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Healthcare Regulatory Agreement – Borrower 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.

Recording requested by:

After recording return to:

Project Name: _____

FHA Project No.: _____

Project Location: _____

Lender: _____

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

Originally endorsed for insurance under Section

Borrower: Profit-Motivated Non-Profit

Is Non-Profit Borrower permitted to take Distributions? Yes No

(Failure to check the appropriate space(s) shall not affect the enforceability or application of this Agreement.)

3

43 This Healthcare Regulatory Agreement – Borrower (this “**Agreement**”) is entered into
44 this ____ day of ____, 20__, between ____, a ____ organized and
45 existing under the laws of ____, whose address is ____, its successors, heirs, and
46 assigns (jointly and severally) (“**Borrower**”) and the U.S. Department of Housing and Urban
47 Development, acting by and through the Secretary, his or her successors, assigns or designates
48 (“**HUD**”). Borrower is sometimes also referred to as “Owner” or “Mortgagor” in the Loan
49 Documents and Program Obligations. If Borrower is also Operator, references in this Agreement
50 to Operator refer to Borrower. To the extent that Borrower contracts with any other party to
51 perform any functions included in this Agreement, Borrower shall maintain ultimate
52 responsibility for performance of all required functions included herein.

53

54 In consideration of, and in exchange for an action by HUD, HUD and Borrower agree to
55 the terms of this Agreement. The HUD action may be one of the following: HUD’s
56 endorsement for insurance of the Note, HUD’s consent to the transfer of any of the Mortgaged
57 Property, HUD’s sale and conveyance of any of the Mortgaged Property, or HUD’s consent to
58 other actions related to Borrower, the Project, or to the Mortgaged Property.

59

60 Borrower and HUD execute this Agreement in order to comply with Program
61 Obligations, with the requirements of the National Housing Act, as amended, and the regulations
62 adopted by HUD pursuant thereto. This Agreement shall continue during such period of time as
63 HUD shall be the owner, holder, or insurer of the Note. Upon satisfaction of the Note, as
64 evidenced by the discharge or release of the Borrower Security Instrument, this Agreement shall
65 automatically terminate. However, Borrower shall be responsible for any violations of this
66 Agreement which occurred prior to termination.

67

68 Violation of this Agreement or Program Obligations may subject Borrower and other
69 signatories hereto to adverse actions.

70

71 Borrower and HUD covenant and agree as follows:

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I. DEFINITIONS.

74

75 **1. DEFINITIONS.** Any capitalized term or word used herein but not defined shall
76 have the meaning given to such term in the Borrower Security Instrument. The following terms,
77 when used in this Agreement (including when used in the above recitals), shall have the
78 following meanings, whether capitalized or not and whether singular or plural, unless, in the
79 context, an incongruity results:

80

81 “**Affiliate**” means any person or business concern that directly or indirectly controls policy of a
82 principal or has the power to do so is an affiliate. Persons and business concerns controlled by
83 the same third party are also affiliates.

84

85 “**Approved Use**” means the use of the Project for the operation of the Healthcare Facility as a
86 ____ [insert type of facility] with ____ [beds/units] [of which no fewer than

5
87 ____ [beds/units] are [to be] in use] and such other uses as may be approved in writing
88 from time to time by HUD based upon a request made by Borrower, Master Tenant (if at the
89 time the Healthcare Facility is now or hereafter included in a Master Lease) or Operator, but
90 excluding any uses that are discontinued with the written approval of HUD.
91
92 **“Borrower”** shall mean the entity identified as “Borrower” in the first paragraph of this
93 Agreement, together with any successors, heirs, and assigns (jointly and severally). “Borrower”
94 shall include any person or entity taking title to the Mortgaged Property whether or not such
95 person or entity assumes the Note. “Borrower” is sometimes also referred to in the Loan
96 Documents and Program Obligations as the “Obligor,” the “Owner,” and/or the “Mortgagor.”
97
98 **“Borrower-Operator Agreement”** means any agreement relating to the operation of the
99 Healthcare Facility by and between Borrower or Master Tenant (if at the time the Healthcare
100 Facility is now or hereafter included in a Master Lease) and Operator, including any Operator
101 Lease.
102
103 **“Borrower Security Instrument”** means the Healthcare [*Mortgage, Deed of Trust, Deed to*
104 *Secure Debt, or other designation as appropriate in Jurisdiction*], Assignment of Leases, Rents
105 and Revenue and Security Agreement, and shall be deemed to be the mortgage as defined by
106 Program Obligations.
107
108 **“Distribution”** means any disbursement, conveyance, loan or transfer of cash, any asset of Borrower,
109 or any other portion of the Mortgaged Property, other than in payment of Reasonable Operating
110 Expenses.
111
112 **“Firm Commitment”** means the commitment for insurance of advances or commitment for
113 insurance upon completion, dated ____, issued to Lender by HUD under which the debt
114 evidenced by the Note is to be insured pursuant to a Section of the National Housing Act.
115
116 **“Fixtures”** has the meaning set forth in the Borrower Security Instrument.
117
118 **“Healthcare Facility”** means that portion of the Project operated on the Land as a Nursing
119 Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any
120 other healthcare facility authorized to receive insured mortgage financing pursuant to Section
121 232 of the National Housing Act, as amended, including any commercial space included in the
122 facility.
123
124 **“HUD”** means the U.S. Department of Housing and Urban Development acting by and through
125 the Secretary in the capacity as insurer or holder of the Loan under the authority of the National
126 Housing Act, as amended, the Department of Housing and Urban Development Act, as amended,
127 or any other federal law or regulation pertaining to the Loan or the Project.
128
129 **“Improvements”** has the meaning set forth in the Borrower Security Instrument.
130

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131 “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under
132 the Note or the Loan Documents, including prepayment premiums, late charges, default interest,
133 and advances to protect the security as provided in the Loan Documents.

134

135 “**Land**” has the meaning set forth in the Borrower Security Instrument and is also legally
136 described on Exhibit A, attached hereto and incorporated herein.

137

138 “**Lender**” means the entity identified as “Lender” in the first paragraph of the Borrower Security
139 Instrument, or any subsequent holder of the Note, and whenever the term “Lender” is used
140 herein, the same shall be deemed to include the “Obligee”, or the “Trustee(s)” and the
141 “Beneficiary” of the Borrower Security Instrument, and shall also be deemed to be the
142 “Mortgagee” as defined by Program Obligations.

143

144 “**Loan Documents**” has the meaning set forth in the Borrower Security Instrument.

145

146 “**Master Lease**” means any master lease now or hereafter entered into, in which the Healthcare
147 Facility is aggregated with other HUD-insured healthcare facilities and leased to a Master Tenant
148 and any amendments or joinders thereto.

149

150 “**Master Tenant**” means any entity approved by HUD now or hereafter leasing the Healthcare
151 Facility pursuant to a Master Lease.

152

153 “**Master Tenant Regulatory Agreement**” means any Healthcare Regulatory Agreement –
154 Master Tenant, now or hereafter relating to the Project and entered into by a Master Tenant for
155 the benefit of HUD.]

156

157 “**Mortgaged Property**” has the meaning set forth in the Borrower Security Instrument.

158

159 “**Non-Profit Borrower**” means a Borrower that is treated under the Firm Commitment as an
160 entity organized for purposes other than profit or gain for itself or persons identified therewith,
161 pursuant to Section 501(c)(3) or other applicable provisions of the Internal Revenue Code. For
162 transactions entered into pursuant to Section 223(a)(7) of the National Housing Act, a Borrower
163 who executed with HUD’s permission a “for-profit” regulatory agreement in connection with the
164 original loan being refinanced through this transaction shall not be considered a “Non-Profit
165 Borrower” for purposes of this Agreement and may designate itself as a “Profit-Motivated”
166 entity on page 1, provided, however, that any conditions in the Firm Commitment conflicting
167 with the above statement shall control.

168

169 “**Note**” means the Note executed by Borrower, described in the Borrower Security Instrument,
170 including all schedules, riders, allonges and addenda, as such Note may be amended from time to
171 time.

172

173 “**Notice**” is defined in Section 45.

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175 “**Operator**” means _____, a _____ organized and existing under the laws of
176 _____, or any subsequent operator approved by HUD.

177

178 “**Operator Lease**” means any lease now or hereafter entered into by Borrower and Operator, or
179 any sublease now or hereafter entered into by any Master Tenant and Operator providing for the
180 operation of the Healthcare Facility.

181

182 “**Operator Regulatory Agreement**” means any Healthcare Regulatory Agreement - Operator
183 relating to the Project now or hereafter entered into by any Operator for the benefit of HUD.

184

185 “**Personalty**” has the meaning set forth in the Borrower Security Instrument.

186

187 “**Principal**” is defined in Section 232 Handbook, Section II, Production, Chapter 6.1.E.

