

**Healthcare Regulatory
Agreement – Fire Safety
Equipment
Section 232(i)**

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

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

Recording requested by:

After recording return to:

Project Name:

FHA Project No.:

Project Location:

Lender:

Original FHA No. (if HUD insured):

Original Principal Amount of Note:

Date of Note:

Originally endorsed for insurance under Section _____

This Agreement entered into this ____ day of _____, 20__, between _____
_____ whose address is _____, hereinafter called **Borrower** and the undersigned
Secretary of Housing and Urban Development, hereinafter called **Secretary**.

In consideration of the endorsement for insurance by the Secretary of the above described Note or in consideration of the consent of the Secretary to the conveyance of the property improved with the fire safety equipment, and in to comply with the requirements of Section 232(i) of the National Housing Act and the Regulations adopted by the Secretary pursuant thereto, the Borrower agrees for itself, its successors and assigns, that so long as the Contract of Insurance under Section 232(i) continues in effect, and during such further period of time as the Secretary shall be holder of the above note:

- (1) Borrower shall promptly make all payments due under the Note and Security Instrument/Mortgage/Deed of Trust, if any.
- (2) Borrower shall not without prior written approval of the Secretary:
 - a. Transfer, dispose of or encumber any of the property improved with the fire safety equipment. Any such transfer shall be only to a person or persons or corporation satisfactory to, and approved by, the Secretary. Any approved transferee shall assume all obligations under this Agreement and under the insured Note and Security Instrument/Mortgage/Deed of Trust, if any.
 - b. Subordinate the lien of the Fire Safety Equipment Loan to any other lien.
 - c. Create any superior or inferior lien to the Security Instrument/Mortgage/Deed of Trust, if any.
- (3) Borrower shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
- (4)
 - a. Borrower shall maintain separate accounts relating to the purchase and installation of fire safety equipment and the loan financing such purchase and installation, and shall keep the books and records for the project in which the equipment is installed in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Borrower shall keep copies of all written contracts or other instruments which affect the property, and such contracts and instruments shall be subject to inspection and examination by the Secretary, or his duly authorized agents.
 - b. At the request of the Secretary, his agents, employees, or attorneys, the Borrower shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts,

operation, and condition of the property and the status of the insured loan and any other requested information with respect to the Borrower, or the property, upon which the fire safety improvements have been made.

(5) VIOLATION OF AGREEMENT. The occurrence of any one or more of the following shall constitute a “**Violation**” under this Agreement:

- a. Any failure by Borrower to comply with any of the provisions of this Agreement;
- b. Any failure by Borrower to comply with any of the provisions of any other of the Loan Documents;
- c. Any fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members, managers, employees, representatives or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD’s consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD’s prior written approval is required; or
- d. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD’s reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair Lender’s and/or HUD’s interest in the Mortgaged Property.

NOTICE OF VIOLATION AND EVENT OF DEFAULT.

(a) At any time during the existence of a Violation, HUD may give written notice of such Violation to Borrower (the “**Violation Notice**”), addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written Notice to HUD and Lender, be designated by Borrower as its legal business address. Borrower shall have thirty (30) days to cure, or cause to be cured, any Violation described in the Violation Notice, 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 discretion, that: (i) Borrower is timely satisfying all payment obligations in the Loan Documents; (ii) none of the Permits and Approvals is at substantial and imminent risk of being terminated; (iii) such violation cannot reasonably be corrected during such thirty (30) day period, but can reasonably be corrected in a timely manner, and (iv) Borrower [, Master Tenant,] or Operator commences to correct such Violation, or cause such correction to be commenced, during such thirty (30) day period and thereafter diligently and continuously proceeds to correct, or cause correction of, such Violation. If, after delivery of such Violation Notice and applicable cure period, the Violation is not corrected to the satisfaction of HUD, HUD may declare an **Event of Default** under this Agreement without further Notice. Alternatively, if necessary in HUD’s determination to protect the health and safety of the tenants or the financial or operational viability of the Healthcare Facility, HUD may declare an Event of Default at any time during the existence of a Violation without providing prior written notice of the Violation.

(b) 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 of the Permits and Approvals that would have a materially adverse effect on the Project, or if HUD determines at any time that, as a result of a Violation, the value of the Mortgaged Property is at substantial and imminent risk of material adverse diminution, then HUD may immediately (without thirty (30) days notice) declare an Event of Default of this Agreement and may immediately proceed to take actions to pursue its remedies.

