

**Supplemental Operator
Assignment of Leases and
Rents**
Section 232

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

OMB Approval No. 2502-0605
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RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

This Supplemental Operator Assignment of Leases and Rents (this “**Agreement**”) is made, entered into and dated as of [_____, 20____], by and between _____ (“**Operator**”), a _____ organized and existing under the laws of _____, (which is the State in which the Operator is located, (as determined in accordance with the Uniform Commercial Code as now enacted in said State, as hereafter amended or superseded (the “**UCC**”)) at _____ (“**Operator**”), and _____ (“**Secured Party**” or “**Lender**”), a _____ organized and existing under the laws of the State of _____.

Operator and Lender have entered into that certain Supplemental Operator Security Agreement, dated as of substantially even date herewith (“**Security Agreement**”), securing, in part, a supplemental mortgage loan by Secured Party in connection with the financing of a healthcare facility commonly known as [_____] (the “**Healthcare Facility**”), authorized to receive mortgage insurance pursuant to Section 241a of the National Housing Act, as amended, and located on the real property legally described on Exhibit A attached hereto and incorporated herein by reference. Any terms not defined herein shall have the meaning given in the Security Agreement. To the extent allowable by law, any provisions of the Security Agreement not in conflict with the provisions set forth herein shall be deemed to apply to this Agreement. For example, any notice required by applicable law and/or this Agreement shall be deemed properly given if given in accordance with the notice provisions set forth in the Security Agreement. If there is a rider to the Security Agreement, the terms of that rider apply to this document as well.

1. Definitions:

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

(b) “**Eligible AR Loan**” shall mean a loan or line of credit obtained by Operator from an Eligible AR Lender for the sole purpose of providing working capital for the operation of the Healthcare Facility and, with the approval of HUD and Secured Party, other healthcare facilities that are encumbered by mortgage loans insured or held by HUD, upon such terms as satisfactory to the Secured Party and approved by HUD.

(c) “**Event of Default**” shall mean an Event of Default pursuant to the Security Agreement.

(d) “**Government Payments**” shall mean a payment from a governmental entity and shall include, without limitation, payments governed under the Social Security Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicaid Services of Department of Health and Human Services.

(e) “**Government Receivables Accounts**” shall mean separate deposit account(s) into which only Government Payments are deposited.

(f) “**HUD**” shall mean the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates.

(g) “**Leases**” shall mean present and future leases, subleases, licenses, concessions or grants or other possessory interests, now or hereafter in force, whether oral or written, covering or affecting the Healthcare Facility, or any portion of the Healthcare Facility, and all modifications, extensions or renewals thereof, including without limitation all Residential Agreements.

(h) “**Provider Agreements**” means any and all Medicaid, Medicare, TRICARE/CHAMPUS, or other governmental insurance provider agreements.

(i) “**Rents**” shall mean all rents, payments, and other benefits derived due to Operator pursuant to the Leases.

(j) “**Required Intercreditor Agreement**” means an Intercreditor Agreement executed by the Secured Party, the Eligible AR Lender, Operator and Borrower, in form and substance satisfactory to Secured Party and approved by HUD.

(k) “**Residential Agreements**” shall mean any lease or other agreement now or hereafter entered into between Operator and any resident of the Healthcare Facility setting forth

the terms of the resident's living arrangement and/or the provision of services to the residents thereof.

[Include any other necessary definitions.]

2. Provisions:

(a) Any provisions of this Agreement shall be: (i) subject to the rights of any Eligible AR Lender as set forth in a Required Intercreditor Agreement, and (ii) granted to the fullest extent permitted by and not in violation of any applicable law (now enacted and/or hereafter amended) and any Provider Agreements.

(b) To further secure the Obligations, Operator pledges to Secured Party all of Operator's rights, title and interest in, to and under all Residential Agreements, any other Leases, including Operator's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. This Agreement creates and perfects a lien on the Leases in favor of Secured Party, which lien shall be effective as of the date of this Agreement.

