining of the payment so collected, if any, to be remitted by FHA Lender to [Owner]
763 *[promptly] [within two (2) Business Days]* after receipt by FHA Lender.]

766 (f) Notwithstanding anything in this Agreement (whether express or implied)
767 to the contrary, Senior Secured Parties, Operator and Owner acknowledge and agree that (i) AR
768 Lender shall have no liability to any Senior Secured Parties, Operator or Owner for computation
769 or verification of the Current Impositions nor the actual use of proceeds of AR Loan by
770 Operator, and (ii) none of Senior Secured Parties nor Owner shall be deemed to be a third party
771 beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured
772 Parties and Owner hereby expressly waive and relinquish their respective rights to claim
773 otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the
774 extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be
775 entitled to retain the same and shall not be required to hold the same in trust or to disgorge the
776 same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority
777 Collateral. Notwithstanding the foregoing, FHA Lender agrees that in the event AR Lender
778 notifies FHA Lender that Current Impositions are being paid improperly with AR Lender
779 Priority Collateral and not in the manner set forth in this Section 3.4, FHA Lender agrees to hold
780 any such improperly paid amounts received thereafter in trust for AR Lender as AR Lender
781 Priority Collateral.

782
783 (g) The signatures of Owner [*insert “, Master Tenant” if Master Lease*
784 *involved*] and Operator below shall confirm their respective agreement to the collection, payment
785 and disbursement of the amounts set forth herein.

786
787 3.5 Except as set forth herein, Operator certifies that there are no proposed
788 agreements, arrangements, understandings or transactions (side deals) outside of the AR Loan
789 Documents that utilize the Accounts of Operator as security for any other obligations. Operator
790 agrees that Operator shall not be a guarantor or party to any other accounts receivable financing
791 agreement without the consent of FHA Lender and HUD.

792
793 3.6 Except as set forth herein or as otherwise disclosed to and approved by
794 HUD in writing, (a) AR Lender and Operator certify and agree that there are no existing or
795 proposed agreements, arrangements, understandings or transactions that involve the Facility (side
796 deals) between (i) Operator, [*insert “, Master Tenant” if Master Lease involved*], Owner, or any
797 owner, master tenant, or operator of any of the Other Facilities, or officers, members, managers,
798 directors, stockholders, partners, or other interest holders, employees or affiliates, or any member
799 of their respective immediate families, and/or the parent entity of Operator, Master Tenant,
800 Owner, or any owner, master tenant, or operator of any of the Other Facilities, and (ii) AR
801 Lender; (b) FHA Lender and Operator certify and agree that there are no existing or proposed
802 agreements, arrangements, understandings or transactions that involve the Facility (side deals)
803 between (i) Operator (or any of Operator’s officers, members, managers, directors, stockholders,
804 partners, or other interest holders, employees or affiliates, or any member of their respective
805 immediate families, and/or its parent entity), and (ii) FHA Lender; and (c) AR Lender and
806 Operator certify that, notwithstanding anything else in the AR Loan Documents, neither the AR
807 Lender Priority Collateral nor the FHA Lender Priority Collateral shall secure any obligations to
808 the AR Lender, or any of its affiliates (including any lender under the AR Loan Documents),
809 relating to projects other than the Facility or Other Facilities. AR Lender and Operator certify
810 and agree that any and all provisions in the AR Loan Documents that would entitle AR Lender to
811 declare a default under the AR Loan as a result of defaults under other agreements by Operator

812 or affiliates of Operator (“**Cross-Defaults**”) are set forth on Exhibit B hereto, The Cross-
813 Defaults have been disclosed to and approved by HUD.

814

815

816 4. MISCELLANEOUS

817

818 **4.1 Beneficiaries.** This Agreement is entered into solely for the benefit of AR
819 Lender, FHA Lender, HUD, and their respective successors and assigns, and neither Operator,
820 Owner nor any other persons or entities whatsoever, including but not limited to any third party
821 assignee, investor, incidental beneficiary or any creditor of Operator or Owner (other than HUD),
822 shall have any right, benefit, priority or interest under or because of the existence of this
823 Agreement.

824 **4.2 Amendment.** This Agreement contains the entire understanding of the
825 Parties with respect to the subject matter hereof, and shall not be modified, amended or
826 terminated orally but only in writing signed by AR Lender, FHA Lender, Owner and Operator.

827

828 **4.3 Bankruptcy Financing.** In the event of the commencement of a
829 bankruptcy, insolvency or similar type of proceeding filed by or against the Operator
830 (“**Proceeding**”), AR Lender shall have the non-exclusive option (in its sole and absolute
831 discretion) to continue to provide financing (on terms acceptable to AR Lender) to the trustee,
832 other fiduciary or to the Operator as a debtor-in-possession, if AR Lender deems such financing
833 to be in its best interests. The subordination and lien priority provisions of this Agreement shall
834 continue to apply to all AR Lender Priority Collateral arising upon the commencement and
835 during the pendency of such Proceeding without regard as to whether a Cut-Off Time has
836 occurred prior to the commencement of such Proceeding, so that AR Lender shall have a prior
837 lien on all AR Lender Priority Collateral, created before and during such Proceeding (to the
838 extent AR Lender provides such financing during the Proceeding or to the extent Operator is
839 granted the right to use, sell, or otherwise dispose of cash collateral during any such Proceeding),
840 to secure the AR Loans, whether advanced before or during such Proceeding.