188

189 “**Program Obligations**” means (1) all applicable statutes and any regulations issued by HUD
190 pursuant thereto that apply to the Project, including all amendments to such statutes and
191 regulations, as they become effective, except that changes subject to notice and comment
192 rulemaking shall become effective only upon completion of the rulemaking process, and (2) all
193 current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to
194 the Project, and all future updates, changes and amendments thereto, as they become effective,
195 except that changes subject to notice and comment rulemaking shall become effective only upon
196 completion of the rulemaking process, and provided that such future updates, changes and
197 amendments shall be applicable to the Project only to the extent that they interpret, clarify and
198 implement terms in this Agreement rather than add or delete provisions from such document.
199 Handbooks, guides, notices, and mortgagee letters are available on HUD’s official website:
200 <http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site.

201

202 “**Project**” has the meaning set forth in the Borrower Security Instrument.

203

204 “**Property Jurisdiction**” is any jurisdiction in which the Land is located.

205

206 “**Reasonable Operating Expenses**” means expenses that arise from the operation, maintenance
207 and routine repair of the Project, including all payments and deposits required under this
208 Agreement and any of the Loan Documents, and comply with the requirements of 24 C.F.R.
209 232.1007, or successor regulation.

210

211 “**Rent,**” “**Profits**” and “**Income**” shall include: all rent due pursuant to any Master Lease or
212 Operator Lease; any payments due pursuant to any Residential Agreement; any other lease
213 payments, revenues, charges, fees and assistance payments arising from the operation of the
214 Project, including but not limited to, if and for so long as applicable, commercial leases,
215 workers’ compensation, social security, Medicare, Medicaid, and other third-party
216 reimbursement payments, Accounts Receivable (as defined in the Borrower Security Instrument)
217 and all payments and income arising from the operation of the Healthcare Facility and/or the
218 provision of services to residents thereof.

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“**Reserve for Replacement**” is defined in Section 13.

“**Residential Agreement**” means a lease or other resident agreement between any Operator and a resident setting forth the terms of the resident’s living arrangement and the provision of any related services.

“**Residual Receipts**” means certain funds held by a Non-Profit Borrower which are restricted in their use by this Agreement and Program Obligations, and otherwise described in Section 17.

“**Surplus Cash**” is defined in Section 15.

“**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, that are levied, assessed or imposed by any public authority or quasi-public authority, and that, if not paid, could become a lien on the Land or the Improvements.

“**Waste**” means a failure to keep the Project in decent, safe and sanitary condition and in good repair. “Waste” also means the failure to meet certain financial obligations regarding the payment of Taxes and the relinquishment of the possession of Rents. During any period in which HUD insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender’s and HUD’s express written consent, Borrower:

- (1) physically changes, or permits changes to, the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain the Mortgaged Property in decent, safe, and sanitary condition and in good repair;
- (3) fails to pay, or cause to be paid, before delinquency any Taxes that because of such failure, may subject the Project to a lien having priority over the Borrower Security Instrument;
- (4) materially fails to comply with covenants in the Note, the Borrower Security Instrument, this Agreement, or any of the Loan Documents respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents.

II. CONSTRUCTION; REPAIRS.

2. CONSTRUCTION FUNDS. Borrower shall keep construction funds of the Project, if any, separate and apart from operating funds of the Project, including without limitation any funds necessary to operate the Healthcare Facility.

13

262 **3. UNPAID OBLIGATIONS.** Borrower certifies that upon final endorsement of
263 the Note by HUD, Borrower shall have no unpaid obligations in connection with the purchase of
264 the Mortgaged Property, the construction of the Mortgaged Property, or with respect to the
265 Borrower Security Instrument except such unpaid obligations as have the written approval of
266 HUD as to terms, form and amount.

267
268 **4. LENDER’S CERTIFICATE.** Borrower shall be bound by the terms of either
269 the Lender’s Certificate, a copy of which has been provided to Borrower, and/or the Request for
270 Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor, as
271 applicable (a copy of which has been provided to Borrower), insofar as the applicable document
272 establishes or reflects obligations of Borrower, and Borrower agrees that the fees and expenses
273 enumerated in the applicable document have been fully paid or payment has been provided for as
274 set forth in the applicable document and that all funds deposited with Lender shall be used for
275 the purposes set forth in the applicable document insofar as Borrower has rights and obligations
276 in respect thereto.

277
278 **5. CONSTRUCTION COMMENCEMENT/REPAIRS.** Borrower shall not
279 commence, and has not commenced, construction or substantial rehabilitation of the Mortgaged
280 Property prior to HUD endorsement of the Note except as permitted by Program Obligations or
281 as otherwise permitted by HUD, and provided that this Section 5 is not applicable if HUD has
282 given prior written approval to an early commencement or early start of construction, or if this
283 Project is an Insurance Upon Completion loan or involves a loan refinancing.

284
285 **6. DRAWINGS AND SPECIFICATIONS.** The Project shall be constructed in
286 accordance with the terms of the Construction Contract (form HUD-92442-ORCF) as approved
287 by HUD, if any, and with the “Drawings and Specifications,” as such term is referred to in such
288 Construction Contract.

289
290 **7. REQUIRED CONSTRUCTION PERMITS.** Unless otherwise required in the
291 Construction Contract and Building Loan Agreement, Borrower has obtained all necessary
292 certificates, permits, licenses, qualifications, authorizations, consents and approvals from all
293 necessary Governmental Authorities to own, construct or substantially rehabilitate, to carry out
294 all of the transactions required by the Loan Documents and to comply with all applicable federal
295 statutes and regulations of HUD in effect on the date of the Firm Commitment, except for those,
296 if any, which customarily would be obtained at a later date, at an appropriate stage of
297 construction or completion thereof, and which the Borrower shall obtain in the future. The
298 licenses and permits that are in effect as of the date hereof are sufficient to allow any
299 construction (or substantial rehabilitation, as applicable) of the Improvements to proceed to
300 completion in the ordinary course. As the construction (or substantial rehabilitation, as
301 applicable) of the Project progresses, unless otherwise required by the Construction Contract,
302 Borrower shall procure and submit all necessary building and other permits required by
303 Governmental Authorities. The Project shall not be available for residency by any resident, nor
304 shall the Healthcare Facility commence operations, except to the extent approved by prior
305 written consent of HUD and of all other legal authorities having jurisdiction of the Project.

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8. PRE-COMPLETION ACCOUNTING REQUIREMENTS. Borrower shall submit an accounting to HUD, as required by Program Obligations, for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property after [initial] endorsement of the Note and ending, at the option of Borrower, any date after completion of the Project, as determined in accordance with Program Obligations. Any income of the Project in excess of disbursements for HUD-approved construction and development costs and Reasonable Operating Expenses, as such excess is determined by HUD, shall be treated as a recovery of construction cost, except as otherwise allowed in Program Obligations.

III. FINANCIAL MANAGEMENT.

9. OUTSTANDING OBLIGATIONS. Borrower shall have no obligations as of the date of this Agreement except those approved by HUD in writing and, except for those approved obligations, the Land has been paid for in full (or if the Land is subject to a leasehold interest, it must be subject to a HUD-approved lease), and is free from any liens or purchase money obligations, except as approved by HUD. As of the date hereof, all contractual obligations relating to the Project have been fully disclosed to HUD.

10. PAYMENTS. Borrower shall make promptly all payments, including any deposits to required reserves, due under the Loan Documents, including without limitation the Note and the Borrower Security Instrument.

11. PROPERTY AND OPERATION; ENCUMBRANCES.

(a) Borrower shall deposit all receipts of Borrower relating to the Project including all Rents, Advances, and equity or capital contributions required under the Firm Commitment or otherwise advanced for the purpose and as part of the Mortgaged Property, in the name of Borrower, for the benefit of the Project, in a federally insured depository or depositories and in accordance with Program Obligations, provided that, in accordance with Program Obligations, an account held in an institution approved by the Government National Mortgage Association may have a balance that exceeds the amount to which such deposit insurance is limited. Equity or capital contributions shall not include certain syndication proceeds, such as proceeds from Low Income Housing Tax Credit transactions used to repay bridge loans, all as more fully set forth in Program Obligations. Such funds shall be withdrawn only in accordance with the provisions of this Agreement and Program Obligations. Any person or entity receiving Mortgaged Property or any other proceeds of the Project other than for eligible purposes pursuant to this Agreement shall immediately deliver such Mortgaged Property or other proceeds to Borrower for the benefit of the Project and failing so to do shall hold and be deemed to hold such Mortgaged Property in trust for the benefit of the Project.

(b) Borrower shall not engage in any business or activity, including the operation of any other project or other healthcare facility, or other ancillary businesses, or incur any liability

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350 or obligation not in connection with the Project. Borrower shall not acquire an Affiliate or
351 contract to enter into any affiliation with any party, except as approved by HUD.

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353 (c) Borrower shall immediately satisfy or obtain a release of any mechanic's lien,
354 attachment, judgment lien, or any other lien that attaches to the Mortgaged Property, except to
355 the extent permitted by HUD.

356

357 (d) Penalties, including but not limited to delinquent tax penalties, shall not be paid
358 from the Mortgaged Property except to the extent such payments are considered Distributions
359 and are allowed pursuant to this Agreement.

