

**Supplemental Healthcare
Regulatory Agreement –
Master Tenant
Section 241(a)**

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

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

1 **Public reporting** burden for this collection of information is estimated to average 0.5 hour(s). This includes the time for collecting,
2 reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be
3 submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will
4 use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset
5 management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and
6 you are not required to complete this form, unless it displays a currently valid OMB control number.
7

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

11

12 **Recording Requested by:**

13 _____
14 _____
15 _____
16 _____

17
18 **After Recording Return to:**

19 _____
20 _____
21 _____
22 _____

23

24 **Project Name:** _____

25 **FHA Project No.:** _____

26 **Project Location:** _____

27 **Lender:** _____

28 **Original Principal Amount of Note:** _____

Date of Note: _____

29 **Originally endorsed for insurance under Section:**

30 This Supplemental Regulatory Agreement – Master Tenant (this “**Agreement**”) is entered
31 into as of [____], between _____, a _____ organized and existing under the
32 laws of _____, whose address is _____, its successors, heirs, and assigns (jointly
33 and severally) (“**Master Tenant**”) and the United States Department of Housing and Urban
34 Development, acting by and through the Secretary, his or her successors, assigns or designates
35 (“**HUD**”).

36 This Agreement shall continue during such period of time as HUD shall be the owner, holder or
37 insurer of the Note. Upon satisfaction of such Note, as evidenced by the discharge or release of
38 the Borrower Security Instrument, this Agreement shall automatically terminate. However,

39 notwithstanding such termination, Master Tenant shall remain responsible for any violations of
40 this Agreement which occurred prior to termination.

41 **Definitions:**

42 Any capitalized terms used but not defined herein shall have the meaning given them in the
43 Borrower Security Instrument, as defined below.

44 **“Borrower”** shall mean [____], the Borrower in connection with the Project and a party to
45 the Borrower Security Instrument. Borrower is sometimes referred to in the Loan Documents or
46 in Program Obligations as the **“Owner”** or the **“Mortgagor.”**

47 **“Borrower-Operator Agreement”** means any agreement relating to the management and
48 operation of the Healthcare Facility by and between Master Tenant and Operator, including any
49 Operator Lease.

50 **“Borrower Regulatory Agreement”** means that certain Supplemental Healthcare Regulatory
51 Agreement – Borrower dated as of [____] **OR** substantially even date herewith], relating to
52 the Project, and made by Borrower for the benefit of HUD.

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

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

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

61

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

63

64 **“First Operator Regulatory Agreement”** has the meaning set forth in the Borrower Security
65 Instrument.

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

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

73 **“Loan Documents”** means this Agreement, the Borrower Regulatory Agreement, the Operator
74 Regulatory Agreement, and all other agreements, instruments, and documents which are now
75 existing or are in the future required by, delivered to, and/or assigned to Lender and/or HUD in
76 connection with or related to the Project, whether executed or delivered by or on behalf of

77 Borrower, Operator, or Master Tenant, as the same may be amended from time to time, provided
78 that neither the Borrower-Operator Agreement nor Master Lease shall be considered a Loan
79 Document.

80 **“Master Lease”** means that certain [*Master Lease title*], relating to the leasing of, *inter alia*, the
81 Healthcare Facility by Borrower to Master Tenant.

82 **“Master Tenant Security Agreement”** means that certain Supplemental Master Tenant
83 Security Agreement dated as of substantially even date herewith, relating to the Project, and
84 made by Master Tenant to Lender.

85 **“Operator”** means [____], the operator of the Healthcare Facility, pursuant to that certain
86 [*Borrower-Operator Agreement*], by and between Operator and Master Tenant.

87 **“Operator Regulatory Agreement”** means that certain Supplemental Healthcare Regulatory
88 Agreement - Operator, relating to the Project and entered into by Operator for the benefit of
89 HUD.

90 **“Project”** means any and all assets of whatever nature or wherever situated related to the Loan
91 known by the FHA project number listed on the first page of this Agreement, including without
92 limitation the Mortgaged Property, the Healthcare Facility, any Improvements, and any collateral
93 owned by the Operator securing the Loan.