841 **4.4 Relative Rights; Cure Rights; Certain Notice Obligations of FHA** 842 **Lender and AR Lender.**

843 (a) This Agreement is entered into solely for the purposes set forth herein, and
844 except as expressly provided herein, neither AR Lender nor FHA Lender assumes any other
845 duties or responsibilities to the other regarding the financial condition of Operator, Owner or any
846 other party, or regarding any of Operator’s property, or regarding any other circumstance bearing
847 upon the risk of nonpayment of the obligations of Operator or Owner under any of the
848 agreements referred to herein. Each of AR Lender and FHA Lender shall be responsible for
849 managing its financial relationships with Operator and Owner, and neither shall be deemed to be
850 the agent of the other for any purpose.

851 (b) AR Lender and the FHA Lender agree to notify the other of any notice of
852 a “Notice Event” given to their respective borrower under any of the AR Loan Documents or any
853 of the FHA-Insured Loan Documents as applicable; provided, that the failure to provide such
854 notice shall not subject such Party to any liability nor affect the subordination and lien priorities
855 set forth in this Agreement. AR Lender and the FHA Lender shall have the right (but not the
856 obligation) to cure any payment default under the other Party’s documents within ten (10) days
857 after notice thereof. A “**Notice Event**” for purposes of this Section shall mean (i) with regard to

858 FHA Lender and the FHA-Insured Loan Documents, a default by the borrower thereunder
859 triggering FHA Lender's commencement of assignment to HUD of the FHA-Insured Loan, an
860 acceleration of the FHA-Insured Loan, a foreclosure, or an action for the appointment of a
861 receiver or similar remedy, including any FHA-Insured Loan Triggering Event; (ii) with regard
862 to AR Lender and AR Loan Documents, any event which results in AR Lender having Ceased
863 Funding or accelerating the AR Loan Obligations or the AR Loan Obligations accelerating
864 automatically in accordance with the terms of the AR Loan Documents, including any AR Loan
865 Triggering Event; or (iii) with regard to AR Lender and the AR Loan Documents, if there is
866 insufficient Availability to fund the Current Impositions (as defined above in Section 3.4), at
867 least with respect to the Facility.

868
869 **4.5 Notices.** Any notice or service of process given, or required to be given,
870 pursuant hereto and in connection herewith, including without limitation any notice of any Cut-
871 Off Time, shall be in writing and shall be deemed to be properly given: (a) when personally
872 delivered; (b) the first or second Business Day after the notice is deposited with a nationally
873 recognized overnight courier service with arrangements made for payment of charges for next or
874 second Business Day delivery, respectively; or (c) two Business Days after the date sent by
875 certified mail return receipt requested, in each case addressed to the Party for whom it is
876 intended at its address hereinafter set forth or such address as subsequently provided to all
877 Parties in writing.

878 If to AR Lender to: _____
879 _____
880 _____
881 Attn: _____
882 Telephone: (____) _____
883 Facsimile: (____) _____
884
885 With copies to: _____
886 _____
887 _____
888 Attn: _____
889 Telephone: (____) _____
890 Facsimile: (____) _____
891
892 If to FHA Lender to: _____
893 _____
894 _____
895 Attn: _____
896 Telephone: (____) _____
897 Facsimile: (____) _____
898
899 With copies to: _____
900 _____
901 _____
902 Attn: _____
903 Telephone: (____) _____
904 Facsimile: (____) _____
905
906 If to Owner to: _____
907 _____
908 _____
909 Attn: _____
910 Telephone: (____) _____
911 Facsimile: (____) _____
912
913 With copies to: _____
914 _____
915 _____
916 Attn: _____
917 Telephone: (____) _____
918 Facsimile: (____) _____
919

920 If to Operator to: _____
921 _____
922 _____
923 Attn: _____
924 Telephone: (____) _____
925 Facsimile: (____) _____
926

927 With copies to: _____
928 _____
929 _____
930 Attn: _____
931 Telephone: (____) _____
932 Facsimile: (____) _____
933
934

935 **4.6 Counterparts; Facsimile Signatures.** This Agreement may be executed
936 in any number of counterparts, each of which shall be deemed to be an original, and all of which
937 together constitute one and the same agreement. Signature transmitted by facsimile or other
938 electronic means shall bind the Parties hereto.
939

940 **4.7 Authorization.** Each individual signatory hereto represents and warrants
941 that he or she is duly authorized to execute this Agreement on behalf of his or her principal and
942 that he or she executes the Agreement in such capacity and not as a Party. [OPTIONAL: *If AR*
943 *Loan is syndicated or participated, and the AR Loan Documents are unclear about agent's*
944 *ability to bind other lenders or whether any lenders or participants may have an identity of*
945 *interest with Operator, field counsel may request additional reasonable assurances here.]
946*

