

Intercreditor Agreement
Section 232

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

OMB Approval No. 2502-0605
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THIS INTERCREDITOR AGREEMENT (this “**Agreement**”) is entered into as of _____, 20____, by and among (i) _____ a _____, (*if applicable, add the following or similar language, as appropriate: acting individually as lender and as agent acting on behalf of all lenders who are parties from time to time under the AR Loan Agreement,* “**AR Lender**”), (ii) _____, a _____, (“**FHA Lender**”), (iii) _____, a _____ (“**Owner**”), and (iv) _____ [*Operator, Master Tenant, and/or whomever receives the AR Financing and holds AR Lender Priority Collateral*], a _____ (“**Operator**”). AR Lender, FHA Lender, Owner and Operator are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Operator has entered into that certain [*name of Operating Lease, Sub-lease, or Owner-Operator Agreement*] with [_____] with respect to the Facility (the “**Owner-Operator Agreement**”), and Operator further entered into a Security Agreement for the benefit of FHA Lender (the “**Operator Security Agreement**”), which security agreement grants a security interest in certain collateral of the Operator which includes the AR Lender Priority Collateral, and entered into a Regulatory Agreement for the benefit of HUD (the “**Operator Regulatory Agreement**”); and

WHEREAS, AR Lender has made or may in the future make loans and/or extensions of credit to or for the benefit of the Operator, secured by certain collateral of the Operator, which includes the AR Lender Priority Collateral; and

WHEREAS, FHA Lender has made or may in the future make loans and/or extensions of credit to or for the benefit of Owner secured by the Facility operated by the Operator or to or for the benefit of Operator secured by certain assets of the Operator; and

WHEREAS, AR Lender and FHA Lender have agreed upon AR Lender’s and FHA Lender’s respective rights in and to the AR Lender Priority Collateral and FHA Lender Priority

Collateral which agreements and understandings are set forth below. In the event of a conflict between the terms of this Agreement and the terms of the AR Loan Documents, or the FHA-Insured Loan Documents, the terms of this Agreement shall govern and control;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and intending to be legally bound, the Parties hereto hereby agree as follows:

1. DEFINITIONS

All terms used herein which are not specifically defined shall have the meanings provided in Article 9 of the Uniform Commercial Code as in effect in the State of (*Insert property jurisdiction*) _____ from time to time (the “UCC”). In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used in this Agreement.

1.1 “Accounts” shall mean all right, title and interest of Operator in and to the following, in each case arising from Operator’s operation of the Facility in the ordinary course of Operator’s business: (a) all rights to payment of a monetary obligation, whether or not earned by performance, including, but not limited to, accounts receivable, health-care insurance receivables, Medicaid and Medicare receivables, Veterans Administration receivables, or other governmental receivables, private patient receivables, and HMO receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of the property described in clauses (a), (b) and (c). Notwithstanding the foregoing, “Accounts” do not include insurance proceeds, commercial tort claims, or accounts arising from the sale of Operator’s equipment, inventory or other goods, other than accounts arising from the sale of Operator’s inventory in the ordinary course of Operator’s business; provided that “Accounts” shall include any Approved Business Interruption Insurance Proceeds. For purposes herein “Approved Business Interruption Insurance Proceeds” include the proceeds of business interruption insurance payable to Operator to the extent such proceeds support continued funding of the AR Loan, provided, however, that “Approved Business Interruption Insurance Proceeds” shall not include rent loss coverage payable to the FHA Lender.

1.2 “Advances” shall mean advances under the revolving loan facility provided for in the AR Loan Documents.

1.3 “AR Lender Priority Collateral” shall mean all right, title and interest of Operator in and to the following: (a) all Accounts arising from the delivery of goods and rendering of services by Operator prior to the Cut-Off Time and the proceeds thereof; (b) all Deposit Accounts and the proceeds thereof; and (c) all Accounts arising after the Cut-Off Time and the proceeds thereof solely to the extent of (and in the amount of) Protective Advances made after the Cut-Off Time in accordance with the terms of this Agreement provided that the collateral should be prioritized in accordance with Section 2.1.

1.4 “AR Loan” shall mean a revolving loan (including any amounts contemplated as letter of credit obligations) made by AR Lender to Operator pursuant to the AR Loan Agreement. Notwithstanding anything else in the AR Loan Documents, unless otherwise specifically approved in writing by FHA Lender and HUD, the AR Loan shall exclude any term loan facility, equipment loan facility and any indebtedness, liability or obligations arising under a guarantee, except to the extent that the obligations guaranteed consist solely of AR Loan Obligations and such guarantors waive subrogation and similar rights until the FHA-Insured Loan is Paid in Full.

1.5 “AR Loan Agreement” shall mean that certain [*Revolving Credit and Security Agreement (enter proper name of document)*], dated as of [_____], by and among AR Lender, as lender, and Operator [*add where applicable: and the operators of the Other Facilities*], as borrower, [*add where applicable: and _____, as Borrower Representative*] as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

1.6 “AR Loan Documents” shall mean any and all promissory notes, security agreements and any and all other documents evidencing or securing the AR Loan as identified on Schedule 1 attached hereto, in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement, provided that, for purposes of this Agreement, this Agreement shall not be considered an AR Loan Document.

1.7 “AR Loan Obligations” shall mean the AR Loan and all other indebtedness, liabilities and obligations owing to AR Lender under the AR Loan Documents (including without limitation any Over-line Advances and/or Allowable Over-Advances, as permitted pursuant to Section 2.7, and Protective Advances), provided, however, that notwithstanding anything to the contrary set forth in the AR Loan Documents, “**AR Loan Obligations**” shall exclude any and all indebtedness, liabilities and obligations that are not directly related to the benefit of the Facilities or the Other Facilities, or the financing thereof. Notwithstanding the foregoing, the AR Loan Obligations shall also include the following: [*insert any specific obligation requested by AR Lender and approved by ORCF, provided such inclusion is consistent with HUD Program Obligations or a waiver of such HUD Program Obligations has been obtained*]. Notwithstanding anything to the contrary in the AR Loan Documents or this Agreement, this Agreement shall not be deemed an “AR Loan Obligation.”

1.8 “Availability” means [*insert “Revolving Loan Availability” or other appropriate defined term*] as defined in the AR Loan Agreement.

1.9 “Business Day” shall mean any day other than a Saturday, a Sunday, or any day that banks in [*insert AR Lender’s Jurisdiction*] _____ or [*insert Property Jurisdiction if different from AR Lender’s Jurisdiction*] _____ are required or permitted by law to close.

1.10 “Ceased Funding” means, with respect to the Cut-Off Time, either of the following events: (i) AR Lender (including any co-lenders pursuant to the AR Loan Documents) has received a request for an Advance under the AR Loan Agreement for which there is sufficient Availability and a period of thirty (30) calendar days has elapsed since the date of such request, during which time such Advance is not made or (ii) AR Lender has notified Operator and/or FHA Lender in writing that it has determined to permanently cease making further Advances (at least with respect to the Facility) under the AR Loan Agreement.