360

361 (e) Borrower shall promptly notify HUD of the appointment of any receiver for the
362 Project, the filing of a petition in bankruptcy or insolvency or for reorganization, as well as the
363 retention of any attorneys, consultants or other professionals in anticipation of such an
364 appointment or filing.

365

366 (f) Borrower shall cause the Project to be insured at all times in accordance with the
367 Borrower Security Instrument and Program Obligations, and Borrower shall notify HUD of all
368 payments received, or claimed, from an insurer.

369

370 (g) Borrower shall notify HUD of any action or proceeding relating to any
371 condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged
372 Property, whether direct or indirect condemnation.

373

374 (h) Borrower shall notify HUD of any litigation proceeding filed against Borrower or
375 Principals, Operator, the Healthcare Facility, or the Project, or any litigation proceeding filed by
376 Borrower, pursuant to Program Obligations.

377

378 (i) If the Healthcare Facility is an Assisted Living Facility, Borrower shall require
379 that no more than one person shall occupy any residential unit of the Healthcare Facility unless
380 Operator receives prior written consent from all residents of such unit.

381

382 **12. FINANCIAL ACCOUNTING.** Borrower shall keep the books and accounts of
383 the operation of the Mortgaged Property in accordance with Program Obligations. Financial
384 records of Borrower and the Project shall be complete, accurate and current at all times. Posting
385 must be made at least monthly to the ledger accounts, and year-end adjusting entries must be
386 posted promptly in accordance with sound accounting principles. All expenditures in connection
387 with the Project must be fully documented so as to provide reasonable assurance to all persons or
388 entities that review such expenditures that such expenditures are permitted under Program
389 Obligations. Undocumented expenses shall not be considered Reasonable Operating Expenses.

390

391 **13. RESERVE FOR REPLACEMENT.**

392

393 (a) Borrower shall establish and maintain a Reserve for Replacement account for

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394 defraying certain costs for replacing major structural elements and mechanical equipment of the
395 Project or for any other purpose. The Reserve for Replacement shall be deposited with Lender
396 or in a safe and responsible depository designated by Lender in accordance with Program
397 Obligations. Such funds shall at all times remain under the control of Lender or Lender's
398 designee, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed
399 as to principal by, the United States of America or in such other investments as may be allowed
400 by HUD and shall be held in accounts insured or guaranteed by a federal agency and in
401 accordance with Program Obligations.

402
403 (b) Borrower shall deposit at endorsement of the Note an initial amount of \$_____
404 __, if applicable, and Borrower shall deposit a monthly amount of \$_____, concurrently with
405 the beginning of payments towards amortization of the Note unless a different date or amount is
406 established by HUD. At least every ten years, starting _____ *[Insert New Project Capital Needs*
407 *Assessment (PCNA) Due Date]*, and more frequently at HUD's discretion, Borrower shall submit
408 to HUD a written analysis of its use of the Reserve for Replacement during the prior ten years
409 and the projected use of the Reserve for Replacement funds during the coming ten years in
410 accordance with Program Obligations. The amount of the monthly deposit may be increased or
411 decreased from time to time at the written direction of HUD without a recorded amendment to
412 this Agreement. In connection therewith, every ten years starting _____ *[Insert New PCNA Due*
413 *Date]*, the Lender shall obtain a physical and capital needs assessment report for HUD to
414 evaluate. The cost of such report may be paid from the Reserve for Replacements. HUD may,
415 in its sole discretion, require Borrower to maintain a minimum balance in the account, in an
416 amount to be set by HUD. *[Insert if applicable: The amount of such required minimum balance*
417 *is: _____]* **[Insert the following sentence, if applicable:** In addition to the required
418 monthly deposits to the said reserve fund, the balance in the replacement reserve fund existing
419 with respect to the Project under FHA Project No. _____ *[Insert old FHA Project Number]*
420 shall be transferred to the replacement reserve fund to be established pursuant to this Agreement
421 under FHA Project No. _____ *[Insert New FHA Project Number]*.

422
423 (c) Borrower shall carry the balance in this account on the financial records as a
424 restricted asset. The Reserve for Replacement shall be invested in accordance with Program
425 Obligations, and any interest earned on the investment shall be deposited in the Reserve for
426 Replacement for use by the Project in accordance with this Section 13.

427
428 (d) Disbursements from such account shall only be made after consent, in writing, of
429 HUD, which may be given or withheld in HUD's sole discretion. In the event of a notification of
430 default under the terms of the Borrower Security Instrument pursuant to which the Indebtedness
431 has been accelerated, a written notification by HUD to Borrower of a violation of this
432 Agreement, or at such other times as determined solely by HUD, HUD may direct the
433 application of the balance in such account to the amount due on the Indebtedness as accelerated
434 or for such other purposes as may be determined solely by HUD.

435
436 (e) Upon Borrower's full satisfaction of all of its obligations under the Loan
437 Documents, any monies remaining in the Reserve for Replacement account shall be released to

21
438 Borrower or its designee.

439
440 (f) Borrower may, only with the advance written approval of HUD, borrow funds
441 from the Reserve for Replacement for Reasonable Operating Expenses as provided in Program
442 Obligations. Such funds shall be repaid to the Reserve for Replacement by Borrower pursuant to
443 the terms approved by HUD prior to the making of such loan. To the extent HUD does not
444 specify repayment requirements, Borrower shall repay the Reserve for Replacement in full
445 within thirty (30) days of the approved withdrawal. If Borrower fails to timely make any
446 repayment installment pursuant to the terms approved by HUD, upon notice from HUD,
447 Borrower shall immediately repay the full amount of such loan from non-Project funds.

448
449 **14. [RESERVED.] [If a long-term debt service reserve is required, insert deal-**
450 **specific provisions in accordance with Program Obligations and the Firm Commitment.]**

451
452 **15. SURPLUS CASH.**

453
454 (a) Surplus Cash shall be calculated semi-annually, at the end of the first six months
455 of the Borrower's annual fiscal year, and at the end of the Borrower's annual fiscal year. Each
456 Surplus Cash calculation shall be submitted to Lender and HUD with the filing of Borrower's
457 Annual Financial Reports, unless otherwise required by HUD.

458
459 (b) **"Surplus Cash"** means any cash remaining in the Borrower's Project accounts
460 identified in the Borrower's audited financial statements after:

461
462 (i) the payment of (1) all sums due or currently required to be paid by
463 Borrower under the Loan Documents, including any required deposits into
464 reserves; and (2) all of Borrower's obligations relating to the Project other
465 than those required to be paid under the Loan Documents, unless funds for
466 such payments have been set aside or deferment of payment has been
467 approved by HUD; and

468
469 (ii) the segregation of all amounts required to be held in trust (e.g., tenant
470 security deposits) and all amounts required to be held (segregated) in other
471 restricted asset accounts of the Project (e.g., Reserve for Replacements)
472 pursuant to this Agreement, the Loan Documents and Program
473 Obligations.

474
475 **16. DISTRIBUTIONS.**

476
477 (a) Borrower may make and take Distributions of Mortgaged Property, to the extent
478 and as permitted by the law of the applicable jurisdiction, pursuant to the restrictions below,
479 including without limitation the reconciliation requirements set forth in Section 16(d); provided
480 however that, except as may be approved by HUD or permitted under Program Obligations, or as
481 otherwise provided in this Agreement, Distributions of Mortgaged Property are prohibited for

482 Non-Profit Borrowers.

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484

(b) Distributions shall not be made:

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(i) from borrowed funds (unless the Borrower is Operator and such Distribution is permitted under the Operator Regulatory Agreement and Program Obligations) or prior to the completion of the construction or rehabilitation of the Project;

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(ii) after HUD has given written notice to Borrower of a violation or default under this Agreement and/or after Lender has given written notice to Borrower of a violation or default under any of the Loan Documents, and until the terms of such notices of violation or default have been satisfied to the satisfaction of HUD and/or Lender, as applicable;

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(iii) when Borrower or the Project is under a forbearance agreement;

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(iv) If: (A) necessary services for the operation of the Healthcare Facility are not being provided on a regular basis, which failure Borrower knows or should have known about in the exercise of due care; (B) written notices of necessary physical repairs or deficiencies involving exigent or significant health or safety risks to residents in connection with the Project (including but not limited to building code violations) by other Governmental Authorities and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing Governmental Authority, (C) Borrower has been notified in writing by HUD, Lender or other Governmental Authority that necessary physical repairs and/or deficiencies exist in connection with the Project and Borrower has not corrected or cured, or caused to be corrected or cured, the identified items to HUD's satisfaction, (D) there remain any outstanding loans from the Reserve for Replacement or Residual Receipts account, or any required deposits to such accounts have not been made when due, or (E) the Reserve for Replacement account or any other required reserve does not have the minimum balance required by HUD; and/or

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(v) if the Borrower is also Operator, at any time that Operator is prohibited from distributing, advancing or otherwise using funds attributable to the Healthcare Facility (e.g., failure to timely file financial reports or when Healthcare Facility Working Capital is negative).