94 **“Reasonable Operating Expenses”** means expenses that arise from the operation, maintenance
95 and routine repair of the Project, including all payments and deposits required under this
96 Agreement and any Loan Document, and comply with the requirements of 24 CFR 232.1007, or
97 successor regulation.
98

99 NOW THEREFORE, in consideration of HUD’s consent to the leasing of the aforesaid
100 Healthcare Facility by Borrower to Master Tenant and in order to comply with the requirements
101 of the National Housing Act and the Regulations adopted by HUD pursuant thereto, Master
102 Tenant agrees to the terms of this Agreement for itself, its successors, heirs and assigns, in
103 connection with the operation of the Healthcare Facility, the Mortgaged Property, and the Project
104 operated thereon.
105

106 **1. SUBORDINATION.**

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108 The Master Lease shall be subject and subordinate to the First Mortgage Documents, this
109 Agreement, the Master Tenant Security Agreement, the Borrower Security Instrument,
110 the Borrower Regulatory Agreement, and the Operator Regulatory Agreement. Master
111 Tenant shall make payments under the Master Lease when due, and such payments shall
112 be sufficient to allow Borrower to pay all Borrower’s required Loan payments, including
113 without limitation, any payments to reserves for taxes or insurance, payments to
114 replacement reserves, payments to debt service reserves, and to fund any maintenance
115 and/or repairs for which the Borrower has responsibility. If at the end of any calendar
116 year, or any fiscal year if the Project operates on the basis of a fiscal year, payments
117 under the Master Lease have not been sufficient to pay for the above items, the Borrower

118 and Master Tenant upon request in writing from HUD shall renegotiate the amounts due
119 under the Master Lease so that such amounts shall be sufficient to pay for such items.
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121 **2. APPROVED USE; PERMITS AND APPROVALS.**

122 (a) As used herein, "**Approved Use**" means the use of the Project for the operation of a
123 Healthcare Facility as a _____ [insert type of facility – include all types of
124 care] with _____ [beds/units – insert total after completion] [of which not less
125 than _____ [beds/units] are [to be] in use] and such other uses as may be
126 approved in writing from time to time by HUD based upon a request made by the
127 Borrower, Operator, or Master Tenant, but excluding any uses that are discontinued
128 with the written approval of HUD. Master Tenant shall ensure that use of the
129 Healthcare Facility is in accordance with the Approved Use.

130 (b) As used herein, "**Permits and Approvals**" means and includes all certificates of
131 need, bed authority, provider agreements, licenses, permits and approvals reasonably
132 necessary to operate the Healthcare Facility or to fund the operation of the Project
133 for the Approved Use. The security interests granted pursuant to the Master Tenant
134 Security Agreement referred to in paragraph 15 hereof shall constitute, to the extent
135 permitted by law, a second lien upon all of Master Tenant's rights, titles and interest,
136 if any, in the Permits and Approvals subject only to the rights of the First Lender
137 under the First Mortgage Documents. However, in the event of either a monetary or
138 other default under this Agreement, the Borrower Regulatory Agreement, any other
139 regulatory agreement made for the benefit of HUD relating to the Project, or any
140 note or security instrument with respect to the Project that is insured or held by
141 HUD, Master Tenant shall cooperate in any legal and lawful manner necessary or
142 required to permit the continued operation of the Healthcare Facility for the
143 Approved Use including, as determined by HUD, in consultation with the Lender,
144 the necessary conveyance, assignment or transfer of Permits and Approvals. For the
145 intents and purposes herein, Master Tenant hereby irrevocably nominates and
146 appoints HUD, and with HUD's prior written approval, the Lender, their respective
147 successors and assigns of both each in its own capacity, as Master Tenant's attorney-
148 in-fact coupled with an interest to do all things that any such attorney-in-fact deems
149 to be necessary or appropriate in order to facilitate the continued operation of the
150 Healthcare Facility for the Approved Use, including but not limited to the power and
151 authority to provide any and all information and data, pay such fees as may be
152 required, and execute and sign in the name of the Master Tenant, its successors or
153 assigns, any and all documents, as may be required by any Governmental Authority
154 exercising jurisdiction over the Project. The Master Tenant will not alter or
155 terminate, or suffer or permit the alteration, relinquishment or termination of any
156 Permit or Approval that is issued or held in the name of Master Tenant or Operator
157 without the prior written consent of HUD. In the event that any such alteration,
158 relinquishment or termination is proposed, upon learning of such proposed alteration,
159 relinquishment or termination, Master Tenant will advise HUD and Lender
160 promptly.