1.11 “Cut-Off Time” shall mean, unless subsequently extended in writing by FHA Lender with HUD consent, such time indicated in the written notice (“**Cut-Off Time Notice**”) that may be given by the FHA Lender to the AR Lender following the occurrence of an FHA-Insured Loan Triggering Event or an AR Loan Triggering Event, which Cut-Off Time Notice must be: (a) in the form set forth in Exhibit A and designating the Facility as to which the Cut-Off Time applies and (b) given pursuant to Section 4.5. Unless the AR Lender has Ceased Funding, the Cut-Off Time shall be no earlier than thirty (30) calendar days after the Cut-Off Time Notice has been given (as set forth in Section 4.5) by FHA Lender to AR Lender. If the AR Lender has Ceased Funding, the Cut-Off Time may be concurrent with the date on which Ceased Funding occurred, even if the Cut-Off Time Notice is delivered thereafter.

1.12 “Deposit Accounts” shall mean any deposit account (a) holding proceeds of any Accounts, (b) holding any cash of the Operator, (c) into which Advances are funded (d) for which a deposit account control agreement in favor of the AR Lender and approved by HUD, has been entered into, or (e) to the extent permitted by applicable law, for which a deposit account services and instructions agreement or similar agreement, approved by HUD, has been entered into, but excluding all payment accounts (if any) established for the payment of amounts due to Owner pursuant to the Owner-Operator Agreement.

1.13 “Facility” shall mean that certain [*type of facility, e.g., nursing home*] located at [_____] and commonly known as [_____].

1.14 “FHA Lender Priority Collateral” shall mean any and all property (whether real, personal or mixed, tangible or intangible) in which FHA Lender and/or HUD is granted liens, encumbrances, security interests and other rights pursuant to any of the FHA-Insured Loan Documents, except for the AR Lender Priority Collateral, it being understood that FHA Lender and/or HUD has an “all assets” security interest on the assets of Operator including but not limited to (i) the skilled nursing facility licenses and any other healthcare or long term care licenses for the Facility, (ii) all Medicare and Medicaid/state/county provider agreements for the Facility, (iii) the certificates of need for the Facility, (iv) the Owner-Operator Agreement and (v) Operator’s furniture, fixtures, equipment, software and inventory directly related to such Facility.

1.15 “**FHA-Insured Loan(s)**” shall mean the mortgage loan(s) made by FHA Lender and insured or held by HUD with respect to the Facility.

1.16 “**FHA-Insured Loan Documents**” shall mean, with respect to the FHA-Insured Loan, any and all promissory notes, deeds of trust, mortgages, regulatory agreements, security agreements and any and all other documents required by FHA Lender and/or HUD as identified on Schedule 2 attached hereto in connection with such FHA-Insured Loan, in each case, as amended, restated, supplemented or otherwise modified from time to time, provided that this Agreement shall not be considered a FHA-Insured Loan Document for purposes of this Agreement.

1.17 “**FHA-Insured Loan Obligations**” shall mean the FHA-Insured Loan and all other indebtedness, liabilities and obligations owing to FHA Lender and/or HUD under the FHA-Insured Loan Documents.

1.18 “**HUD**” shall mean the U.S. Secretary of Housing and Urban Development or any successor agency.

1.19 “**Maximum Commitment Amount**” shall mean \$_____ [insert maximum AR Lender revolving loan commitment amount, inclusive of any contemplated letter of credit amounts, approved by HUD’s Office of Residential Care Facilities (ORCF)].

1.20 “**Other Facilities**” means any other healthcare facilities financed by the AR Loan, in any case financed by a mortgage loan made by a HUD-approved lender and insured or held by HUD, which facilities are described on Schedule 3 (as such list of Other Facilities may be modified from time to time with the consent of HUD, AR Lender and FHA Lender).

1.21 “**Paid in Full**” shall mean the final indefeasible payment in full of all AR Loan Obligations or FHA-Insured Loan Obligations, as applicable, and the termination of the AR Loan Documents and the FHA-Insured Loan Documents, as applicable; provided, however, that a reduction in the outstanding balance due under the AR Loan Documents to zero shall not mean that the AR Loan Obligations have been “Paid in Full” unless and until, all commitments of the AR Lender to lend under the AR Loan Documents have been terminated. With respect to any AR Loan Obligations under the AR Loan Documents consisting of contingent obligations under letters of credit, final payment is considered the setting apart of cash sufficient to discharge such AR Loan Obligations in an account for the exclusive benefit of AR Lender.

1.22 “**Possession Date**” shall mean, with respect to the Facility, the earlier of the date upon which (a) FHA Lender, or its nominee, has taken actual physical possession and control of the Facility, whether by foreclosure, deed in lieu of foreclosure, appointment of a receiver or other legal process, or (b) FHA Lender, or its nominee, has begun the operation and management of the Facility.

1.23 “Protective Advances” shall mean amounts advanced by AR Lender following the Cut-Off Time and prior to the Possession Date that the AR Lender deems reasonably necessary to preserve and protect the AR Lender Priority Collateral and written notice of which is given to FHA Lender within five (5) Business Days after the subject advance is made, provided, however, that failure to provide such notice within five Business Days shall not affect the inclusion of Accounts arising after the Cut-Off Time as AR Lender Priority Collateral, as described more fully in the definition of AR Lender Priority Collateral.

1.24 “Triggering Event” shall mean an FHA-Insured Loan Triggering Event or an AR Loan Triggering Event. An **“FHA-Insured Loan Triggering Event”** shall mean any of (i) a payment default under the FHA-Insured Loan Documents, (ii) acceleration by FHA Lender of the sums due under the FHA-Insured Loan Documents, (iii) an Event of Default (as defined in any of the FHA-Insured Loan Documents) has occurred, or (iv) an event of default under the Owner-Operator Agreement has occurred. An **“AR Loan Triggering Event”** shall mean any event which results in AR Lender having Ceased Funding or accelerating the AR Loan Obligations (provided, however, that any acceleration that occurs automatically pursuant to the terms of the AR Loan Agreement shall not be an AR Loan Triggering Event if such acceleration is timely waived, cured, unwound or otherwise disregarded by the AR Lender who continues to fund).

2. PRIORITIES

2.1 AR Lender Priority.

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.1(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of the FHA Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, AR Lender shall have a first and prior security interest in, upon and to the AR Lender Priority Collateral to secure the AR Loan Obligations; and FHA Lender hereby subordinates to AR Lender’s security interest FHA Lender’s security interest in the AR Lender Priority Collateral. FHA Lender shall abide by the standstill provisions set forth below in Section 2.3(a). FHA Lender, Owner, [insert Master Tenant, if Master Lease involved] and Operator agree, that, in the event AR Lender seeks to enforce any of its remedies under the AR Loan Documents, AR Lender may have reasonable access to the Facility for any inspection and copying of the books and records of Operator relating to the AR Lender Priority Collateral and the FHA Lender Priority Collateral, provided that AR Lender shall promptly repair any damage to the Facility caused by AR Lender or its agents resulting from such inspection and copying. AR Lender agrees that, notwithstanding anything in the AR Loan Documents to the contrary: (i) AR Lender may not require Operator to deliver the books and records of Operator to AR Lender; and (ii) AR Lender’s rights to inspect and copy Operator’s books and records shall be limited to those rights set forth in the preceding sentence.