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(c) Any Distribution of any funds, which the party receiving such funds is not entitled to retain hereunder, shall be returned to Borrower's Project-related accounts immediately.

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(d) Upon each required calculation of Surplus Cash, Borrower must demonstrate positive Surplus Cash, or to the extent Surplus Cash is negative, repay to Project-related accounts any Distributions taken during such calculation period. Such repayment must be made within thirty (30) days of the conclusion of the reporting period, or such longer period approved by HUD.

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526 (e) If a Non-Profit Borrower has been permitted to take Distributions, as indicated on
527 the first page of this Agreement, such Non-Profit Borrower may make Distributions of such
528 Surplus Cash, upon the following conditions:

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530 (i) Distributions may only be made after the end of any annual or semi-annual
531 fiscal period, and when the Borrower can demonstrate positive Surplus
532 Cash pursuant to Section 15, at the end of the immediately prior annual or
533 semi-annual fiscal period;

534 (ii) Operator is in good standing with the applicable licensing agency and has
535 no open state compliance issues or special focus facility designation;

536 (iii) No unresolved audit findings in the annual audited financial statements
537 exist relating to the Project;

538 (iv) Borrower and Operator are in compliance with the terms of this
539 Agreement and the Operator Regulatory Agreement, respectively, with no
540 notice of noncompliance or violation from HUD;

541 (v) No defaults exist under any of the Loan Documents and all payments
542 required by any of the Loan Documents are current, with no notice of
543 noncompliance or violation from HUD; and

544 (vi) The balance of the Residual Receipts account remains equal to no less
545 than six months of the Borrower's required debt service (including any
546 mortgage insurance premium, escrow deposit, reserve deposits, or any
547 other payments required by Borrower pursuant to the Loan Documents).

548 The Non-Profit Borrower making Distributions must evidence, with appropriate documentation
549 sufficient for audit and HUD monitoring purposes, compliance with each condition listed above
550 at the time such Distribution is made, and must retain such documentation in accordance with
551 Program Obligations, for audit and HUD monitoring purposes.

552

553 **17. RESIDUAL RECEIPTS.**

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555 (a) Any Non-Profit Borrower shall establish and maintain a Residual Receipts
556 account. Unless and until otherwise approved in writing by HUD, Residual Receipts and the
557 Residual Receipts account shall be restricted as set forth in this Section 17. Within ninety (90)
558 days after the end of the annual or semi-annual fiscal period for which Surplus Cash is
559 calculated, Borrower shall deposit into the Residual Receipts account an amount equal to the
560 excess, if any, of (i) Surplus Cash as of the end of such fiscal period over (ii) the amount of any
561 permitted Distributions therefrom.

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563 (b) Residual Receipts shall be deposited with Lender or in a safe and responsible
564 depository designated by Lender in accordance with Program Obligations. Residual Receipts
565 shall at all times remain under the control of Lender or Lender's designee, whether in the form of
566 a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United
567 States of America or in such other investments as may be allowed by HUD and shall be held in
568 accounts insured or guaranteed by a federal agency and in accordance with Program Obligations.

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570 (c) Borrower shall carry the balance in such account on the financial records as a
571 restricted asset. Residual Receipts shall be invested in accordance with Program Obligations,
572 and any interest earned on the investment shall be deposited in the Residual Receipts account for
573 use by the Project in accordance with this Section 17.
574

575 (d) Disbursements from such account shall only be made after consent, in writing, of
576 HUD, which may be given or withheld in its sole discretion, provided that, if the Non-Profit
577 Borrower has been permitted to take Distributions as indicated on the first page of this
578 Agreement, then HUD shall apply the conditions enumerated in Section 16(e) in granting or
579 withholding such consent. In the event of a notification of default under the terms of the
580 Borrower Security Instrument, pursuant to which the Indebtedness has been accelerated, a
581 written notification by HUD to Borrower of a violation of this Agreement or at such other times
582 as determined solely by HUD, HUD may direct the application of the balance in such account to
583 the amount due on the Indebtedness as accelerated or for such other purposes as may be
584 determined solely by HUD.
585

586 (e) Upon Borrower's full satisfaction of all its obligations under the Loan
587 Documents, all funds remaining in the Residual Receipts account shall be released to the
588 Borrower.
589

590 (f) Borrower may, only with the advance written approval of HUD, borrow funds
591 from Residual Receipts for Reasonable Operating Expenses as provided in Program Obligations
592 or for such other purposes as HUD may permit. Such funds shall be repaid to the Residual
593 Receipts account pursuant to the terms approved by HUD prior to the making of such loan. To
594 the extent HUD does not specify repayment requirements, Borrower shall repay the Residual
595 Receipts account in full within thirty (30) days of the approved withdrawal. If Borrower fails to
596 timely make any repayment installment pursuant to the terms approved by HUD, upon notice
597 from HUD, Borrower shall immediately repay the full unrepaid amount of all such loan from
598 non-Project funds.
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600 **18. ADVANCES.**

601
602 (a) All advances made by Borrower (or by a member, partner, shareholder of
603 Borrower, or other individual or entity acting on behalf of Borrower) for Reasonable Operating
604 Expenses or otherwise for the benefit of the Project must be deposited into the Project's
605 operating account, or otherwise as directed by HUD, as required by Program Obligations.
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607 (b) Interest may accrue, and be paid, on such advances pursuant to terms approved by
608 HUD in advance in writing.
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610 (c) Repayments of advances must be approved by HUD, or as otherwise provided in
611 Program Obligations.
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613 **19. PROJECT RECORDS.** Borrower shall:

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(a) Make and keep books, records, and accounts, in such reasonable detail, so as to fully, accurately, and fairly reflect the activities of Borrower.

(b) Record the Project’s assets, liabilities, revenues, expenses, receipts and disbursements in separate accounts from any other assets, liabilities, revenues, expenses, receipts and disbursements of Borrower so as to permit the production of a Statement of Financial Position, a Statement of Profit and Loss (Statement of Activities), and a Statement of Cash Flows for Borrower in which the activities of Borrower are separately identifiable from the activities of the Operator, unless Borrower is also Operator.

(c) Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- (i) Transactions are executed, and access to assets is permitted, only in accordance with Borrower’s authorization;
- (ii) Transactions are accurately and timely recorded to permit the preparation of quarterly and annual financial reports in conformity with applicable Program Obligations;
- (iii) Transactions are timely recorded in sufficient detail so as to permit an efficient audit of the Borrower’s books and records in accordance with Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Standards (GAGAS), and other applicable Program Obligations; and
- (iv) Transactions are timely recorded in sufficient detail so as to maintain accountability of the Borrower’s assets. The recorded accountability for assets shall be compared with the existing assets at reasonable intervals, but not less than annually, and appropriate action shall be taken with respect to any differences.

(d) Make the books, records and accounts of Borrower available for inspection by HUD or its authorized representatives, after reasonable prior notice, during normal business hours, at the Project or other mutually agreeable location or, at HUD’s request, shall provide legible copies of such documents to HUD or its authorized representatives within a reasonable time after HUD or its authorized representative makes a request for such documents.

(e) Include as a requirement in any operating or management contract that the books, records, and accounts of any agent of Borrower, as they pertain to the operations of the Project, shall be kept in accordance with the requirements of this Section 19 and be available for examination by HUD or its authorized representatives after reasonable prior notice during customary business hours at the Project or other mutually agreeable location or, at HUD’s request, the Management Agent shall provide legible copies of such documents to HUD or its authorized representatives within a reasonable time after HUD or its authorized representative makes the request.

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20. ANNUAL FINANCIAL REPORTS.

(a) For so long as any portion or portions of this Section 20 are not expressly waived or modified in writing by HUD, within ninety (90) days, or such longer period established in writing by HUD, following the end of each fiscal year, Borrower shall furnish HUD and Lender with a complete annual financial report of all of Borrower’s financial activities for the immediately preceding fiscal year, or for such other period as approved by HUD in writing, prepared in accordance with Generally Accepted Accounting Principles (GAAP). For purposes of this Section 20, where Borrower is also Operator, and without limiting the requirements for Operator’s submission of financial reports to HUD under the Operator Regulatory Agreement, financial activities of Borrower and the Project shall include all of the activities of both Borrower and Operator. To the extent any records or other information of the Project is held by Operator, or any management agent or Affiliate, Borrower shall cause such entity to provide such information to Borrower, Lender, and HUD, and every contract related to the Project with Operator, or any management agent or Affiliate, shall include the provision that such information shall be provided on demand. All annual financial reports furnished to HUD required herein shall be furnished in accordance with 24 C.F.R. 5.801 and other Program Obligations, and shall include a certification in content and form prescribed by HUD and certified by Borrower.

(b) In addition, except as otherwise provided in this Section 20, annual financial reports shall be audited in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Government Auditing Standards (GAGAS), and certified by a certified public accountant licensed or certified by a regulatory authority of a state or other political subdivision of the United States, which authority makes such certified public accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. Such certified public accountant must have no business relationship with Borrower other than for the provision of tax consulting and return preparation and auditing services.