161 (c) Except as otherwise provided below or in Program Obligations, Master Tenant shall
162 electronically deliver, within two (2) Business Days after Master Tenant’s receipt
163 thereof, to the assigned HUD personnel and Lender, copies of any and all notices,
164 reports, surveys and other correspondence (regardless of form) received by Master
165 Tenant from any Governmental Authority that includes any statement, finding or
166 assertion that (i) Master Tenant, the Healthcare Facility, or any portion of the Project
167 is or may be in violation of (or default under) any of the Permits and Approvals or
168 any governmental requirements applicable thereto, (ii) any of the Permits and
169 Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil
170 money penalty is being imposed with respect to the Healthcare Facility, or (iv)
171 Master Tenant, the Operator, the Healthcare Facility, or any portion of the Project is
172 subject to any governmental investigation or inquiry involving fraud. Master Tenant
173 shall also deliver to the Project’s HUD-assigned personnel and Lender,
174 simultaneously with delivery thereof to any governmental authority, any and all
175 responses given by or on behalf of Master Tenant to any of the foregoing and shall
176 provide to the HUD personnel and Lender, promptly upon request, such information
177 regarding any of the foregoing as HUD or Lender may request. Unless otherwise
178 requested by HUD, the reporting requirement of this provision shall not encompass
179 regulators’ communications relating solely to licensed nursing facility surveys where
180 the most severe citation level is at the “G” level or its equivalent (pursuant to CMS State
181 Operations Manual, Chapter 7, as may hereafter be edited or updated, or any successor
182 guidance) unless a citation at such level is either (i) unresolved from the two most recent
183 consecutive prior surveys, or (ii) is a repeat violation having the same citation number.
184 Moreover, unless otherwise requested by HUD or Lender, the initial communication from
185 the Operator pursuant to this paragraph shall be a notice by email to the Lender describing
186 the conduct cited, the scope and duration of remedy(ies) imposed, and the timelines for
187 corrective actions. Then, unless otherwise requested by HUD or Lender, the next
188 communication from the Operator shall be notification that the citations have been cleared
189 by the issuing regulatory agency. The receipt by HUD and/or Lender of notices,
190 reports, surveys, correspondence and other information shall not in any way impose
191 any obligation or liability on HUD, Lender or their respective agents, representatives
192 or designees to take (or refrain from taking) any action, and HUD, Lender and their
193 respective agents, representatives and designees shall have no liability for any failure
194 to act thereon or as a result thereof.

195 (d) The Master Tenant shall at all times maintain, or cause to be maintained, in full force
196 and effect the Permits and Approvals. Without the prior written consent of HUD,
197 Master Tenant shall not convey, assign, encumber, transfer, relinquish or alienate
198 from the Project any of the Permits or Approvals. The Master Tenant shall ensure
199 that the Healthcare Facility is at all times operated in accordance with the
200 requirements of the Permits and Approvals, and that none of the Permits and
201 Approvals is placed at risk of suspension, revocation, rescission, termination or
202 limitation, as evidenced by, without limitation, any communication from regulatory
203 or funding entities so indicating.

204
205 **3. CONDITION OF MORTGAGED PROPERTY.**

- 206 (a) Master Tenant shall maintain, or cause to be maintained, in decent, safe, and sanitary
207 condition and good repair the Healthcare Facility and any other parts of the Project
208 for which the Master Tenant is responsible for maintaining pursuant to the Master
209 Lease.
- 210 (b) Master Tenant shall not remodel, reconstruct, add to, or demolish, without the prior
211 written consent of HUD, any part of the Project or subtract from any real or personal
212 property of the Project, except in the ordinary course of business.
- 213 (c) Master Tenant shall not use (or allow the Operator to use) any portion of the Project
214 for any purpose except the Approved Use.
- 215 (d) To the extent of the authority it has retained under the Borrower-Operator Agreement,
216 Master Tenant shall permit HUD and/or Lender to conduct a physical inspection of
217 the Healthcare Facility at any reasonable time upon reasonable notice.
218

219 **4. RISK MANAGEMENT PROGRAM.**

220
221 In accordance with Program Obligations, Master Tenant shall implement and maintain, or
222 cause Operator to implement and maintain, a risk management program which
223 incorporates a real-time incident reporting and tracking system that informs Operator's
224 and Master Tenant's senior management of all incidents with the potential to expose the
225 Operator to liability for personal injury or other damages. Each incident must be
226 reviewed by Operator's appropriately-trained professional staff, and such staff must
227 follow-up on incidents as necessary. The risk management program must include
228 appropriate training for Operator's staff.
229