(b) Without limiting the foregoing, following the occurrence of a Triggering Event, FHA Lender may deliver to AR Lender a Cut-Off Time Notice. Notwithstanding the occurrence of a Cut-Off Time, the AR Lender shall have a first and prior security interest in the AR Lender Priority Collateral, and FHA Lender shall have a subordinate lien in the AR Lender Priority Collateral, until the AR Loan Obligations are Paid in Full. Any Accounts arising from the delivery of goods and rendering of services by Operator at the Facility after the Cut-Off Time Notice, but prior to the Cut-Off Time, shall be AR Lender Priority Collateral notwithstanding the collection of the same after the Cut-Off Time. For the avoidance of doubt, FHA Lender shall have a first and prior security interest in any Accounts arising from the delivery of goods and rendering of services by Operator at the Facility on or after the Cut-Off Time with respect to the Facility (except to the extent AR Lender makes Protective Advances), and such Accounts shall be considered FHA Lender Priority Collateral and not AR Lender Priority Collateral. From and after the Cut-Off Time, all amounts received by AR Lender on account of the AR Lender Priority Collateral shall be applied solely to the AR Loan Obligations. Nothing herein shall prevent AR Lender from collecting the full amount of the AR Loan Obligations from any guarantors thereof and/or from collateral other than the AR Lender Priority Collateral and/or the FHA Lender Priority Collateral.

(c) If AR Lender's security interest (as now or in the future existing) in the AR Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, and as a result thereof, a creditor subordinate to AR Lender would have or would be entitled to claim, priority over the FHA Lender in the AR Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by FHA Lender to such other creditor.

(d) Notwithstanding anything else in this Agreement AR Loan Obligations shall not include indemnity obligations relating to any breach of this Agreement or relating to any dispute between AR Lender and FHA Lender or HUD.

(e) AR Lender agrees to exercise any rights of setoff against funds on deposit in Deposit Accounts maintained with AR Lender for application to AR Loan Obligations consistently with the priorities and provisions established under this Agreement.

2.2 FHA Lender Priority.

(a) AR Lender and FHA Lender agree that, as between AR Lender and FHA Lender, subject to Section 2.2(b), at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the taking of possession of, or other exercise of rights in respect of, the AR Lender Priority Collateral (or any portion thereof) or the priorities that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting of any security interests referred to herein, FHA Lender shall have a first and prior security interest in, upon and to the FHA Lender Priority Collateral; and AR Lender hereby subordinates to FHA Lender AR Lender's security interest, if any, in the FHA Lender Priority Collateral to secure the FHA-Insured Loan. AR Lender shall abide by the standstill provisions set forth below in Section 2.3(b). Promptly upon execution of this Agreement, AR Lender agrees to cause itself to be removed from any insurance policy and insurance certificate that has any designation of AR Lender as (a) loss payee or lender's loss payee on any insurance with respect to any FHA Lender Priority Collateral

upon which AR Lender does not have a subordinate lien as permitted by this Agreement and (b) primary loss payee or primary lender's loss payee on any insurance with respect to any FHA Lender Priority Collateral upon which AR Lender has a subordinate lien permitted under this Agreement.

(b) If FHA Lender's security interest (as now or in the future existing) in the FHA Lender Priority Collateral becomes, in whole or in part, for any reason, unperfected or is judicially or administratively determined to be unenforceable, in whole or in part, or is voided, in whole or in part, and as a result thereof, a creditor subordinate to FHA Lender would have or would be entitled to claim, priority over AR Lender in the FHA Lender Priority Collateral, nothing in this Agreement is intended or shall be construed as a subordination by AR Lender to such other creditor. Notwithstanding the foregoing, FHA Lender shall have a first priority security interest in the FHA Lender Priority Collateral applicable to the corresponding Facility, provided however, AR Lender shall have the ability to utilize the FHA Lender Priority Collateral solely to the extent necessary to exercise any of AR Lender's rights and/or remedies (including without limitation billing and collecting the Operator's accounts receivable and other assets comprising AR Lender Priority Collateral) under the AR Loan Documents.

(c) FHA Lender acknowledges that one or more of the Other Facilities, if any, may be subject to loans made by other HUD-approved lenders and insured or held by HUD. The AR Loan may provide financing for and may be secured by collateral pertaining to any or all of the Other Facilities. This Agreement is intended to set forth the priorities, rights, and responsibilities of FHA Lender vis-à-vis AR Lender, only, and shall not affect priorities of the FHA-Lender vis-a-vis any other lender of any Other Facilities.

2.3 Standstill; Possession Date.

(a) Until the AR Loan Obligations have been Paid in Full, FHA Lender and Owner [insert "and Master Tenant" if a Master Lease is involved] shall not exercise any remedies with regard to the AR Lender Priority Collateral (including without limitation any remedies in conflict with Section 2.9(c) below which includes, without limitation, notifying account debtors to redirect payment for such AR Lender Priority Collateral, changing or attempting to change any direction of payment or remittance instructions to account debtors for such AR Lender Priority Collateral to any deposit accounts other than those Deposit Accounts into which Accounts have been paid historically, or any combination of the foregoing); *provided however*, that after a Triggering Event, the foregoing shall not prohibit the FHA Lender from (i) taking any action against the Operator with respect to any FHA Lender Priority Collateral (so long as such action does not compromise the AR Lender's ability to bill and/or collect the AR Lender Priority Collateral), (ii) terminating an Owner-Operator Agreement, (iii) commencing an action for possession or for collection of rent or other monetary amounts due under such Owner-Operator Agreement or for specific enforcement of an Operator's covenants under such Owner-Operator Agreement, so long as such actions do not comprise the exercise of a remedy with regard to AR Lender Priority Collateral, or (iv) pursuing the remedies specified in the definition of "Possession Date," (v) taking steps to appoint a receiver or (vi) contacting the necessary authorities, which may include account debtors, to begin the process of transferring the license and/or any other necessary permits or approvals, and the assignment of the provider agreements from the incumbent Operator to a new operator.

(b) Until the FHA-Insured Loan Obligations have been Paid in Full, subject to AR Lender's right to access the FHA Lender Priority Collateral set forth in Section 2.1 above,

AR Lender shall not affirmatively exercise any remedies with regard to the FHA Lender Priority Collateral.

(c) Without limiting the foregoing, FHA Lender shall deliver to AR Lender ten (10) Business Days' prior written notice of the commencement of any action or undertaking to take physical possession, control or management of the Facility (the "**Possession Date Notice**"). If a Cut-Off Time Notice has previously been issued, the Possession Date Notice shall have no effect on the Cut-Off Time. If no previous Cut-Off Time Notice has been issued, the Possession Date Notice shall serve as a Cut-Off Time Notice. If a Possession Date Notice is serving as Cut-Off Time Notice, notwithstanding the fact that FHA Lender or its designee may take physical possession, control or management of a Facility upon providing ten (10) Business Days' notice to AR Lender, AR Lender shall have rights to and be entitled to the collections of all Accounts arising from the delivery of goods or rendering of services at the Facility for the period beginning on the date of the Possession Date Notice and continuing until the thirtieth (30th) day following a Possession Date Notice, without regard to whether such Accounts were generated in the name of Operator or in the name of any temporary or permanent replacement operator, manager or receiver.

(d) Without limiting any of its rights hereunder or under the AR Loan Documents, at any time after receiving a Cut-Off Time Notice or a Possession Date Notice, AR Lender shall have the right to cease making Advances. Irrespective of whether or not AR Lender makes any Advances (including Protective Advances) after receiving the Cut-Off Time Notice, it shall retain a first priority lien on all AR Lender Priority Collateral.