(c) Any Non-Profit Borrower shall submit audited annual financial reports, as applicable, pursuant to federal notice (e.g., Office of Management and Budget Circular A-133). However, notwithstanding any additional time provided for Non-Profit Borrowers to submit audited annual financial reports, such Borrowers shall still be required to submit unaudited annual financial reports pursuant to Section 20(a), except that, for Borrowers that elect to submit their required audited annual financial reports early (i.e. within the time specified in Section 20(a)), the requirement to submit unaudited annual financial reports shall be waived.

(d) If Borrower fails to submit any annual financial report required by this Section 20 within ninety (90) days of the required due date, HUD, at its sole election, and without relieving Borrower of its requirement to file such report, may thereafter examine, or cause to be examined at Borrower’s expense, the books and records of Borrower and the Project for purposes of preparing a report of the operations of the Project for HUD’s use.

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701 (e) Auditing costs and tax return preparation costs may be charged as Reasonable
702 Operating Expenses only to the extent they are required of Borrower itself by state law, the
703 Internal Revenue Service (“**IRS**”), the Securities and Exchange Commission, or HUD. Neither
704 IRS audit costs nor costs of tax return preparation for partners, members, shareholders, Principals
705 or Affiliates of Borrower are considered Reasonable Operating Expenses.

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IV. PROJECT MANAGEMENT.

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709 **21. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE**
710 **MORTGAGED PROPERTY.** Borrower (a) shall not commit or permit Waste, (b) shall not
711 abandon the Mortgaged Property, (c) shall restore or repair promptly, or cause to be restored or
712 repaired promptly, in a good and workmanlike manner, any damaged part of the Project to the
713 equivalent of its original condition, or such other condition as HUD may approve in writing,
714 whether or not litigation or insurance proceeds or condemnation awards are available to cover
715 any costs of such restoration or repair, and (d) shall keep, or cause to be kept, the Project in
716 decent, safe, sanitary condition and good repair, including the replacement of Personalty and
717 Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this
718 Section 21 are absolute and unconditional and are not limited by any conditions precedent and
719 are not contingent on the availability of financial assistance from HUD or on HUD’s
720 performance of any administrative or contractual obligations. In the event all or any of the
721 Improvements shall be destroyed or damaged by fire, by an exercise of the power of eminent
722 domain, by failure of warranty, or other casualty, the money derived from any settlement,
723 judgment, or insurance on any portion of the Project shall be applied in accordance with the
724 terms of Program Obligations and the Borrower Security Instrument or as otherwise may be
725 directed in writing by HUD.

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727 **22. FLOOD HAZARDS.** Borrower shall maintain, or cause to be maintained, flood
728 insurance as required by Program Obligations.

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730 **23. CONTRACTS FOR GOODS AND SERVICES.** Consistent with Program
731 Obligations, to the extent that Borrower obtain, or cause to be obtained, contracts for goods,
732 materials, supplies, and services (“**Goods and Services**”), it shall do so at costs, amounts, and
733 terms that do not exceed reasonable and necessary levels and those customarily paid in the
734 vicinity of the Land for Goods and Services received. The purchase price of Goods and Services
735 shall be based on quality, durability and scope of work. Reasonable Operating Expenses do not
736 include amounts paid for betterments as defined in the Property Jurisdiction or the Improvements
737 unless determined by HUD to be prudent and appropriate. If the Borrower is acquiring goods
738 and services whose costs exceed five percent (5.00%) of the Healthcare Facility’s gross annual
739 revenue, Borrower shall solicit written cost estimates. Borrower shall keep copies of all written
740 cost estimates and contracts or other instruments relating to the Project, all or any of which may
741 be subject to inspection and examination by HUD at the Project or other mutually agreeable
742 location.

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744 **24. RESPONSIVENESS TO INQUIRIES.** At the request of HUD, Borrower shall
745 promptly furnish or cause to be furnished operating budgets and occupancy, accounting and
746 other reports (including credit reports) and give or cause to be given specific answers to
747 questions relative to income, assets, liabilities, contracts, operation, and conditions of the Project
748 and the status of the Borrower Security Instrument.

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750 **25. PERMITS AND APPROVALS.**

751

752 (a) Borrower shall at all times cause Operator, or any lessee or management agent, as
753 applicable, to maintain in full force and effect, all appropriate certificates of need, bed authority,
754 provider agreements, licenses, permits and approvals reasonably necessary to operate the
755 Healthcare Facility or to fund the operation of the Project for the Approved Use (collectively, the
756 **“Permits and Approvals”**). Without the prior written consent of HUD, none of the Permits and
757 Approvals shall be conveyed, assigned, encumbered, transferred or alienated from the Healthcare
758 Facility or the Project (nor shall they be relinquished to any licensing or certification authority).
759 Borrower shall ensure that the Healthcare Facility and the Project are at all times operated in
760 accordance with the requirements of the Permits and Approvals.

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762 (b) The security interest referred to in Section 27 below shall constitute, to the extent
763 permitted by law, a first lien upon all of the rights, titles and interests of Borrower, if any, in the
764 Permits and Approvals. However, in the event of either a monetary or other default under this
765 Agreement, the Note, the Borrower Security Instrument, or any of the other Loan Documents,
766 the Borrower shall cooperate in any legal and lawful manner necessary or required to permit the
767 continued operation of the Healthcare Facility for the Approved Use. For the intents and
768 purposes herein, Borrower hereby irrevocably nominates and appoints Lender and HUD, their
769 respective successors and assigns, each in its own capacity, as Borrower’s attorney-in-fact
770 coupled with an interest to do all things that any such attorney-in-fact deems to be necessary or
771 appropriate in order to facilitate the continued operation of the Healthcare Facility and the
772 Project for the Approved Use, including but not limited to, the power and authority to provide
773 any and all information and data, pay such fees as may be required, and execute and sign in the
774 name of Borrower, its successors or assigns, any and all documents, as may be required by any
775 Governmental Authority exercising jurisdiction over the Project.

776

777 (c) Borrower shall not alter, terminate or relinquish or suffer or permit the alteration,
778 termination or relinquishment of any Permits and Approvals without the prior written approval
779 of HUD. In the event that any such alteration, termination or relinquishment is proposed, upon
780 learning of such proposed alteration, termination or relinquishment, Borrower shall advise HUD
781 and Lender promptly. Borrower shall insert the foregoing requirements into any Borrower-
782 Operator Agreement for the Project.

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784 (d) Except as otherwise provided below or in Program Obligations, Borrower shall
785 electronically deliver within two (2) Business Days after Borrower’s receipt thereof, to the
786 assigned HUD personnel and Lender copies of any and all notices, reports, surveys and other
787 correspondence (regardless of form) received by Borrower from any Governmental Authority

788 that includes any statement, finding or assertion that (i) Borrower, Operator, the Project or any
789 lessee or management agent of the Project is or may be in violation of (or default under) any of
790 the Permits and Approvals or any governmental requirements applicable thereto, (ii) any of the
791 Permits and Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil
792 money penalty relating to the Project is being imposed with respect to the Healthcare Facility, or
793 (iv) Borrower, Operator, the Project or any lessee or management agent of the Project is subject
794 to any governmental investigation or inquiry involving fraud. Borrower shall deliver to the
795 assigned HUD personnel and Lender, simultaneously with delivery thereof to any Governmental
796 Authority, any and all responses given by or on behalf of Borrower to any of the foregoing and
797 shall provide to HUD and Lender, promptly upon request, such other information regarding any
798 of the foregoing as HUD or Lender may request. Unless otherwise requested by HUD, the
799 reporting requirement of this provision shall not encompass regulators' communications relating
800 solely to licensed nursing facility surveys where the most severe citation level is at the "G" level
801 or its equivalent (pursuant to CMS State Operations Manual, Chapter 7, as may hereafter be
802 edited or updated, or any successor guidance) unless a citation at such level is either (i)
803 unresolved from the two most recent consecutive prior surveys, or (ii) is a repeat violation
804 having the same citation number. Moreover, unless otherwise requested by HUD or Lender, the
805 initial communication from the Operator pursuant to this paragraph shall be a notice by email to
806 the Lender describing the conduct cited, the scope and duration of remedy(ies) imposed, and the
807 timelines for corrective actions. Then, unless otherwise requested by HUD or Lender, the next
808 communication from the Operator shall be notification that the citations have been cleared by the
809 issuing regulatory agency. The receipt by HUD and/or Lender of notices, reports, surveys,
810 correspondence and other information shall not in any way impose any obligation or liability on
811 HUD, the Lender or their respective agents, representatives or designees to take or refrain from
812 taking any action, and HUD, Lender and their respective agents, representatives and designees
813 shall have no liability for any failure to act thereon or as a result thereof.