230 **5. NOTICE OF VIOLATION AND EVENT OF DEFAULT.**

231
232 (a) Upon any violation of any provision of this Agreement by Master Tenant, HUD may
233 give written notice thereof to Master Tenant, with a copy to Borrower and Lender.
234 Master Tenant shall have thirty (30) days to cure, or cause to be cured, any such
235 violation, provided that HUD shall extend such thirty (30) day period by such time as
236 HUD may reasonably determine is necessary to correct the violation for so long as,
237 HUD determines, in its reasonable discretion, that: (i) Borrower is timely satisfying
238 all payment obligations in the Loan Documents; (ii) none of the Permits or Approvals
239 is at substantial and imminent risk of being terminated; (iii) such violation cannot
240 reasonably be corrected during such thirty (30) day period, but can reasonably be
241 corrected in a timely manner, and (iv) Master Tenant commences to correct such
242 violation during such thirty (30) day period and thereafter diligently and continuously
243 proceeds to correct such violation, or cause such corrective action to be commenced
244 and diligently pursued. If upon the expiration of such cure period, the violation is not
245 cured to HUD's satisfaction, HUD may, without further notice, declare an Event of
246 Default. Upon declaring an Event of Default, HUD may:
247

- 248 1. Terminate, or cause the termination of, the Master Lease, seek the
249 appointment of a receiver for the Healthcare Facility, terminate any Borrower-

250 Operator Agreement, and/or require the Master Tenant to immediately procure
251 a replacement operator (including an interim operator where appropriate);
252 and/or
253

254 2. Apply to any court, state or federal, for specific performance of this
255 Agreement, for an injunction against any violation of the Agreement, or for
256 such other relief as may be appropriate.
257

258 Notwithstanding any other provisions of this agreement, if HUD determines at any
259 time that any of the Permits and Approvals are at substantial and imminent risk of
260 being terminated, suspended or otherwise restricted, if such termination, suspension,
261 or other restriction would have a materially adverse effect on the Project, including
262 without limitation, HUD's determination that there is a substantial risk that
263 deficiencies identified by applicable state and/or federal regulatory and/or funding
264 agencies cannot be cured in such manner and within such time periods as would avoid
265 the loss, suspension, or diminution of any Permits and Approvals that would have a
266 materially adverse effect on the Project, or if HUD determines at any time that the
267 health and safety of the residents of the Healthcare Facility are at substantial and
268 imminent risk, then HUD may immediately (without thirty (30) days notice) declare a
269 default under this Agreement and may immediately proceed to take actions pursuant
270 to subsections (a)(1) and/or (a)(2) above.
271

272 (b) Master Tenant acknowledges that the viable operation of the Healthcare Facility, and
273 thus the preservation of the security for the Borrower Security Instrument, depends
274 upon timely satisfaction of debts incurred related to the operation of the Healthcare
275 Facility. In addition to fully complying with any payment obligations in the Master
276 Lease, Master Tenant shall timely pay (or cause Operator to pay) all debts incurred
277 related to the operation of the Healthcare Facility, provided, Master Tenant and/or
278 Operator may withhold payments of amounts due vendors for operational expenses
279 that Master Tenant or Operator, in good faith, dispute.
280

281 (c) In the event that Master Tenant receives a written notice from HUD or Lender (i)
282 stating that a default exists under the Borrower Regulatory Agreement, the Borrower
283 Security Instrument or any note or security instrument with respect to the Project that
284 is insured or held by HUD, and (ii) directing Master Tenant to make future payments
285 due under the Master Lease to HUD or Lender, Master Tenant shall thereafter make
286 all future payments under the Master Lease to HUD or Lender as so directed.
287

288 (d) Master Tenant shall use all commercially reasonable efforts to enforce its rights
289 against Operator in the event of default under the Borrower-Operator Agreement to
290 avoid a mortgage insurance claim.
291

292 **6. TRANSFERS; CHANGE IN CONTROL; MASTER LEASE AMENDMENTS.** 293

294 (a) Without the prior written consent of HUD, there shall be no change in or transfer of
295