(e) Except as may be expressly set forth herein, including but not limited to in Section 2.6(b) hereof, FHA Lender, Owner, and Operator hereby agree that any AR Lender Priority Collateral and proceeds thereof, which may come into the possession of FHA Lender or Owner or Operator will be held in trust for AR Lender, and FHA Lender and Owner shall turn over any AR Lender Priority Collateral and/or proceeds thereof to AR Lender, in the same form as received with any necessary endorsements, promptly upon receipt, until all of the AR Loan Obligations have been Paid in Full. Any replacement operator or receiver who commences operating the Facility shall agree in writing to abide by the provisions of this Section 2.3(e) to the extent it, or its new lender, if any, comes into possession of any AR Lender Priority Collateral, provided, however, failure to secure such written agreement shall not subject FHA Lender to any liability nor affect the subordination and lien priorities set forth in this Agreement.

(f) Any FHA Lender Priority Collateral that may come into the possession of AR Lender, Operator or Owner will be held in trust by AR Lender, Operator or Owner (as applicable), for FHA Lender, and such recipient shall turn over any FHA Lender Priority Collateral so received to FHA Lender in the same form as received, with any necessary endorsements, promptly upon receipt, until the FHA-Insured Loan Obligations have been Paid in Full in accordance with the terms of this Agreement. Any replacement operator or receiver who commences operating the Facility shall agree in writing to abide by the provisions of this Section 2.3(f) to the extent it, or its new lender, if any, comes into possession of any FHA Lender Priority Collateral.

2.4 No Contest.

(a) FHA Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to AR Lender with respect to the AR

Lender Priority Collateral *provided that*, nothing in this Section 2.4(a) shall prevent FHA Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.1(b). FHA Lender further agrees that, subject to Section 2.1(b), AR Lender's lien and security interest in the AR Lender Priority Collateral shall at all times, while AR Loan Obligations are owing from Operator to AR Lender, be superior and prior to the liens and security interests granted to the FHA Lender in such AR Lender Priority Collateral, irrespective of the time, order or method of attachment or perfection of AR Lender's and the FHA Lender's liens and security interests, or the filing of financing statements, or the taking of possession of the FHA Lender Priority Collateral, or any portion thereof.

(b) AR Lender agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to FHA Lender with respect to the FHA Lender Priority Collateral; *provided that*, nothing in this Section 2.4(b) shall prevent AR Lender from taking all appropriate steps to protect and preserve its priority in the circumstances contemplated in Section 2.2(b). AR Lender further agrees that FHA Lender's lien and security interest in the FHA Lender Priority Collateral shall at all times while any indebtedness or obligations under the FHA-Insured Loan Documents are owing from the Owner to the FHA Lender, be superior and prior to the liens and security interests granted to AR Lender in such FHA Lender Priority Collateral, irrespective of the time, order or method of attachment or perfection of the FHA Lender's liens and security interests, or the filing of financing statements or the taking of possession of the AR Lender Priority Collateral, or any portion thereof.

(c) AR Lender waives, in respect of FHA Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, AR Lender agrees that FHA Lender may (i) proceed directly against any collateral in which FHA Lender has a lien or security interest (subject to the terms of this Agreement) and/or any guarantor of the FHA-Insured Loan Obligations in any particular order and (ii) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement. FHA Lender waives, in respect of AR Lender, any and all rights under any theory of marshalling or ordering of the disposition of collateral and accordingly, FHA Lender agrees that AR Lender may (A) proceed directly against any collateral in which AR Lender has a lien or security interest (subject to the terms of this Agreement) and/or any guarantor of the AR Loan Obligations in any particular order and (B) release, surrender, substitute or exchange any collateral and/or any guarantor at any time without affecting the agreements set forth in this Agreement.

2.5 Releases; Bailee for Perfection.

(a) Notwithstanding anything to the contrary contained herein or in any of the FHA-Insured Loan Documents, the Operator Security Agreement or the Owner-Operator Agreement (or any sublease thereof), but subject to Section 2.5(b) below, FHA Lender agrees that in the event any AR Lender Priority Collateral (but not the AR Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of AR Lender's remedies against Operator under the AR Loan Documents, the FHA Lender shall release all of its rights to and interests in such AR Lender Priority Collateral. Nothing in this Section 2.5(a) shall require any release of the FHA Lender Priority Collateral. FHA Lender shall execute such release documents as AR Lender may reasonably request to effectuate the terms of this Section 2.5(a). Notwithstanding anything to the contrary contained herein or in any of the AR Loan Documents,

but subject to Section 2.5(b), AR Lender agrees that in the event any FHA Lender Priority Collateral (but not the FHA-Insured Loan) is sold, transferred or conveyed or otherwise disposed of in conjunction with the exercise of FHA Lender's remedies under the FHA-Insured Loan Documents, AR Lender shall release all of its rights to and interests in (if any) such FHA Lender Priority Collateral and such property shall be transferred free and clear of all liens and security interests in favor of AR Lender. Nothing in this Section 2.5(a) shall require any release of the AR Lender Priority Collateral. AR Lender shall execute such release documents as FHA Lender may reasonably request to effectuate the terms of this Section 2.5(a).

(b) Notwithstanding the foregoing, to the extent that the proceeds of any sale of AR Lender Priority Collateral exceed the amount necessary to pay and satisfy in full the AR Loan Obligations, such excess shall be delivered to FHA Lender (to the extent that FHA Lender is otherwise entitled thereto in accordance with the FHA-Insured Loan Documents and/or applicable law) for application by FHA Lender pursuant to the FHA-Insured Loan Documents. To the extent that the proceeds of any sale of FHA Lender Priority Collateral exceed the amount necessary to pay and satisfy the FHA-Insured Loan Obligations in full, such excess shall be delivered to AR Lender (to the extent that AR Lender has a security interest in the FHA Lender Priority Collateral and is otherwise entitled thereto in accordance with the AR Loan Documents and/or applicable law) for application by AR Lender pursuant to the AR Loan Documents.

(c) In the event FHA Lender or its nominee purchases any AR Lender Priority Collateral (which it shall have no obligation to purchase), AR Lender agrees that upon receipt of the purchase price (i) all such AR Lender Priority Collateral so sold, and all liens or security interests therein, and all proceeds thereof, shall be deemed to be held by AR Lender as agent for the purchaser until effectively transferred to such purchaser's ownership and control, (ii) AR Lender shall continue to receive such AR Lender Priority Collateral and proceeds thereof in existing lockbox or controlled deposit accounts until such purchaser has made alternative collection and deposit arrangements (which it shall arrange within thirty (30) days), and (iii) AR Lender shall remit all collections of such purchased AR Lender Priority Collateral in the same manner as provided in Section 2.6.

(d) With respect to any AR Lender Priority Collateral and/or FHA Lender Priority Collateral that FHA Lender cannot perfect a security interest in by filing a financing statement, and with respect to which AR Lender has perfected a security interest, AR Lender shall be deemed to be holding such AR Lender Priority Collateral and/or FHA Lender Priority Collateral as representative and bailee for FHA Lender for the purposes of perfection of FHA Lender's liens thereon or therein under the Uniform Commercial Code as in effect in each applicable jurisdiction, and as amended from time to time; provided, however, that the failure of AR Lender to hold any such collateral shall not subject such AR Lender to any liability nor affect the subordination and lien priorities set forth in this Agreement.

2.6 Return of Payments

(a) AR Lender agrees that, upon the AR Loan Obligations being Paid in Full, any AR Lender Priority Collateral and the proceeds thereof which may come into AR Lender's possession will be held by it in trust for FHA Lender and it shall turn over any such AR Lender Priority Collateral and/or proceeds thereof to FHA Lender (or, at FHA Lender's direction, to a new lender who has entered into an intercreditor agreement with FHA Lender), in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt.