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815 **26. OPERATOR; COOPERATION IN CHANGE OF OPERATOR.**

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817 (a) Unless Borrower is itself the licensed operator of the Healthcare Facility,
818 Borrower has or shall (i) enter into and maintain a Borrower-Operator Agreement or [OR (ii) the
819 Master Lease, in which event Borrower shall cause any Master Tenant to enter into and maintain
820 the Borrower-Operator Agreement, all in such form as approved by HUD. Any Operator
821 (including Borrower) must be approved by HUD and shall execute a Healthcare Regulatory
822 Agreement – Operator (Form HUD-92466A-ORCF) upon such terms as are acceptable to HUD
823 and an Operator Security Agreement (Form HUD-92323-ORCF) and deposit account control
824 agreements in form and substance satisfactory to HUD and Lender. If Borrower is or becomes
825 Operator, Borrower shall execute a Healthcare Regulatory Agreement – Operator (Form HUD-
826 92466A-ORCF) upon terms acceptable to HUD and an Operator Security Agreement (Form
827 HUD-92323-ORCF) and deposit account control agreements in form and substance satisfactory
828 to HUD and Lender.

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830 (b) Borrower shall require Operator to comply with the terms of the Operator
831 Regulatory Agreement and shall set forth such requirements, or cause such requirements to be

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832 set forth, in any Borrower-Operator Agreement. Borrower shall require any Master Tenant to
833 comply with the terms of the Master Tenant Regulatory Agreement and shall set forth such
834 requirements in any Master Lease.

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836 (c) In the event that, consistent with the Operator Regulatory Agreement and/or any
837 applicable Master Tenant Regulatory Agreement, HUD directs Borrower and/or any Master
838 Tenant to terminate any Borrower-Operator Agreement [and/or Master Lease] and procure a new
839 Operator acceptable to HUD, Borrower shall expeditiously do so consistent with the continued
840 operation of the Healthcare Facility for the Approved Use, and in cooperation with and subject to
841 the requirements of the necessary regulatory and/or funding entities. Doing so shall in no way
842 obviate the Borrower's obligation to comply with all other terms of this Agreement or affect any
843 enforcement action by HUD.

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845 (d) In the event that Borrower is itself the licensed operator of the Healthcare Facility
846 and HUD determines that (i) any of the Permits and Approvals have been or are at substantial
847 and imminent risk of being terminated, suspended or otherwise restricted in such a way that the
848 Project could not be operated for the Approved Use, as evidenced by, without limitation, letters
849 of warning or imposition of penalties from applicable state and/or federal regulatory and/or
850 funding agencies, or (ii) the financial viability of the Healthcare Facility is at substantial and
851 imminent risk, then, pursuant to Program Obligations and without prejudice to any enforcement
852 actions otherwise set forth in this Agreement, HUD may direct Borrower to retain the services of
853 an operator acceptable to HUD. Upon such direction from HUD, Borrower shall expeditiously
854 do so.

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856 (e) Without prior approval of HUD, the Operator Lease, if any, and/or the Master
857 Lease, if any, shall not and may not be amended to, contain any provisions that convey an
858 ownership interest in the Project to Operator or Master Tenant, as applicable, or grant Operator
859 or Master Tenant, as applicable, a bargain purchase option during or after the lease term.
860 Nothing herein shall be construed as prohibiting Borrower from granting an Operator or Master
861 Tenant, as applicable, an option to purchase the Project on arms-length negotiated terms,
862 provided that such terms do not cause the Operator Lease to be characterized as something other
863 than an "operating lease" for accounting purposes and provided such option provides that the
864 exercising of same is subject to the prior satisfaction of applicable Program Obligations,
865 including those relating to the transfer of physical assets.

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867 **27. PERSONAL PROPERTY; SECURITY INTERESTS.** Borrower shall suitably
868 equip, or cause to be equipped, the Project for the Approved Use. Except as otherwise approved
869 in writing by HUD, Borrower shall grant to Lender and HUD a first lien security interest in all
870 personal property of Borrower related to the Project as additional security for the obligations of
871 Borrower under the Note, the Borrower Security Instrument and this Agreement. Such security
872 interest shall be evidenced by such security agreements as Lender and/or HUD may require and,
873 in connection therewith, Borrower shall execute or cause to be executed and delivered such
874 deposit account control agreements as may be required by Lender and/or HUD. Borrower
875 hereby authorizes each of Lender and HUD to file such UCC financing statements, amendments,

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876 and continuation statements as either of them may deem to be necessary or appropriate in
877 connection with the foregoing security interests. Borrower shall not be permitted to grant any
878 other liens on any of the Mortgaged Property without the prior written approval of Lender and
879 HUD.

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881 **28. PROFESSIONAL LIABILITY INSURANCE.** Borrower shall maintain, or
882 cause Operator or any lessee or management agent to maintain, professional liability insurance
883 that complies with the applicable requirements of HUD. Annually, Borrower shall provide, or
884 cause Operator or any lessee or management agent to provide, to HUD and Lender, a
885 certification of compliance with such professional liability insurance requirements as evidenced
886 by an Acord or certified copy of the insurance policy.

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888 **29. PROPERTY MANAGEMENT AGREEMENTS.** If, in addition to or in lieu of
889 any Borrower-Operator Agreement, Borrower enters into a property management agreement or
890 other document outlining procedures for managing the Healthcare Facility (“Management
891 Agreement”), such agreement or document must be approved by HUD, must include HUD-
892 92071-ORCF, Management Agreement Addendum, and must be consistent with Program
893 Obligations. Any management agent must be approved by HUD and must execute and deliver a
894 Management Agent Certification – Residential Care Facilities (form HUD-9839-ORCF, or
895 successor form) in such form as approved by HUD.

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897 **30. ACCEPTABILITY OF MANAGEMENT OF THE MORTGAGED**
898 **PROPERTY.** Borrower shall provide management of the Mortgaged Property in a manner
899 consistent with Program Obligations and acceptable to HUD. Borrower shall take such actions
900 as shall cause the Project to conform to Program Obligations.

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902 **31. TERMINATION OF CONTRACTS.** Except as otherwise permitted by HUD,
903 any contract pertaining to the Project with a vendor having an identity of interest with the
904 Borrower and/or Operator, as determined by HUD pursuant to Program Obligations, shall
905 provide: (1) in the event of a default under this Agreement, any Master Tenant Regulatory
906 Agreement, or the Operator Regulatory Agreement, the contract shall be subject to termination
907 without penalty and without cause upon written request by HUD, within thirty (30) days notice
908 of such termination; and (2) in the event that HUD determines that any of the Permits and
909 Approvals are at substantial and imminent risk of being terminated, suspended or otherwise
910 restricted so as to have a material adverse effect on the Project, the contract shall be subject to
911 termination immediately without penalty and without cause upon written request by HUD. Upon
912 such request by HUD, Borrower shall immediately arrange to terminate the contract, or cause
913 Operator to terminate the contract, and Borrower shall also make arrangements, or cause
914 Operator to make arrangements, satisfactory to HUD for continuing acceptable services to the
915 Project effective as of the termination date of the contract.

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917 **32. MANAGEMENT AGENT.** In the event that a management agent is or will be
918 the holder of the Healthcare Facility license or is or will be the payee under one or more third-

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919 party payor agreements with respect to the Healthcare Facility, such management agent will be
920 treated as an Operator in accordance with Program Obligations.

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922 **33. COMMERCIAL (NON-RESIDENTIAL) LEASES.** No portion of the Project
923 shall be leased for any commercial purpose or use without receiving HUD's prior written
924 approval as to terms, form and amount, except for commercial leases for support or ancillary
925 services which are subordinate to the Borrower Security Instrument, have terms of not more than
926 five (5) years and otherwise comply with Program Obligations. Borrower shall deliver, or cause
927 to be delivered, an executed copy of any commercial lease to HUD and Lender within thirty (30)
928 days after its effective date.

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930 **V. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD.**

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932 **34.** Borrower shall not without the prior written approval of HUD, including without
933 limitation in accordance with Program Obligations:

934

935 (a) Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of
936 the Mortgaged Property or any interest therein, or permit the conveyance, assignment, or transfer
937 of any interest or control in Borrower (if the effect of such conveyance, assignment or transfer is
938 the creation or elimination of a Principal) unless permitted by Program Obligations. Borrower
939 need not obtain the prior written approval of HUD for: (i) conveyance of the Mortgaged
940 Property at a judicial or non-judicial foreclosure sale under the Borrower Security Instrument;
941 (ii) inclusion of the Mortgaged Property in a bankruptcy estate by operation of law under the
942 United States Bankruptcy Code; (iii) acquisition of an interest by inheritance or by court decree;
943 or (iv) as otherwise allowed by Program Obligations.

944

945 (b) Enter into any contract, agreement or arrangement to borrow funds or finance any
946 purchase or incur any liability, direct or contingent, other than in accordance with the Loan
947 Documents and Program Obligations.

948

949 (c) Pay out any funds in violation of this Agreement, the Loan Documents, or
950 Program Obligations.

951

952 (d) In accordance with 24 C.F.R. 232.1007 or any successor regulation, except for
953 Distributions allowed pursuant to this Agreement, pay any compensation, including wages or
954 salaries, in excess of fair and reasonable compensation or incur any obligation to do so, to any
955 officer, director, stockholder, trustee, beneficiary, partner, member, or Principal of Borrower, or
956 to any nominee thereof, except that, at any time at which Borrower is the operator of the
957 Healthcare Facility, Borrower may pay fair and reasonable compensation to employees who are
958 officers, directors, stockholders, trustees, beneficiaries, partners, members or Principals of
959 Borrower.