(c) Operator absolutely and unconditionally assigns and transfers to Secured Party all of Operator's rights, title and interest in and to the Rents. It is the intention of Operator to establish a present, absolute and irrevocable transfer and assignment to Secured Party of all of Operator's right, title and interest in and to the Rents. Operator and Secured Party intend this Supplemental Assignment of the Leases and Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of this absolute assignment, the term "Rents" shall not be deemed to include Government Payments to the extent and for so long as assignment of such payments or receivables is prohibited by applicable law. If this present, absolute and unconditional assignment of the Rents is not enforceable by its terms under the laws of the applicable jurisdiction, then the Rents (including the Government Payments to the maximum extent now or hereafter permitted by applicable law) shall be included as a part of the collateral and it is the intention of Operator that in this circumstance this Agreement creates and perfects a lien on the Leases and Rents in favor of Secured Party, which lien shall be effective as of the date of this Agreement, to the fullest extent permitted by applicable law with respect to the Healthcare Assets.

(d) Operator shall have the right, power and authority to collect Rents, as such rights are limited or affected by the terms of the Loan Documents and Program Obligations. Upon the occurrence and continuance of an Event of Default, subject to applicable law with respect to Government Payments and Accounts, Secured Party may, upon giving Notice, terminate the permission given to Operator to collect the Rents (including those past due and unpaid and those that accrue thereafter) and Secured Party may exercise its rights, power and authority under the Leases, in whole or in part, as specified by Secured Party in its Notice (subject to Secured Party taking such enforcement action as may be required by applicable law as a condition for enforcement of an assignment of rents or leases). In any event, the permission given to Operator shall terminate upon the (i) foreclosure of the Borrower Security Instrument; (ii) appointment of a receiver for the Healthcare Facility; or (iii) the taking of actual possession by Secured Party, its successors or assigns or nominees. Operator hereby agrees that Secured Party

is entitled to the appointment of a receiver for the Healthcare Facility upon the occurrence of an Event of Default hereunder. Operator agrees to comply with and observe Operator's obligations under all Leases, including Operator's obligations, if any, pertaining to the maintenance and disposition of security deposits, both prior to and after any such termination of Operator's rights.

(e) Operator acknowledges and agrees that the exercise by Secured Party, either directly or by its designee, of any of the rights conferred under this Agreement shall not be construed to make Secured Party a lender-in-possession of the Healthcare Facility so long as, and to the extent, Secured Party, or an authorized agent of Secured Party, has not entered into actual possession of the Healthcare Facility. The acceptance by Secured Party of the assignment of the Leases and Rents shall not at any time or in any event obligate Secured Party to take any action under this Agreement or to expend any money or to incur any expenses. Secured Party shall not be liable in any way for any injury or damage to person or property sustained by any Person or Persons, firm or corporation in or about the Healthcare Facility unless Secured Party is a lender-in-possession. Prior to Secured Party's actual entry into and taking possession of the Healthcare Facility, Secured Party shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Healthcare Facility; or (3) be responsible for the operation, control, care, management or repair of the Healthcare Facility or any portion of the Healthcare Facility. The execution of this Agreement by Operator shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Healthcare Facility is and shall be that of Operator, prior to such actual entry and taking of possession.

(f) Upon delivery of Notice by Secured Party to Operator of Secured Party's exercise of Secured Party's rights under this Agreement at any time after the occurrence of an Event of Default, and without the necessity of Secured Party entering upon and taking and maintaining control of the Healthcare Facility directly, by a receiver, or by any other manner or proceeding permitted by the laws of the applicable jurisdiction, Secured Party immediately shall have all rights, powers and authority granted to Operator under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(g) This document may be executed in counterparts.

(h) The rights and remedies in favor of Secured Party hereunder are subject to the limitations and terms set forth in the Rider to Operator Security Agreement.

[Insert appropriate signature blocks.]

[Insert appropriate signature blocks.]

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

OPERATOR:

By: _____

Name: _____

Title: _____

SECURED PARTY:

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of Land for Healthcare Facility