(b) FHA Lender agrees that upon the FHA-Insured Loan Obligations being Paid in Full, except to the extent the FHA-Insured Loan Obligations are Paid in Full with the proceeds of replacement mortgage financing by a new lender that has entered into an intercreditor agreement with AR Lender, any FHA Lender Priority Collateral securing the AR Loan Obligations and proceeds thereof, which may come into FHA Lender's possession, will be held by it in trust for AR Lender and it shall turn over any such FHA Lender Priority Collateral and/or proceeds thereof to AR Lender, in the same form as received with any necessary endorsements or in an amount equal to the proceeds received, promptly upon receipt.

2.7 AR Loan Documents; Over-line Advances; Allowable Over-Advances; Collateralization.

(a) AR Lender represents and warrants that as of the date hereof Schedule 1 sets forth a list of the material documents evidencing or securing the AR Loan(s) and that true, correct and complete copies of the documents listed thereon have been provided to FHA Lender and its counsel.

(b) Notwithstanding anything else in this Agreement or the AR Loan Documents, AR Lender shall not make Over-line Advances without prior written consent of FHA Lender and HUD (provided that HUD may be deemed to have given consent as set forth below in this Section 2.7(b)), except for Protective Advances. "**Over-line Advance**" means an Advance in excess of the Maximum Commitment Amount. Upon the written request by AR Lender to FHA Lender to make an Over-line Advance, FHA Lender shall promptly (within two (2) Business Days) make such request of HUD and HUD will make commercially reasonable efforts to respond within ten (10) Business Days to any written request for consent to an Over-line Advance if such request is sent to the Director of HUD's Office of Residential Care Facilities (or successor office) and supported by a documented collateral analysis provided by the AR Lender showing sufficient eligible collateral so as to not exceed the borrowing base formula set forth in the AR Loan Documents; provided, however, that if HUD fails to respond within ten (10) Business Days of receiving such request from FHA Lender, such failure to respond shall be deemed to be a consent to the making of such Over-line Advance.

(c) Notwithstanding anything else in this Agreement or the AR Loan Documents, AR Lender shall not make any Over-Advance, other than Allowable Over-Advances, without prior written consent of FHA Lender and HUD.

(i) "**Over-Advance**" means any Advances made by AR Lender pursuant to the AR Loan Documents in excess of the borrowing base formula provisions set forth in the AR Loan Documents.

(ii) "**Allowable Over-Advances**" shall mean one or more Over-Advances which: (1) are advanced by AR Lender solely to be used by Operator for

working capital purposes and/or to pay for costs and expenses incurred by the Operator relating to the operation of the Facility or Other Facilities (including, but not limited to payroll and related expenses, food and other dietary goods, pharmaceuticals, rent due pursuant to the Owner-Operator Agreement (if any), debt service on the FHA-Insured Loan Documents, or other amounts due pursuant to the Owner-Operator Agreement and/or FHA-Insured Loan Documents), (2) are due within 180 days; and (3) are accompanied by documentation (which documentation may include an amendment to the AR Loan Documents or letter to the Operator) dictating the amount and duration/due date of such Over-Advance and documentation (which may be from the Operator) indicating why such Over-Advance is necessary, provided that AR Lender gives notice pursuant to Section 4.5 of this Agreement to FHA Lender within five (5) Business Days of such Over-Advance and any extension of such Over-Advance; and provided further that failure by AR Lender to provide notice (or any required accompanying documentation) to FHA Lender within 5 Business Days shall not subject AR Lender to any liability hereunder nor affect the subordination and lien priorities set forth in this Agreement, and shall not cause any Over-Advance to not constitute an “Allowable Over-Advance” hereunder. FHA Lender will give HUD notice of any notice of an Over-Advance it receives. In no event shall the due date for an Allowable Over-Advance be extended beyond 180 days from the making of the Over-Advance without prior written consent from FHA Lender, provided that FHA Lender shall not provide consent without receiving HUD consent.

(d) Until the AR Loan Obligations are Paid in Full, without the prior written consent of FHA Lender, AR Lender shall not amend, restate, supplement or otherwise modify the AR Loan Documents in any way which, and AR Lender shall not take any action which, (i) results in the creation of any lien, security interest or other encumbrance in any collateral related to the Facility other than the security interests and liens in existence as of the date of this Agreement pursuant to the AR Loan Documents listed on Schedule 1, (ii) conflicts in any way with this Agreement, (iii) adds a term loan facility, equipment loan facility, or any additional credit facility other than the revolving loan facility and letter of credit subfacility set forth in the AR Loan Documents in existence as of the date of this Agreement, (iv) amends the definition of “Obligations” set forth in the AR Loan Agreement on the date hereof, or (v) materially and adversely affects the rights or interests of FHA Lender.

(e) For the avoidance of doubt, but without limiting in any way the agreement of AR Lender set forth in subsection (d) immediately above, FHA Lender agrees that its consent shall not be required for any amendment or modification of any AR Loan Documents that increases the amount of the AR Loan in connection with the joinder of a co-borrower thereunder that is an operator of a nursing and/or assisted living facility that is encumbered by a mortgage loan held or insured by HUD; it being agreed and understood that, such joinder must be approved by HUD.

(f) AR Lender agrees to provide FHA Lender with true, correct and complete copies of any AR Loan Documents, including any amendments thereto, upon written request from FHA Lender. Operator shall provide copies of any and all amendments to the AR Loan Documents to FHA Lender prior to the effective date of any amendment. Nothing in this paragraph shall limit any Operator obligations to receive any necessary consents pursuant to the FHA-Insured Loan Documents.

(g) Notwithstanding anything to the contrary in this Agreement or the FHA-Insured Loan Documents, it is hereby agreed that, without further approval by FHA Lender or HUD: *[INSERT CHANGES/AMENDMENTS TO MATERIAL TERMS, IF ANY, THAT ORCF HAS PRE-APPROVED AND AGREED DO NOT REQUIRE FURTHER HUD CONSENT. FOR EXAMPLE:]*

(i) The AR Loan may be extended, for an additional period or periods, but not beyond *[insert date approved by ORCF]*, and provided that any such extension must be on the same terms and conditions except as set forth in subdivision (ii) hereof, if applicable;

(ii) *[If interest rate change parameters are also approved by ORCF add the following]* Each such extension may be accompanied by an interest rate change, but solely within the following parameters: *[insert parameters approved by ORCF]*;

(iii) A modification or extension entered into in accordance with this Section 2.7(g) shall not be deemed to violate the requirement in the Operator Regulatory Agreement to obtain prior HUD consent to such modification; *provided that*, nothing herein shall be deemed to waive or limit the requirement to obtain such prior consent for any other modification of a Material Term (as defined in the Operator Regulatory Agreement) or any other extensions or interest rate change except as set forth in this Section 2.7(g).

(h) **“Cross-Collateralization between HUD Projects and AR Loan”:**
[Insert ONE of the following three choices, as applicable, and intentionally omit the other two]

(i) *[Alternative 1]* The parties acknowledge that, pursuant to the AR Loan Documents, the Operator and each operator of the Other Facilities is jointly and severally liable for repayment of the AR loan and that the operator collateral related to the Facility and each of the Other Facilities secures the AR Loan; i.e. that the operator collateral regarding the Facility and each of the Other Facilities are cross-collateralized to secure the AR Loan. Such cross-collateralization has been approved by HUD.