(c) Upon any declaration of an Event of Default, HUD may:

- (i) If HUD holds the Note, declare the whole of the Indebtedness immediately due and payable and then proceed with the foreclosure of the Borrower's Security Instrument or otherwise dispose of HUD's interest in the Note and the Borrower's Security Instrument pursuant to Program Obligations;
- (ii) If the Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and the Borrower's Security Instrument, and the holder after receiving such Notice and demand, shall declare the whole of the Indebtedness due and payable and thereupon proceed with foreclosure of the Borrower's Security Instrument and/or the exercise of other remedies available to Lender under the Loan Documents or at law or equity, or assign the Note and the Borrower's Security Instrument to HUD as provided in Program Obligations. Upon assignment of the Note and the Borrower's Security Instrument to HUD, HUD may then proceed with the foreclosure of the Borrower's Security Instrument or otherwise dispose of HUD's interest in the Note and the Borrower's Security Instrument pursuant to Program Obligations;
- (iii) Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;
- (iv) Collect reasonable attorney fees related to enforcing Borrower's compliance with this Agreement.

(d) Any forbearance by HUD in exercising any right or remedy under this Agreement or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any right or remedy.

(6) NONRECOURSE DEBT. The following individuals or entities identified in the Firm Commitment: *[Insert names of such parties here; such parties must indicate acknowledgement and acceptance of this Section by executing below or in counterpart]* as identified in the Firm Commitment does not assume personal liability for payments due under the Note and the Borrower's Security Instrument, or for the payments to the Reserve for Replacement, or for matters not under its control, provided that each said individual or entity shall remain personally liable under this Agreement only with respect to the matters hereinafter stated; namely: (a) for funds or property of the Project coming into its hands which, by the provisions of this Agreement, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of this Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of this Section. The obligations of the individuals or entities listed in this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of this Agreement, and any release of record of the Borrower's Security Instrument.

Individual/Entity *[insert appropriate signature block indicating authorized individual executing document; signature may also be provided in counterpart.]*

Individual/Entity *[insert appropriate signature block indicating authorized individual executing document; signature may also be provided in counterpart.]*

(7) COMPLIANCE WITH LAWS.

- a. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements (including the Borrower's Security Instrument) recorded against the Mortgaged Property; and Program Obligations; including but not limited to those of the foregoing pertaining to: health and safety; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; Leases; lead-based paint maintenance requirements of 24 C.F.R.

Part 35 and maintenance and disposition of resident security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 39. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property including those that could endanger residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Borrower's Security Instrument or Lender's interest in the Mortgaged Property. To the best of Borrower's knowledge, Borrower represents and warrants to HUD that no portion of the Mortgaged Property has been or shall be purchased with the proceeds of any illegal activity.

- b. 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 rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which Borrower is identified; and further, if Borrower 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 Borrower; 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 Borrower may be identified.
 - c. HUD and Lender shall be entitled to invoke any remedies available by law or equity to redress any breach or to compel compliance by Borrower with these requirements, including any remedies available hereunder.
- (8) This Agreement shall bind, and the benefits shall inure to, the respective parties hereto, their legal representative, executors, administrators, successors in office or interest, and assigns, and all owners of the property, so long as the contract of insurance continues in effect, and during such further time as the Secretary shall be the holder of the note.
- (9) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

- (10) Borrower warrants that it has not, and shall not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
- (11) **RULES OF CONSTRUCTION.** The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an “**Exhibit**” or a “**Section**” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement or to a Section of this Agreement. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Agreement, the term, “including” means “including, but not limited to.”
- (12) **PRESENT ASSIGNMENT.** To the extent permitted by applicable law, Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort that it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents and other provisions in the Borrower’s Security Instrument and, if Borrower is also Operator, subject to the rights of any accounts receivable lender under accounts receivable financing that has been approved by HUD. Until a default is declared under this Agreement, a revocable license is granted to Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon an Event of Default under this Agreement or under the Borrower’s Security Instrument, such revocable license is automatically terminated.
- (13) **NOTICE.**
- a. All notices, demands and other communications (“**Notice**”) under or concerning this Agreement shall be in writing. A courtesy copy of any Notice given by Borrower or HUD shall be sent simultaneously to Lender. Each Notice shall be addressed to the intended recipients at their respective addresses set forth below, and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first or second Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next or second Business Day delivery, respectively, or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 45, the term “**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.

- 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 to the other party in accordance with this Section 45. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section 45, that it shall acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 45 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

- (14) Real property, upon which the fire safety improvements are located and which is covered by the terms of this Agreement, is described in Schedule A attached hereto.

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

Borrower hereby certifies that the statements and representations contained in this Agreement and all supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this Agreement. This Agreement 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.

BORROWER:

By: _____

Name: _____

Title: _____

HUD:

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

Authorized Agent
Office of Residential Care Facilities

[ADD ADDITIONAL LINES IF NEEDED]

NOTICE: THIS AGREEMENT 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).

EXHIBIT A

[LEGAL