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961 (e) Enter into or change any contract, agreement or arrangement for supervisory or
962 managerial services or leases for the operation of the Healthcare Facility or any portion of the

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Project, except as permitted under Program Obligations.

(f) Convey, assign or transfer any right to receive Rents of the Mortgaged Property.

(g) Remodel, add to, subtract from, construct, reconstruct or demolish any part of the Project, except as required by HUD under Section 21(c) and except that Borrower may, without approval of HUD, (i) dispose of or cause to be disposed of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value (provided, that Borrower shall have no obligation to replace any such Fixtures or Personalty that are not needed for operation of the Project) and (ii) make minor alterations that do not adversely affect the Mortgaged Property.

(h) Permit the use of the Project, including any portion of the Healthcare Facility, for any other purpose except the Approved Use, or permit commercial use greater than that originally approved by HUD.

(i) Amend the organizational documents of Borrower in such a way that modifies the terms of the organizational documents required by HUD, Lender, and/or Program Obligations, including, but not limited to: (i) any amendment that results in the creation or elimination of a Principal or modifies the requirements regarding the filing of a HUD previous participation certification when required by Program Obligations; (ii) any amendment that in any way affects the Loan Documents; (iii) any amendment that would change the identity of the persons and/or entities authorized to bind Borrower previously approved by HUD or pre-approve a successor general partner, manager or member to bind the partnership or company for any matters concerning the Project which require HUD's consent or approval; (iv) a change in any general partner, manager or managing member or pre-approved successor general partner, manager or managing member of the partnership or company or any change in a guarantor of any obligation to HUD; and (v) any proposed changes to the mandatory HUD language included in the organizational documents. Copies of all fully executed amendments to the organizational documents must be provided to HUD within ten (10) days of the effective date of the amendment. If the amendments to the organizational documents are recorded, copies of the recorded documents must be provided to HUD within ten (10) days of receipt by Borrower.

(j) Except in cases funded by proceeds from professional liability insurance, institute litigation seeking the recovery of a sum in excess of \$100,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of \$100,000; and in all cases dispose of or distribute the proceeds thereof.

(k) Reimburse any party from the Mortgaged Property for payment of expenses or costs of the Project except for Reasonable Operating Expenses and except for payments by means of Distributions.

(l) Receive any fee or payment of any kind from Operator or any management agent or employee of the Project, or other provider of Goods or Services of the Project in exchange for

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1007 the right to provide such Goods or Services.

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1009 (m) Except as provided in Section 33, enter into, or agree to the assignment of, any
1010 commercial lease for all or part of the Mortgaged Property.

1011
1012 (n) Enter into any amendment of any contract or lease relating to the Project, except
1013 to the extent such contract or lease does not require HUD's approval, including without
1014 limitation any amendment that (i) reduces the rent or other payments due to Borrower, (ii)
1015 materially increases the obligations of Borrower or the rights of the other parties to such contract
1016 or lease, (iii) materially decreases the rights of Borrower or the obligations of the other parties to
1017 such contract or lease, or (iv) alters any provision of such contract or lease required by HUD to
1018 be included therein.

1019 1020 VI. ENFORCEMENT.

1021
1022 **35. VIOLATION OF AGREEMENT.** The occurrence of any one or more of the
1023 following shall constitute a "**Violation**" under this Agreement:

1024
1025 (a) Any failure by Borrower to comply with any of the provisions of this Agreement;

1026
1027 (b) Any failure by Borrower to comply with any of the provisions of any other of the
1028 Loan Documents;

1029
1030 (c) Any fraud or material misrepresentation or material omission by Borrower, any of
1031 its officers, directors, trustees, general partners, members, managers, employees, representatives
1032 or managing agent in connection with (1) any financial statement, rent roll or other report or
1033 information provided to HUD during the term of this Agreement or (2) any request for HUD's
1034 consent to any proposed action, including a request for disbursement of funds from any restricted
1035 account for which HUD's prior written approval is required; or

1036
1037 (d) The commencement of a forfeiture action or proceeding, whether civil or
1038 criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged
1039 Property or otherwise materially impair Lender's and/or HUD's interest in the Mortgaged
1040 Property.

1041
1042 **36. NOTICE OF VIOLATION AND EVENT OF DEFAULT.**

1043
1044 (a) At any time during the existence of a Violation, HUD may give written notice of
1045 such Violation to Borrower (the "**Violation Notice**"), addressed to the addresses stated in this
1046 Agreement, or such other addresses as may subsequently, upon appropriate written Notice to
1047 HUD and Lender, be designated by Borrower as its legal business address. Borrower shall have
1048 thirty (30) days to cure, or cause to be cured, any Violation described in the Violation Notice,
1049 provided that HUD shall extend such thirty (30) day period by such time as HUD may
1050 reasonably determine is necessary to correct the Violation for so long as, HUD determines, in its

1051 discretion, that: (i) Borrower is timely satisfying all payment obligations in the Loan
1052 Documents; (ii) none of the Permits and Approvals is at substantial and imminent risk of being
1053 terminated; (iii) such violation cannot reasonably be corrected during such thirty (30) day period,
1054 but can reasonably be corrected in a timely manner, and (iv) Borrower, Master Tenant, (if a
1055 Master Lease is then in effect with such Master Tenant, or Operator commences to correct such
1056 Violation, or cause such correction to be commenced, during such thirty (30) day period and
1057 thereafter diligently and continuously proceeds to correct, or cause correction of, such Violation.
1058 If, after delivery of such Violation Notice and applicable cure period, the Violation is not
1059 corrected to the satisfaction of HUD, HUD may declare an **Event of Default** under this
1060 Agreement without further Notice. Alternatively, if necessary in HUD's determination to protect
1061 the health and safety of the tenants or the financial or operational viability of the Healthcare
1062 Facility, HUD may declare an Event of Default at any time during the existence of a Violation
1063 without providing prior written notice of the Violation.

1064
1065 (b) Notwithstanding any other provisions of this Agreement, if HUD determines at
1066 any time that any of the Permits and Approvals are at substantial and imminent risk of being
1067 terminated, suspended or otherwise restricted if such termination, suspension, or other restriction
1068 would have a materially adverse effect on the Project, including without limitation, HUD's
1069 determination that there is a substantial risk that deficiencies identified by applicable state and/or
1070 federal regulatory and/or funding agencies cannot be cured in such manner and within such time
1071 periods as would avoid the loss, suspension, or diminution of any of the Permits and Approvals
1072 that would have a materially adverse effect on the Project, or if HUD determines at any time that,
1073 as a result of a Violation, the value of the Mortgaged Property is at substantial and imminent risk
1074 of material adverse diminution, then HUD may immediately (without thirty (30) days notice)
1075 declare an Event of Default of this Agreement and may immediately proceed to take actions to
1076 pursue its remedies.

1077
1078 (c) Upon any declaration of an Event of Default, HUD may:

- 1079
1080 (i) If HUD holds the Note, declare the whole of the Indebtedness immediately
1081 due and payable and then proceed with the foreclosure of the Borrower
1082 Security Instrument or otherwise dispose of HUD's interest in the Note
1083 and the Borrower Security Instrument pursuant to Program Obligations;
1084 (ii) If the Note is not held by HUD, notify the holder of the Note of such
1085 default and require the holder to declare a default under the Note and the
1086 Borrower Security Instrument, and the holder after receiving such Notice
1087 and demand, shall declare the whole of the Indebtedness due and payable
1088 and thereupon proceed with foreclosure of the Borrower Security
1089 Instrument and/or the exercise of other remedies available to Lender under
1090 the Loan Documents or at law or equity, or assign the Note and the
1091 Borrower Security Instrument to HUD as provided in Program
1092 Obligations. Upon assignment of the Note and the Borrower Security
1093 Instrument to HUD, HUD may then proceed with the foreclosure of the
1094 Borrower Security Instrument or otherwise dispose of HUD's interest in

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- 1095 the Note and the Borrower Security Instrument pursuant to Program
1096 Obligations;
- 1097 (iii) Collect all Rents and charges in connection with the Project or the
1098 operation of the Healthcare Facility, to the extent permitted by applicable
1099 law, and use such collections to pay obligations of Borrower under this
1100 Agreement and under the Note and the Loan Documents and the necessary
1101 expenses of preserving and operating the Project;
- 1102 (iv) Take possession of the Mortgaged Property, bring any action necessary to
1103 enforce any rights of Borrower growing out of the Mortgaged Property's
1104 operation, and maintain the Mortgaged Property in decent, safe, sanitary
1105 condition and good repair;
- 1106 (v) Apply to any court, state or federal, for specific performance of this
1107 Agreement, for an injunction against any Violations of this Agreement, for
1108 the appointment of a receiver to take over and operate the Project in
1109 accordance with the terms of this Agreement, or for such other relief as
1110 may be appropriate, as the injury to HUD arising from a default under any
1111 of the terms of this Agreement would be irreparable and the amount of
1112 damage would be difficult to ascertain; and,
- 1113 (vi) Collect reasonable attorney fees related to enforcing Borrower's
1114 compliance with this Agreement.
- 1115
- 1116 (vii) In non-identity of interest cases, Landlord and/or Master Tenant shall use
1117 all commercially reasonable efforts to enforce their rights against Master
1118 Tenant or Subtenant in the event of a Lease or Sublease default, to avoid a
1119 mortgage insurance claim.