(ii) *[Alternative 2]* *[Describe any alternative arrangement approved by HUD. For example, if any operator’s access to AR loan is expressly limited to a particular dollar amount, then the extent of cross-collateralization against such operator may be required to be similarly limited]*

(iii) *[Alternative 3]* *[If the HUD projects are not cross-collateralized insert “Not Applicable”]*

(i) **“Use of HUD projects to Pay or Collateralize Non-HUD Affiliated Obligations Not Permitted”** Notwithstanding anything to the contrary in the AR Loan Documents, unless approved by HUD and set forth in Section 1.7 hereof, AR Lender agrees that AR Lender shall not use or apply any income of or property of any project with an FHA-Insured Loan to pay or collateralize any Non-HUD Affiliated Obligations. For purposes hereof, **“Non-HUD Affiliated Obligations”** shall include any mortgage loan, term loan, line of credit, accounts receivable financing loan, or other credit arrangement from AR Lender (including any syndicate lenders) or its affiliates, to parties that are affiliated with the Operator, the operators of the Other Facilities, the owners of the Facility or Other Facilities, or the Master Tenant.

(j) AR Lender certifies and agrees that (i) the AR Loan Documents do not, and shall not, include any Non-HUD Affiliated Obligations as part of the AR Loan Obligations, and shall not amend its documents to include any such terms at any time without express, specific prior HUD written approval, and (ii) neither the Operator, nor the operators of the Other

Facilities, nor any Owner or Master Tenant of the Facility or the Other Facilities (A) are or at any time shall become obligors or guarantors of any such Non-HUD Affiliated Obligations or (B) have granted or shall grant any liens or security interests to secure such Non-HUD Affiliated Obligations.

(k) **“Use of Non-HUD project collateral to Secure HUD AR line”**

Notwithstanding anything to the contrary in the AR Loan Documents, AR Lender agrees that, if and to the extent that non-HUD project collateral secures the AR Loan or any guarantee thereof, the costs of entering into, negotiating, administering and enforcing the documents evidencing such non-HUD collateral, including any protective advances thereunder, shall not be charged to the AR Loan or to the Operator or operators of the Other Facilities.

2.8 FHA-Insured Loan Documents. FHA Lender represents and warrants that as of the date hereof, Schedule 2 sets forth a list of certain material documents evidencing or securing the FHA-Insured Loan(s) and that true, correct and complete copies of the documents listed thereon have been provided to AR Lender and its counsel. FHA Lender agrees to provide AR Lender with true, correct and complete copies of any FHA-Insured Loan Documents, including any amendments thereto, upon written request from AR Lender.

2.9 Deposit Account Control Agreements; Lien Releases.

(a) To the extent required by HUD, any deposit accounts into which the proceeds of Accounts are deposited, shall be subject to deposit account control agreements and/or deposit account instructions and services agreements, with each depository bank maintaining such deposit accounts (each, a “**Depository Bank**”) on terms approved by HUD.

(b) Upon the AR Loan Obligations being Paid in Full, AR Lender agrees to promptly notify the FHA Lender of such event, and AR Lender further agrees that it will execute any and all such termination statements or releases as may be necessary to release any lien on the Operator’s assets, including but not limited to the termination of (or, if FHA Lender and AR Lender are both a party to the same such agreement, release of AR Lender from) any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank of Operator which holds or receives Operator’s Accounts. In the event any Party to this Agreement that has been Paid in Full fails to file any required releases and/or termination statements within ten (10) Business Days of the other Party’s timely demand therefor, the requesting Party hereby is authorized to file a copy of this Agreement in any appropriate UCC financing office as conclusive evidence of such (non-complying) Party’s release of its security interest in the AR Lender Priority Collateral, and any third Party shall be entitled to rely upon the filing of this Agreement as a full and complete release of such Party’s security interest.

(c) Until the AR Loan Obligations are Paid in Full, AR Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank. At such time that the AR Loan Obligations are Paid in Full, FHA Lender will have the exclusive authority to exercise control (unless prohibited by law) over the Deposit Accounts and to provide appropriate instructions to the applicable Depository Bank, and AR Lender will take all necessary steps to effectuate the foregoing, including, but not limited to, providing appropriate instructions to the applicable Depository Bank or terminating any deposit account control agreement, provider account agreement, blocked account agreement or lockbox agreement with any depository bank

of Operator which holds or receives Operator's Accounts. After a Cut-Off Time, the parties agree to coordinate the timing of instructions given to residents and third-party payors that identify new deposit accounts into which payments should be made. Without limiting anything set forth in Section 2.3(a), each of the parties to this Agreement hereby agrees to cooperate and work in good faith with each other in order to effectively and efficiently bill, invoice and collect all Accounts due from Operator's account debtors and to promptly turn over any proceeds of Accounts to the party entitled to such proceeds.

3. REPRESENTATIONS; COVENANTS

3.1 Operator operates the Facility. Operator has granted or will grant a security interest in its Accounts and certain other assets to FHA Lender and HUD (collectively, the "**Senior Secured Parties**") pursuant to the Operator Security Agreement in connection with one or more FHA-Insured Loans provided to Owner.

3.2 AR Lender consents to the Operator Security Agreement and the liens granted in favor of the Senior Secured Parties notwithstanding any contrary provisions of the AR Loan Documents. This Intercreditor Agreement sets forth the relative priorities of AR Lender and the Senior Secured Parties in and to the assets of Operator.

3.3 Subject to the provisions of Section 3.4 below, the Parties acknowledge that funds received by Operator from AR Lender ("**AR Loan Advances**") shall be utilized (i) first, to pay current debt service obligations of Operator to AR Lender with respect to the Facility, (ii) second, to pay Operator's costs of operations with respect to the Facility including, but not limited to, rent and all other payment obligations due under the Owner-Operator Agreement, payroll and payroll taxes, ordinary maintenance and repairs and management and consulting fees to unaffiliated management agents or consultants ("**Current Operating Costs**"); (iii) third, provided that no Event of Default exists under the Owner-Operator Agreement or FHA-Insured Loan Documents, to pay management and consulting fees to affiliated management agents and (iv) after the payment of Current Operating Costs, and consulting fees to affiliated management agents, subject to applicable restrictions, if any, in the AR Loan Documents and the Operator Regulatory Agreement, AR Loan Advances may be distributed to Operator's shareholders, partners, members or owners, as the case may be. [The parties acknowledge that such utilization of Advances may include and is subject to the Master Tenant's rights to reallocate rent payments and the Operator's obligations pursuant to that certain Cross-Default Guaranty entered into by Operator relating to the Facility ("**Cross-Default Guaranty**") and that such reallocated rent payments or payments pursuant to the Cross-Default Guaranty shall be deemed Current Operating Costs for purposes of this Agreement.] Notwithstanding anything to the contrary herein (but subject to any limitations in the AR Loan Documents and the Operator Regulatory Agreement), any distributions made by Operator to Operator's shareholders, partners, members or owners, as the case may be, shall be permitted to the extent, and only to the extent, allowed by that certain Operator Regulatory Agreement executed by Operator in connection with the Facility. AR Lender makes no representations or covenants with respect to Operator's compliance with the terms of this Section 3.3.

[The terms of this Section 3.4 are not standardized and are meant to be revised by the Closing Attorney, with ORCF Closer consent, as agreed to by all parties to reflect the deal-specific circumstances and agreements. Some common provisions are suggested below.]