947 **4.8 Successors and Assigns.** This Agreement shall be binding upon the
948 Parties hereto and their legal representatives, successors and assigns, provided, however, that
949 each of the parties hereto further agrees to provide the other party with written notice of any such
950 assignment of the AR Loan and/or the FHA-Insured Loan Documents, respectively. Each of the
951 parties hereto agrees not to assign their rights to the AR Loan and/or the FHA-Insured Loan
952 Documents to Operator or any affiliate of Operator.
953

954 **4.9 Governing Law.** This Agreement and all matters arising out of or related
955 to this Agreement shall be deemed to have been made under, and shall be governed and
956 construed in all respects by, the substantive laws of the State of [enter property or organizational
957 jurisdiction] _____ without regard to principles of conflicts of laws.
958

959 **4.10 Jurisdiction and Venue.** FHA Lender and AR Lender hereby irrevocably
960 consent to the nonexclusive jurisdiction of the State and Federal Courts located in the State of
961 [enter property or organizational jurisdiction] _____ in any and all actions and proceedings
962 arising under or in connection with this Agreement.

963 **4.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY**
964 **WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN**
965 **CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST ANY**

966 **OTHER PARTY(IES) WITH RESPECT TO THE RIGHTS AND OBLIGATIONS SET**
967 **FORTH HEREIN.**

968
969 **4.12 Severability.** If a court of competent jurisdiction in a final determination
970 deems any provision of this Agreement invalid, prohibited or unenforceable, such invalidity,
971 prohibition or unenforceability shall apply only to such provision and only to the extent of such
972 invalidity, prohibition or unenforceability, and shall not render this Agreement or any other
973 provision of this Agreement wholly or partially invalid, prohibited or unenforceable.

974
975 **4.13 Headings.** The paragraph headings used in this Agreement are for
976 convenience only and shall not affect the interpretation of any of the previous hereof. The
977 statements set forth in the Recital paragraphs are incorporated herein by reference.

978
979 **4.14 Entire Agreement.** This Agreement is the entire agreement among the
980 Parties regarding the subject matter of this Agreement.
981

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

984
985 **AR LENDER:**
986 *[insert appropriate signature block]*

987
988
989 **FHA LENDER:**
990 *[insert appropriate signature block]*

991
992
993 **OPERATOR:**
994 *[insert appropriate signature block]*

995
996
997 **OWNER:**
998 *[insert appropriate signature block]*

999
1000
1001 **MASTER TENANT:**
1002 *[insert appropriate signature block]*

1003
1004

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Schedule 1
AR Loan Documents

Schedule 2
FHA-Insured Loan Documents

Schedule 3
List of Other Facilities
(other facilities financed by the AR Loan)

Exhibit A
Form of Cut-Off Time Notice

1020 _____, 20__
1021 _____
1022 _____

1023 _____
1024 Attn: _____

1025
1026 Re: Intercreditor Agreement Dated as of _____, 20__ by and among _____
1027 ("AR Lender"), _____ ("FHA Lender"), _____ ("Owner")
1028 and _____ ("Operator") (the "Intercreditor Agreement")
1029

1030 Ladies and Gentlemen:

1031
1032 This letter constitutes the Cut-Off Time Notice described in the Intercreditor Agreement.
1033 All capitalized terms used, and not otherwise defined, herein shall have the meanings provided
1034 for in the Intercreditor Agreement.

1035
1036 Please be advised that:
1037 an FHA-Insured Loan Triggering Event has occurred as a result of
1038 _____,
1039 and notice of such FHA-Insured Loan Triggering Event [is provided by this notice] **OR** [has
1040 been provided on _____].

1041
1042 an AR Loan Triggering Event has occurred as a result of
1043 _____,
1044 and notice of such AR Loan Triggering Event was received on _____.

1045
1046 Ceased Funding has occurred as of _____.

1047
1048 This Cut-Off Time Notice applies to the following Facility(ies) and FHA-Insured Loan Nos.:
1049 _____

1050
1051 In accordance with Section [1.11] of the Intercreditor Agreement the Cut-Off Time shall be
1052 deemed to occur as of ____ [a.m./p.m.], _____ time, on _____, 20__,
1053 unless **extended by HUD [which date and time may be concurrent with, or at any time after, the**
1054 **date when Ceased Funding occurs (even if this notice results in retroactive designation of such**
1055 **Cut-Off Time), but no sooner than 30 days after notice of an FHA-Insured Loan Triggering**
1056 **Event or AR Loan Triggering Event]**.

1057
1058 All provisions of the Intercreditor Agreement applicable after the Cut-Off Time shall
1059 govern the future relationship of AR Lender, FHA Lender, HUD, Owner, and Operator under the
1060 Intercreditor Agreement with respect to the Facility(ies) identified in this Cut-Off Time Notice.
1061 Please contact the undersigned at _____ if you have any questions.

1062
1063 Sincerely,
1064 _____
1065 By: _____
1066 cc: _____ Name: _____