- 296 (i) the management, operation, or control of the Project or the Healthcare Facility, or
297
298 (ii) any change in the ownership or control of the Master Tenant, except as set forth in
299 Program Obligations.
300
- 301 (b) The Master Lease shall not be terminated prior to the expiration date thereof or
302 assigned without the prior written approval of HUD. In the event of any assignment
303 of the Master Lease, as a condition to such assignment, the assignee shall execute and
304 deliver a regulatory agreement in form and substance satisfactory to HUD. The
305 Master Lease shall not be amended without the prior written approval of HUD if such
306 amendment would (i) reduce the rent or other payments due thereunder, (ii)
307 materially increase the obligations of the Borrower or the rights of the Master Tenant,
308 (iii) materially decrease the rights of the Borrower or the obligations of the Master
309 Tenant, or (iv) alter any provision of the Master Lease that HUD required to be
310 included therein. Copies of all amendments to the Master Lease shall be promptly
311 furnished to HUD and the Lender.
312

313 **7. MANAGEMENT AGREEMENTS.**

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315 No management agreement(s) may be executed concerning the Healthcare Facility or any
316 portion of the Project (“**Management Agreement**”), unless such Management
317 Agreement is approved by HUD. Any such Management Agreement shall contain a
318 provision that, in the event HUD issues any notice of violation or default under this
319 Agreement, the Operator Regulatory Agreement, or the Borrower Regulatory Agreement,
320 the Management Agreement(s) shall be subject to termination without penalty upon
321 written request of HUD. Upon such request, Master Tenant shall immediately arrange to
322 terminate the Management Agreement(s) within a period of not more than thirty (30)
323 days and shall make arrangements satisfactory to HUD for the continuing proper
324 management of the Healthcare Facility and the Project.
325

326 **8. PROHIBITION OF CERTAIN FEES.**

327
328 Master Tenant shall not charge and shall not permit Operator to charge, any resident of
329 the Healthcare Facility an admission fee, key fee, finders’ fee, continuing care retirement
330 community fee, life-care fee or similar fee pursuant to any agreement to furnish
331 residential units or services to persons making such payments.
332

333 **9. SECURITY DEPOSITS AND OTHER FEES.**

334
335 Master Tenant shall not require as a condition of occupancy or leasing of any unit in the
336 Healthcare Facility, any consideration or deposit, provided that Master Tenant may
337 require, or may cause Operator to require, the prepayment of the first month’s rent plus a
338 security deposit in an amount not in excess of one month’s rent, to guarantee the
339 performance of any tenant lease terms. Master Tenant may charge certain application
340 processing fees such as credit check or criminal background fees or pet deposits, but not
341 deposits or fees for service or assistance animals.

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10. SUBLEASES.

Master Tenant shall not lease or sublease the Project or any part thereof without the prior written consent of HUD.

11. COMMERCIAL (NON-RESIDENTIAL) LEASES.

No portion of the Project shall be leased for any commercial purpose or use without receiving HUD’s prior written approval as to terms, form and amount, except as permitted in the Operator Regulatory Agreement. Master Tenant shall deliver an executed copy of any commercial lease to HUD.

12. AUDITS AND INSPECTIONS.

All portions of the Project, including without limitation all Mortgaged Property and any other equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating to the operation of the Healthcare Facility shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD, the Lender, or the duly authorized agents of either. Master Tenant shall keep, or cause to be kept, copies of all written contracts or other instruments which affect the Project, all or any of which may be subject to inspection and examination by HUD or its duly authorized agents. The obligations of Master Tenant under this paragraph shall be limited to the extent necessary in order for Master Tenant to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

13. NON-DISCRIMINATION.

There shall be full compliance with the provisions of (i) any federal, state or local laws prohibiting discrimination in housing on the basis of race, color, national origin, religion, sex, familial status or disability; and (ii) the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD to take any corrective action it may deem necessary including, but not limited to, the refusal to consent to a further renewal of the Master Lease between the Borrower and the Master Tenant, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which Master Tenant is affiliated; and further, if Master Tenant 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 (i) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal shareholders of Master Tenant; and (ii) with respect to any other type of business association, or organization with which the officers, directors, trustee, managers, partners, associates or principal stockholders of Master Tenant may be identified.

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14. BOOKS, ACCOUNTS, AND FINANCIAL REPORTS.

- (a) Master Tenant shall keep, or shall cause to be kept, the books and accounts of the operation of the Healthcare Facility in accordance with Program Obligations, to the extent not inconsistent with state requirements, which would allow for the audit of the Project.