3.4 AR Loan Advances Payment Structure.

(a) Control of Operator's Deposit Accounts. Operator, FHA Lender and AR Lender agree and certify to the existence of deposit account control agreements or like agreements relating to Operator's deposit accounts: *[Describe deal-specific arrangement as to who has primary control of Operator's deposit accounts.]*

(b) AR Lender funds AR Loan Advances. Operator, FHA Lender and AR Lender agree that no later than the [eighth (8th)] day of each calendar month (*provided that if such day is not a Business Day then on the immediately preceding Business Day*), [upon written request from Operator in accordance with the AR Loan Agreement, AR Lender shall disburse [, by wire transfer of immediately available funds as an Advance (to the extent of *[Availability]*)] to [the account of FHA Lender designated in writing by Operator to AR Lender] [a payment account designated in writing by Operator and from which FHA Lender will either receive an automatic wire or access via the automated clearinghouse system], an amount equal to the Current Impositions, as defined below, as designated in writing to AR Lender by FHA Lender, provided, however, that any Advance made pursuant to this subsection (b) shall be subject to the restrictions set forth in subsection (d) below.

(c) **“Current Impositions”** equals the sum of: [(i) the aggregate rent payable under the Owner-Operator Agreement for such month, [including any reallocated rent payments pursuant to the Master Lease and/or any payments due pursuant to the Cross-Default Guaranty]], [(ii) taxes and insurance due and owing with respect to the Owner-Operator Agreement for such month,] [and] [(iii) deposits to reserves required under the Owner-Operator Agreement.]

(d) AR Lender agrees that it shall make the Advance as described in subsection (b) above unless (i) there is not sufficient *[Availability]*, or (ii) a default or event of default shall exist or be continuing under the AR Loan Agreement, or (iii) Operator fails to satisfy all conditions precedent thereto as set forth in the AR Loan Documents. After payment of the Current Impositions and subject to applicable restrictions in the AR Loan Documents, any remaining Advances may be made as directed by Operator. *[Operator agrees to promptly, but in no event later than the eighth (8th) day of each calendar month (or the immediately preceding Business Day if such day is not a Business Day), notify FHA Lender and Owner in accordance with Section 4.5 if there is not sufficient Availability for AR Lender to make the disbursement set forth in this Section 3.4].*

(e) Use of AR Loan Advances to satisfy FHA-Insured Loan Current Impositions. *[The parties acknowledge that AR Loan Advances shall first be used to pay Current Impositions.]* [FHA Lender shall receive by automatic debit or FHA Lender shall have a right to withdraw from the account to which the AR Loan Advances are made] amounts at least equal to the Current Impositions. FHA Lender agrees to apply amounts received on account of Current Impositions toward payment of Owner's monthly debt service obligations under the FHA-Insured Loan and to fund applicable escrow and reserve requirements, with the balance remaining of the payment so collected, if any, to be remitted by FHA Lender to [Owner] *[promptly] [within two (2) Business Days]* after receipt by FHA Lender.]

(f) Notwithstanding anything in this Agreement (whether express or implied) to the contrary, Senior Secured Parties, Operator and Owner acknowledge and agree that (i) AR Lender shall have no liability to any Senior Secured Parties, Operator or Owner for computation or verification of the Current Impositions nor the actual use of proceeds of AR Loan by Operator, and (ii) none of Senior Secured Parties nor Owner shall be deemed to be a third party beneficiary of any financing relationship between Operator and AR Lender, and Senior Secured Parties and Owner hereby expressly waive and relinquish their respective rights to claim otherwise. Notwithstanding anything herein (whether express or implied) to the contrary, to the extent FHA Lender receives Current Impositions or the proceeds thereof, FHA Lender shall be entitled to retain the same and shall not be required to hold the same in trust or to disgorge the same to AR Lender, irrespective of whether the same constitutes proceeds of AR Lender Priority Collateral. Notwithstanding the foregoing, FHA Lender agrees that in the event AR Lender notifies FHA Lender that Current Impositions are being paid improperly with AR Lender Priority Collateral and not in the manner set forth in this Section 3.4, FHA Lender agrees to hold any such improperly paid amounts received thereafter in trust for AR Lender as AR Lender Priority Collateral.

(g) The signatures of Owner [*insert “, Master Tenant” if Master Lease involved*] and Operator below shall confirm their respective agreement to the collection, payment and disbursement of the amounts set forth herein.

3.5 Except as set forth herein, Operator certifies that there are no proposed agreements, arrangements, understandings or transactions (side deals) outside of the AR Loan Documents that utilize the Accounts of Operator as security for any other obligations. Operator agrees that Operator shall not be a guarantor or party to any other accounts receivable financing agreement without the consent of FHA Lender and HUD.

3.6 Except as set forth herein or as otherwise disclosed to and approved by HUD in writing, (a) AR Lender and Operator certify and agree that there are no existing or proposed agreements, arrangements, understandings or transactions that involve the Facility (side deals) between (i) Operator, [*insert “, Master Tenant” if Master Lease involved*], Owner, or any owner, master tenant, or operator of any of the Other Facilities, or officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or the parent entity of Operator, Master Tenant, Owner, or any owner, master tenant, or operator of any of the Other Facilities, and (ii) AR Lender; (b) FHA Lender and Operator certify and agree that there are no existing or proposed agreements, arrangements, understandings or transactions that involve the Facility (side deals) between (i) Operator (or any of Operator’s officers, members, managers, directors, stockholders, partners, or other interest holders, employees or affiliates, or any member of their respective immediate families, and/or its parent entity), and (ii) FHA Lender; and (c) AR Lender and Operator certify that, notwithstanding anything else in the AR Loan Documents, neither the AR Lender Priority Collateral nor the FHA Lender Priority Collateral shall secure any obligations to the AR Lender, or any of its affiliates (including any lender under the AR Loan Documents), relating to projects other than the Facility or Other Facilities. AR Lender and Operator certify and agree that any and all provisions in the AR Loan Documents that would entitle AR Lender to declare a default under the AR Loan as a result of defaults under other agreements by Operator

or affiliates of Operator (“**Cross-Defaults**”) are set forth on Exhibit B hereto, The Cross-Defaults have been disclosed to and approved by HUD.

4. MISCELLANEOUS

4.1 Beneficiaries. This Agreement is entered into solely for the benefit of AR Lender, FHA Lender, HUD, and their respective successors and assigns, and neither Operator, Owner nor any other persons or entities whatsoever, including but not limited to any third party assignee, investor, incidental beneficiary or any creditor of Operator or Owner (other than HUD), shall have any right, benefit, priority or interest under or because of the existence of this Agreement.

4.2 Amendment. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and shall not be modified, amended or terminated orally but only in writing signed by AR Lender, FHA Lender, Owner and Operator.

4.3 Bankruptcy Financing. In the event of the commencement of a bankruptcy, insolvency or similar type of proceeding filed by or against the Operator (“**Proceeding**”), AR Lender shall have the non-exclusive option (in its sole and absolute discretion) to continue to provide financing (on terms acceptable to AR Lender) to the trustee, other fiduciary or to the Operator as a debtor-in-possession, if AR Lender deems such financing to be in its best interests. The subordination and lien priority provisions of this Agreement shall continue to apply to all AR Lender Priority Collateral arising upon the commencement and during the pendency of such Proceeding without regard as to whether a Cut-Off Time has occurred prior to the commencement of such Proceeding, so that AR Lender shall have a prior lien on all AR Lender Priority Collateral, created before and during such Proceeding (to the extent AR Lender provides such financing during the Proceeding or to the extent Operator is granted the right to use, sell, or otherwise dispose of cash collateral during any such Proceeding), to secure the AR Loans, whether advanced before or during such Proceeding.