1120

1121 (d) Any forbearance by HUD in exercising any right or remedy under this Agreement
1122 or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any
1123 right or remedy.

1124

1125 (e) If at any time the Project is subject to a Master Lease, such Master Lease shall be
1126 subordinated to the Loan Documents pursuant to the then applicable HUD form of Master Lease
1127 Subordination, Non-Disturbance and Attornment Agreement (a "Master Lease SNDA") or a
1128 Master Lease Subordination Agreement, as determined by HUD in accordance with Program
1129 Obligations. HUD agrees to honor (a) the provisions of Sections 4 and 7 of any Master Lease
1130 SNDA, and (b) the provisions of Section 5 of the Master Lease SNDA or Master Lease
1131 Subordination Agreement, insofar as such sections call for HUD's consent for the release of the
1132 Project from the Master Lease and/or the Loan Documents, on the terms and subject to the
1133 limitations set forth in such sections.

1134

1135 **37. MEASURE OF DAMAGES.** The damage to HUD as a result of Borrower's
1136 breach of duties and obligations under this Agreement shall be, in the case of failure to maintain,
1137 or cause to be maintained, the Project as required by this Agreement, the cost of the repairs
1138 required to return the Project to decent, safe and sanitary condition and good repair. This

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1139 contractual provision shall not abrogate or limit any other remedy or measure of damages
1140 available to HUD under any civil, criminal or common law.

1141

1142 **38. NONRECOURSE DEBT.** The addendum (“Section 38 Addendum”) attached
1143 hereto is incorporated herein by reference.

1144

1145 **VII. MISCELLANEOUS.**

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1147 **39. COMPLIANCE WITH LAWS.**

1148

1149 (a) Borrower shall comply with all applicable: laws; ordinances; regulations;
1150 requirements of any Governmental Authority; lawful covenants and agreements (including the
1151 Borrower Security Instrument) recorded against the Mortgaged Property; and Program
1152 Obligations; including but not limited to those of the foregoing pertaining to: health and safety;
1153 construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and
1154 land use; Leases; lead-based paint maintenance requirements of 24 C.F.R. Part 35 and
1155 maintenance and disposition of resident security deposits; and, with respect to all of the
1156 foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall
1157 at all times maintain records sufficient to demonstrate compliance with the provisions of this
1158 Section 39. Borrower shall take appropriate measures to prevent, and shall not engage in or
1159 knowingly permit, any illegal activities at the Mortgaged Property including those that could
1160 endanger residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of
1161 the Mortgaged Property, or otherwise impair the lien created by the Borrower Security
1162 Instrument or Lender’s interest in the Mortgaged Property. To the best of Borrower’s
1163 knowledge, Borrower represents and warrants to HUD that no portion of the Mortgaged Property
1164 has been or shall be purchased with the proceeds of any illegal activity.

1165

1166 (b) There shall be full compliance with the provisions of (1) any State or local laws
1167 prohibiting discrimination in housing on the basis of race, color, national origin, religion, sex,
1168 disability, and familial status; and (2) the regulations of HUD providing for non-discrimination
1169 and equal opportunity in housing. It is understood and agreed that failure or refusal to comply
1170 with any such provisions shall be a proper basis for HUD to take any corrective action it may
1171 deem necessary including, but not limited to, the rejection of applications for FHA mortgage
1172 insurance and the refusal to enter into future contracts of any kind with which Borrower is
1173 identified; and further, if Borrower is a corporation or any other type of business association or
1174 organization which may fail or refuse to comply with the aforementioned provisions, HUD shall
1175 have a similar right of corrective action (1) with respect to any individuals who are officers,
1176 directors, trustees, managers, partners, associates or principal stockholders of Borrower; and (2)
1177 with respect to any other type of business association, or organization with which the officers,
1178 directors, trustee, managers, partners, associates or principal stockholders of Borrower may be
1179 identified.

1180

1181 (c) HUD and Lender shall be entitled to invoke any remedies available by law or
1182 equity to redress any breach or to compel compliance by Borrower with these requirements,
1183 including any remedies available hereunder.

1184
1185 **40. BINDING EFFECT.** This Agreement shall bind, and the benefits shall inure to,
1186 Borrower, its heirs, legal representative, executors, administrators, successors in office or
1187 interest, and assigns, and to HUD and HUD’s successors, so long as the Contract of Insurance
1188 continues in effect, and during such further time as HUD shall be Lender, holder, coinsurer, or
1189 reinsurer of the Borrower Security Instrument, or obligated to reinsure the Note or the Borrower
1190 Security Instrument.

1191
1192 **41. PARAMOUNT RIGHTS AND OBLIGATIONS.** Borrower warrants that it has
1193 not, and shall not, execute any other agreement with provisions contradictory of, or in opposition
1194 to, the provisions hereof, and that, in any event, the requirements of this Agreement are
1195 paramount and controlling as to the rights and obligations set forth and supersede any other
1196 requirements in conflict therewith.

1197
1198 **42. SEVERABILITY.** The invalidity of any clause, part, or provision of this
1199 Agreement shall not affect the validity of the remaining portions hereof.

1200
1201 **43. RULES OF CONSTRUCTION.** The captions and headings of the sections of
1202 this Agreement are for convenience only and shall be disregarded in construing this Agreement.
1203 Any reference in this Agreement to an “**Exhibit**” or a “**Section**” shall, unless otherwise explicitly
1204 provided, be construed as referring, respectively, to an Exhibit attached to this Agreement or to a
1205 Section of this Agreement. All Exhibits attached to or referred to in this Agreement are
1206 incorporated by reference into this Agreement. Use of the singular in this Agreement includes
1207 the plural and use of the plural includes the singular. As used in this Agreement, the term,
1208 “including” means “including, but not limited to.”

1209
1210 **44. PRESENT ASSIGNMENT.** To the extent permitted by applicable law,
1211 Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its
1212 rights to Rents, charges, fees, carrying charges, Project accounts, security deposits, and other
1213 revenues and receipts of whatsoever sort that it may receive or be entitled to receive from the
1214 operation of the Mortgaged Property, subject to the assignment of Rents and other provisions in
1215 the Borrower Security Instrument and, if Borrower is also Operator, subject to the rights of any
1216 accounts receivable lender under accounts receivable financing that has been approved by HUD.
1217 Until a default is declared under this Agreement, a revocable license is granted to Borrower to
1218 collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits,
1219 and other revenues and receipts, but upon an Event of Default under this Agreement or under the
1220 Borrower Security Instrument, such revocable license is automatically terminated.

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45. 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.

BORROWER: [REDACTED]

HUD: [REDACTED]

LENDER: [REDACTED]

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1256 **IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the date first
1257 herein above written.

1258

1259 Borrower hereby certifies that the statements and representations contained in this instrument
1260 and all supporting documentation thereto are true, accurate, and complete and that each signatory
1261 has read and understands the terms of this instrument. This instrument has been made,
1262 presented, and delivered for the purpose of influencing an official action of HUD in insuring the
1263 Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

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1267 **BORROWER:**

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1269

[Redacted]

1270

1271 By: _____

1272 Name: _____

1273 Title: _____

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1277 **U.S. DEPARTMENT OF HOUSING**

1278 **AND URBAN DEVELOPMENT,**

1279 acting by and through the **Secretary:**

1280

1281 By: _____

1282 Name: _____

1283 Authorized Agent

1284 Office of Residential Care Facilities

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[Redacted]

[ADD ADDITIONAL LINES IF NEEDED]

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1291 **NOTICE: THIS AGREEMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED**
1292 **AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A**
1293 **DEED TO REAL ESTATE (i.e., NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS**
1294 **OR OTHER APPROPRIATE FORMALITIES).**

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EXHIBIT A

[LEGAL DESCRIPTION OF THE LAND]

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SECTION 38 ADDENDUM

The Loan is nonrecourse. The following individuals or entities (each, a “Section 38 party”) as identified below and in the Firm Commitment (which means the commitment for insurance of advances or commitment for insurance upon completion issued to Lender by HUD under which the debt evidenced by the Note is to be insured pursuant to a Section of the Act, dated [redacted] [month, date, year], and any amendments thereto):

[Insert names of such parties here; such parties must indicate acknowledgement and acceptance of this Section by executing below or in counterpart]

1. _____
(Individual/Entity Name)

2. _____
(Individual/Entity Name)

does not assume personal liability for payments due under the Note and the Borrower 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 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.]*

[ADD ADDITIONAL LINES FOR MULTIPLE SIGNATORIES]