- (b) Except as otherwise approved by HUD, Master Tenant must deposit, or cause to be deposited, all revenue generated or otherwise received in connection with the Healthcare Facility, in an operating account, for the benefit of the Project, or in a general collection account maintained for Operator and affiliated operators, provided deposits to such general collection account can be traced to the applicable facility that generated such deposit. If HUD determines that such deposits cannot be reliably and readily so traced, HUD may direct the Master Tenant to deposit such funds in a segregated operating account. Additionally, HUD may direct that any general collection account include funds only from facilities having FHA-insured loans and encompassed within the Master Lease. The account must be with a financial institution whose deposits are insured by an agency of the federal government, provided that an account held in an institution rated by the Government National Mortgage Association may have a balance that exceeds the amount to which such insurance is limited. Funds generated by the operation of the Healthcare Facility may be transferred to one or more central disbursement or other accounts in which such funds are commingled with other funds, provided that a complete and accurate accounting of such funds (including deposits and disbursements) is maintained at all times.

- (c) Master Tenant shall submit, or cause to be submitted, to HUD and Lender, on a quarterly and year-to-date basis (or more frequently if specified by HUD), prepared and certified by an authorized representative or agent of Master Tenant, such financial reports relating to the Healthcare Facility (including, but not limited to, financial statements, accounts receivable, aging reports and occupancy reports) in the formats and at such times as may be required by HUD, including without limitation any consolidated statements if required by HUD. Such reports must be submitted no later than sixty (60) days after the period covered by the reports, except for reports relating to the final quarter of each year, which shall be submitted no later than ninety (90) days after end of the fiscal year. Such reports are subject to the sanctions contained in 18 U.S.C. Sections 1001, 1010, and 1012.

- (d) If Master Tenant (or any direct or indirect parent of Master Tenant) is required to provide an audited financial statement to any lender, Master Tenant shall simultaneously provide copies of such audited financial statements to HUD and Lender. If HUD has reason to believe that any certified statements submitted on behalf of the Master Tenant may be unreliable (for example, indicate a likely prohibited use of project funds), or are not presented in a manner that is consistent with Program Obligations, HUD may, on a case-by-case basis require financial

434 statements from the Master Tenant which have been certified by an independent
435 public accountant, at the Master Tenant's expense, and such certified financial
436 statement must be delivered to HUD within ninety (90) days after HUD requests such
437 items from Master Tenant.
438

439 (e) If a quarterly/year-to-date financial statement relating to the Healthcare Facility
440 demonstrates negative Healthcare Facility Working Capital as defined by HUD, or if
441 such required statement is not timely submitted, then until a current quarterly/year-to-
442 date financial statement demonstrates positive Healthcare Facility Working Capital,
443 or until otherwise authorized by HUD, funds derived from or in connection with the
444 operation of that facility may not be distributed for any purpose other than making
445 payments due pursuant to the Borrower-Operator Agreement and/or Master Lease,
446 making payments required to be made under the First Mortgage Documents and/or
447 the Loan Documents, making payments pursuant to any accounts receivable financing
448 approved by HUD, and making payments for Reasonable Operating Expenses.
449

450 (f) At the request of HUD, Master Tenant shall give specific answers, satisfactory to
451 HUD, to questions posed from time to time relating to income, assets, liabilities,
452 contracts, operation, and condition of the Healthcare Facility, and shall provide to
453 HUD copies of all books, contracts, records, documents and other papers relating to
454 the Healthcare Facility from time to time as HUD may request.
455

456 (g) Master Tenant acknowledges that the financial information referenced above is
457 necessary for HUD to review from time to time, given the risk inherent in the
458 operation of the Healthcare Facility, and given the necessity of the Master Tenant's
459 financial and operational stability in order to ensure timely payment of amounts due
460 under the Master Lease essential to the Borrower's debt service.
461

462 **15. UNIFORM COMMERCIAL CODE/LIENS.** 463

464 Except as otherwise approved in writing by HUD, Master Tenant shall grant to Lender
465 and HUD a second lien security interest, subject only to the rights of First Lender under
466 the First Mortgage Documents, in all of Master Tenant's rights to personal property of
467 Master Tenant used in the operation of the Healthcare Facility or the Project as additional
468 security for the obligations of the Borrower under the Note, Borrower Security
469 Instrument, and Borrower Regulatory Agreement, and the Master Tenant's obligations
470 under this Agreement. Such security interest shall be evidenced by such security
471 agreement(s) as Lender and/or HUD may require in connection therewith. Master Tenant
472 shall execute and deliver, or cause to be executed and delivered, such deposit account
473 control agreements as may be required by Lender and/or HUD. Master Tenant shall not
474 allow any such required deposit account control agreements, sweep agreements, or other
475 such required agreements, to be revoked or rescinded at any time without Lender's prior
476 written consent. Master Tenant hereby authorizes each of the Lender and HUD to file
477 such UCC financing statements and continuation statements as either of them may deem
478 to be necessary or appropriate in connection with the foregoing security interest. Except
479 as provided in this paragraph 15 and/or the First Mortgage Documents, without the prior