4.4 Relative Rights; Cure Rights; Certain Notice Obligations of FHA Lender and AR Lender.

(a) This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, neither AR Lender nor FHA Lender assumes any other duties or responsibilities to the other regarding the financial condition of Operator, Owner or any other party, or regarding any of Operator’s property, or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Operator or Owner under any of the agreements referred to herein. Each of AR Lender and FHA Lender shall be responsible for managing its financial relationships with Operator and Owner, and neither shall be deemed to be the agent of the other for any purpose.

(b) AR Lender and the FHA Lender agree to notify the other of any notice of a “Notice Event” given to their respective borrower under any of the AR Loan Documents or any of the FHA-Insured Loan Documents as applicable; provided, that the failure to provide such notice shall not subject such Party to any liability nor affect the subordination and lien priorities set forth in this Agreement. AR Lender and the FHA Lender shall have the right (but not the obligation) to cure any payment default under the other Party’s documents within ten (10) days after notice thereof. A “**Notice Event**” for purposes of this Section shall mean (i) with regard to

FHA Lender and the FHA-Insured Loan Documents, a default by the borrower thereunder triggering FHA Lender's commencement of assignment to HUD of the FHA-Insured Loan, an acceleration of the FHA-Insured Loan, a foreclosure, or an action for the appointment of a receiver or similar remedy, including any FHA-Insured Loan Triggering Event; (ii) with regard to AR Lender and AR Loan Documents, any event which results in AR Lender having Ceased Funding or accelerating the AR Loan Obligations or the AR Loan Obligations accelerating automatically in accordance with the terms of the AR Loan Documents, including any AR Loan Triggering Event; or (iii) with regard to AR Lender and the AR Loan Documents, if there is insufficient Availability to fund the Current Impositions (as defined above in Section 3.4), at least with respect to the Facility.

4.5 Notices. Any notice or service of process given, or required to be given, pursuant hereto and in connection herewith, including without limitation any notice of any Cut-Off Time, shall be in writing and shall be deemed to be properly given: (a) when personally delivered; (b) the first or second Business Day after the notice is deposited with a nationally recognized overnight courier service with arrangements made for payment of charges for next or second Business Day delivery, respectively; or (c) two Business Days after the date sent by certified mail return receipt requested, in each case addressed to the Party for whom it is intended at its address hereinafter set forth or such address as subsequently provided to all Parties in writing.

If to AR Lender to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

With copies to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

If to FHA Lender to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

With copies to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

If to Owner to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

With copies to: _____

Attn: _____
Telephone: (____) _____
Facsimile: (____) _____

If to Operator to: _____

Attn: _____

Telephone: (____) _____

Facsimile: (____) _____

With copies to: _____

Attn: _____

Telephone: (____) _____

Facsimile: (____) _____

4.6 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together constitute one and the same agreement. Signature transmitted by facsimile or other electronic means shall bind the Parties hereto.

4.7 Authorization. Each individual signatory hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of his or her principal and that he or she executes the Agreement in such capacity and not as a Party. [OPTIONAL: *If AR Loan is syndicated or participated, and the AR Loan Documents are unclear about agent's ability to bind other lenders or whether any lenders or participants may have an identity of interest with Operator, field counsel may request additional reasonable assurances here.*]

4.8 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their legal representatives, successors and assigns, provided, however, that each of the parties hereto further agrees to provide the other party with written notice of any such assignment of the AR Loan and/or the FHA-Insured Loan Documents, respectively. Each of the parties hereto agrees not to assign their rights to the AR Loan and/or the FHA-Insured Loan Documents to Operator or any affiliate of Operator.

4.9 Governing Law. This Agreement and all matters arising out of or related to this Agreement shall be deemed to have been made under, and shall be governed and construed in all respects by, the substantive laws of the State of [enter property or organizational jurisdiction] _____ without regard to principles of conflicts of laws.

4.10 Jurisdiction and Venue. FHA Lender and AR Lender hereby irrevocably consent to the nonexclusive jurisdiction of the State and Federal Courts located in the State of [enter property or organizational jurisdiction] _____ in any and all actions and proceedings arising under or in connection with this Agreement.

4.11 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED BY OR AGAINST ANY

OTHER PARTY(IES) WITH RESPECT TO THE RIGHTS AND OBLIGATIONS SET FORTH HEREIN.

4.12 Severability. If a court of competent jurisdiction in a final determination deems any provision of this Agreement invalid, prohibited or unenforceable, such invalidity, prohibition or unenforceability shall apply only to such provision and only to the extent of such invalidity, prohibition or unenforceability, and shall not render this Agreement or any other provision of this Agreement wholly or partially invalid, prohibited or unenforceable.

4.13 Headings. The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the previous hereof. The statements set forth in the Recital paragraphs are incorporated herein by reference.

4.14 Entire Agreement. This Agreement is the entire agreement among the Parties regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

AR LENDER:

[insert appropriate signature block]

FHA LENDER:

[insert appropriate signature block]

OPERATOR:

[insert appropriate signature block]

OWNER:

[insert appropriate signature block]

MASTER TENANT:

[insert appropriate signature block]

Schedule 1
AR Loan Documents

Schedule 2
FHA-Insured Loan Documents

Schedule 3
List of Other Facilities
(other facilities financed by the AR Loan)

Exhibit A
Form of Cut-Off Time Notice

_____, 20__

Attn: _____

Re: Intercreditor Agreement Dated as of _____, 20__ by and among _____
("AR Lender"), _____ ("FHA Lender"), _____ ("Owner")
and _____ ("Operator") (the "Intercreditor Agreement")

Ladies and Gentlemen:

This letter constitutes the Cut-Off Time Notice described in the Intercreditor Agreement. All capitalized terms used, and not otherwise defined, herein shall have the meanings provided for in the Intercreditor Agreement.

Please be advised that:

an FHA-Insured Loan Triggering Event has occurred as a result of _____

and notice of such FHA-Insured Loan Triggering Event [is provided by this notice] **OR** [has been provided on _____].

an AR Loan Triggering Event has occurred as a result of _____

and notice of such AR Loan Triggering Event was received on _____.

Ceased Funding has occurred as of _____.

This Cut-Off Time Notice applies to the following Facility(ies) and FHA-Insured Loan Nos.:

In accordance with Section [1.11] of the Intercreditor Agreement the Cut-Off Time shall be deemed to occur as of ____ [a.m./p.m.], _____ time, on _____, 20__, unless **extended by HUD [which date and time may be concurrent with, or at any time after, the date when Ceased Funding occurs (even if this notice results in retroactive designation of such Cut-Off Time), but no sooner than 30 days after notice of an FHA-Insured Loan Triggering Event or AR Loan Triggering Event].**

All provisions of the Intercreditor Agreement applicable after the Cut-Off Time shall govern the future relationship of AR Lender, FHA Lender, HUD, Owner, and Operator under the Intercreditor Agreement with respect to the Facility(ies) identified in this Cut-Off Time Notice. Please contact the undersigned at _____ if you have any questions.

Sincerely,

By: _____

cc: _____

Name: _____

Title: _____