

Surplus Cash Note
Section 232

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

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

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

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

Project Name: _____
FHA Project No: _____

FOR VALUE RECEIVED, _____, a _____ organized and existing under the laws of _____ (“**Maker**”) promises to pay to _____, a _____ organized and existing under the laws of _____ (“**Payee**”) the sum of _____ Dollars (\$_____), payable at _____ with interest on any remaining balance of principal at _____ percent (____%) per annum payable [annually or semi-annually], commencing _____, 20__, and thereafter on the first day of _____ until the entire indebtedness has been paid. Any interest not so paid shall not create any default in the terms of this Surplus Cash Note, but shall accrue and be payable in full on the maturity date hereof. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on _____, 20__ (the “**Maturity Date**”). [Note: The Maturity Date must be on or after the maturity date of the Borrower’s Security Instrument.] (The definition of any capitalized term or word used herein but not defined shall have the meaning given such term in that certain Healthcare Regulatory Agreement – Borrower (Form HUD-92466-ORCF) between Maker and the U.S. Department of Housing and Urban Development (“**HUD**”) (the “**Borrower’s Regulatory Agreement**”), and/or the Borrower’s Security Instrument, as defined below.)

This Surplus Cash Note is subject to the following terms and conditions:

1. In the event that the maturity date of that certain Healthcare [*Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed or Other Designation as Appropriate in Jurisdiction*], Assignment of Leases, Rents and Revenue and Security Agreement, dated _____ in the principal amount of \$_____ made by Maker to _____ (“**Lender**”) in connection with the Project referenced above (the “**Borrower’s Security Instrument**”) is extended and such extension is approved by HUD then in such event the Maturity Date shall automatically be extended to the extended maturity date of the Borrower’s Security Instrument without further consent of Payee.

2. Except as provided in Section 5 below, as long as HUD is the insurer or holder of the Note secured by the Borrower’s Security Instrument, payments due under this Surplus Cash Note shall be payable only from 75% of available Surplus Cash. Notwithstanding the provisions

of the Borrower's Regulatory Agreement that allow for Distributions prior to a calculation of Surplus Cash, Borrower shall not take Distributions prior to making the Surplus Cash calculation and prior to making any payment thus due on this Surplus Cash Note. At the time of such distribution is made, Borrower shall apply the required percentage of said Distribution to reduce the balance owed on this Surplus Cash Note. The restriction on payment imposed by this Section shall not excuse any default caused by the failure of Maker to pay the indebtedness evidenced by this Surplus Cash Note.

3. In the event the Indebtedness secured by the Borrower's Security Instrument is paid in full and the Borrower's Security Instrument released of record, then the holder of this Surplus Cash Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable. Notwithstanding the foregoing, in the event said indebtedness is paid in full by way of any substitute indebtedness of Maker secured by any substitute security instrument insured or held by HUD under Section 223(a)(7) of the National Housing Act, as amended, the Maturity Date of this Surplus Cash Note shall automatically be extended to the maturity date of the substitute security instrument without the consent of Payee.

4. Subject to paragraph 2 above, Maker may pay any part or all of the principal of this Surplus Cash Note on any interest payment date, provided no such prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash in accordance with the conditions prescribed in the Borrower's Regulatory Agreement. Payments under this Surplus Cash note may only be made after a positive Surplus Cash computation.

5. Notwithstanding the provisions of Sections 2, 4 and 7, Maker may also make payments due hereunder from sources other than income of the Project or Project sources.

6. Any unauthorized payments, as determined by HUD, shall be returned to the Project.

7. Except as permitted pursuant to Section 5 hereof, no prepayment of this Surplus Cash Note shall be made until after final endorsement for mortgage insurance by HUD of the Note, unless such prepayment is made from non-Project sources.

8. This Surplus Cash Note is non-negotiable.

9. Interest on this Surplus Cash Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Borrower's Security Instrument.

10. Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Surplus Cash Note.

11. The terms and provisions of this Surplus Cash Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Surplus Cash Note shall not be modified or amended without the written consent of HUD.

12. Maker has no claim, and will not later assert any claim for payment due under this Surplus Cash Note against the Mortgaged Property, any mortgage proceeds, any reserve or deposit held by the Lender or another entity required by HUD in connection with the mortgage transaction documented by the Borrower's Security Instrument and the Borrower's Regulatory Agreement.

13. IN WITNESS WHEREOF, Maker has executed this Surplus Cash Note on this ____ day of _____, 20__.

MAKER:

By:_____

Name:_____

Title:_____

Maker and Payee hereby certify that this is a bona fide transaction and that they fully understand all the requirements of this Surplus Cash Note, and that no prepayment of principal or interest shall be made or accepted without evidence that HUD has authorized such prepayment, unless such prepayment is from Surplus Cash or non-Project sources as described in Sections 2 and 5. If an unauthorized prepayment is made or accepted, the funds shall be returned to the Project immediately upon discovery.

Maker and Payee hereby certify that the statements and representations of fact contained in this instrument and all documents in connection with this transaction are, to the best of their knowledge, true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

MAKER:

By:_____

Name:_____

Title:_____

PAYEE:

By:_____

Name:_____

Title:_____