480 written approval of Lender and HUD, Master Tenant shall not be permitted to grant or
481 permit any other liens on any of the property related to the Project.
482

483 **16.** Master Tenant shall ensure that all goods and services, if any, purchased or acquired by
484 Master Tenant in connection with the Project are Reasonable Operating Expenses, except
485 as otherwise allowed by HUD.
486

487 **17. PROFESSIONAL LIABILITY INSURANCE.**
488

489 Master Tenant shall maintain, and/or cause to be maintained, professional liability
490 insurance that complies with Program Obligations. Annually, upon such time periods as
491 set forth in Program Obligations, Master Tenant shall provide, or cause to be provided, to
492 HUD and Lender, a certification of compliance with such professional liability insurance
493 requirements, as approved by HUD.
494

495 **18. TRANSFER OF OPERATIONS.**
496

497 Master Tenant agrees that, in the event that HUD requires a replacement operator
498 pursuant to the First Operator Regulatory Agreement and/or Operator Regulatory
499 Agreement, or terminates the Master Lease in accordance with this Agreement, Master
500 Tenant shall cooperate with such actions and shall take all actions necessary to (i) provide
501 for an orderly transition to the replacement operator of licensed operations with
502 applicable Medicare and Medicaid certifications intact, (ii) maintain normal operations,
503 (iii) avoid displacement of residents, and (iv) transfer all transferable provider agreements
504 to the replacement operator(s), as applicable. Master Tenant hereby agrees to waive any
505 termination fees and penalties due to Master Tenant relating to such termination or
506 transfer actions.
507

508 **19. NOTICE.**
509

510 All notices, demands and other communications (“**Notice**”) under or concerning this
511 Agreement shall be in writing. Each Notice shall be addressed to the intended recipients
512 at their respective addresses set forth herein, and shall be deemed given on the earliest to
513 occur of (1) the date when the Notice is received by the addressee; (2) the first or second
514 Business Day after the Notice is delivered to a recognized overnight courier service, with
515 arrangements made and payment of charges for next or second Business Day delivery,
516 respectively; or (3) the third Business Day after the Notice is deposited in the United
517 States mail with postage prepaid, certified mail, return receipt requested.

518 Any Notice hereunder shall be addressed as follows:
519

520 **Master Tenant:** [Insert Address] [REDACTED]
521

522 **HUD:** [Insert Address] [REDACTED]
523

524 **Lender:** [Insert Address] [REDACTED]
525

526 **20. ACCOUNTS RECEIVABLE FINANCING.**

527

528 No accounts receivable or receipts from any Healthcare Facility may be pledged without
529 prior written approval of Lender and HUD of the terms of such financing and the forms
530 evidencing and securing such financing. In the event that Lender and HUD grant such
531 approval, (i) the holder(s) of such lien shall enter into an Intercreditor Agreement with
532 Lender and/or HUD in such form and upon such terms as consented to by Lender and
533 HUD, and (ii) Master Tenant shall agree to comply with the terms required by Lender
534 and HUD in connection therewith.

535

536 **21.** This document may be executed in counterparts.

537

538 **22.** The legal description of the Land is attached hereto as Exhibit A.

539

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

542
543 Master Tenant hereby certifies that the statements and representations contained in this
544 instrument and all supporting documentation thereto are true, accurate, and complete and that
545 each signatory has read and understands the terms of this instrument. This instrument has been
546 made, presented, and delivered for the purpose of influencing an official action of HUD in
547 insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained
548 therein.

549
550

551 **MASTER TENANT**
552 *(Insert appropriate signature block)*

553 [REDACTED]
554
555
556
557
558

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

561
562

562 By: [REDACTED]
563 Name: [REDACTED]
564 Authorized Agent
565 Office of Residential Care Facilities

566
567
568
569
570
571
572

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

577