

**Addendum to  
Operating Lease  
Section 232**

**U.S. Department of Housing and  
Urban Development  
Office of Healthcare Programs**

OMB Approval No. 9999-9999  
(exp. mm/dd/yyyy)

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LEASE¶**

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. Response to this request for information is required in order to receive the benefits to be derived. 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. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

This Addendum is attached to and made a part of that certain Operating Lease Agreement dated \_\_\_\_\_ 200\_\_ entered into by Owner/Lessor and Lessee (the "Operating Lease"), and amends and/or supplements the Operating Lease. In the event of a conflict between the terms of this Addendum and the Operating Lease, the terms of this Addendum shall govern and control. Capitalized terms used herein but not defined shall have the meanings set forth in the Operating Lease.

**DEFINITIONS**

The following terms shall have the meanings specified below:

"FF&E" means furnishings, fixtures and equipment of all kinds used in connection with the Leased Premises, including additions, substitutions and replacements thereto.

"FHA" means the Federal Housing Administration.

"Health Care Requirements" shall mean, relating to the Leased Premises, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Leased Premises or any part thereof as a health care facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with health care authorities pertaining to the Leased Premises.

"HUD" means the U.S. Department of Housing and Urban Development.

"HUD Program Requirements" means all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD handbooks, notices and mortgagee letters that apply to the Leased Premises, including all updates and changes to such handbooks, notices and mortgagee letters that apply to the Leased Premise, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.

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"Leased Premises" means all the land located at, and known and identified as \_\_\_\_\_, said premises being situated in \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_, and more particularly described in Exhibit attached to this Lease, together with any additions thereto and substitutions therefore, and any buildings, improvements, betterments, all FF&E and other property, real or personal, now existing or at any time acquired, constructed or located thereon, and all easements and other rights appurtenant thereto.

"Lender" means [Enter name of FHA Lender], and any future holder of the Mortgage.

"Lessee" means [Enter name of Lessee].

"Lessee Regulatory Agreement" means the Regulatory Agreement-Nursing Homes entered into by and between the Lessee and FHA with respect to the Leased Premises and any riders, amendments and supplements thereto.

"Lessee Security Agreement" means that certain Lessee Security Agreement between Lessee and Lender with respect to the Leased Premises and any amendments or supplements thereto.

"Material Term" is a term in a loan or security agreement that:

- 1) extends the maturity date of the loan;
- 2) adds guarantors to the loan;
- 3) releases guarantors from the loan;
- 4) adds borrowers to the loan;
- 5) adds an interest reserve to the loan;
- 6) amends the interest rate payable on the outstanding principal balance of the loan;
- 7) increases or decreases the principal amount of the loan;
- 8) adds collateral as additional security for the loan; and/or
- 9) amends or expands the type of obligations secured by the loan.

"Mortgage" means that certain mortgage or deed of trust from the Owner/Lessor in favor of the Lender with respect to the Leased Premises securing the Mortgage Loan, and any amendments and supplements thereto.

"Mortgage Loan" means the FHA-insured mortgage loan in the original maximum principal amount of up to \$\_\_\_\_\_ made by Lender to the Owner/Lessor, secured, in whole or in part, by the Leased Premises, as the same may be amended, increased or decreased.

"Mortgage Loan Documents" means the Owner/Lessor Regulatory Agreement, the Mortgage, the Promissory Note evidencing the Mortgage Loan executed by the Owner/Lessor in favor of the Lender, the Security Agreement, the Lessee Regulatory Agreement, the Lessee Security Agreement, and any and all other documents required by HUD and/or the Lender in connection with the Mortgage Loan.

"Owner/Lessor" means [Enter name of Owner].

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"Owner/Lessor Regulatory Agreement" means the Regulatory Agreement entered into by and between the Owner/Lessor and HUD with respect to the Leased Premises and any riders, amendments and supplements thereto.

"Security Agreement" means that certain Security Agreement between Owner/Lessor and Lender with respect to the Leased Premises and any amendments and supplements thereto.

### HUD REQUIREMENTS

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1. Precedence of Addendum. For so long as HUD is the holder or insurer of any indebtedness secured by the Leased Premises, the provisions of this Addendum shall apply to this Lease. In the event of any conflict between any provision of this Addendum and any other provision of this Lease, the provision of this Addendum shall be controlling. This Addendum shall not be amended without the prior written consent of HUD and the Lender.

#### 2. Compliance With HUD Program Requirements and Terms of Mortgage Loan Documents.

(a) The Lessee agrees to comply with all applicable HUD Program Requirements and the Mortgage Loan Documents. The Lessee further agrees that this lease will be part of the collateral pledged by Owner/Lessor to Lender & HUD. The Lessee agrees that it will not take any action which would violate any applicable HUD Program Requirements or any of the Mortgage Loan Documents.

(b) In the event of any conflict between the terms and provisions of this Lease Agreement and any applicable HUD Program Requirements or the Mortgage Loan Documents, the HUD Program Requirements and Mortgage Loan Documents shall control in all respects. Owner/Lessor and Lessee agree that no provision of this Lease shall modify any obligation of Owner/Lessor or Lessee under the Mortgage Loan Documents. Owner/Lessor and Lessee acknowledge that HUD's acceptance of this Lease in connection with the closing of the Mortgage Loan shall in no way constitute HUD's consent to arrangements which are inconsistent with HUD Program Requirements. This Lease is subject to all HUD Program Requirements.

#### 3. Subordination.

(a) This Lease is and shall be subject and subordinate to the Mortgage and other Mortgage Loan Documents; to all renewals, modifications, consolidations, replacements and extensions thereof; to all substitutions thereof; and to all future mortgages upon the Leased Premises and/or other security interests in or to the Leased Premises and any other items which are herein leased to Lessee or which, pursuant to the terms hereof, become a part of the Leased Premises or are otherwise deemed to become the property of Owner/Lessor or to remain upon the Leased Premises at the end of the term; and to each advance made or hereafter to be made under any of the foregoing. This Section shall be self-operative and no further instrument of subordination shall be required. Without limiting the foregoing, the Lessee agrees to execute and

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deliver promptly any and all certificates, agreements and other instruments that the Owner/Lessor, Lender or HUD may reasonably request in order to confirm such subordination. Unless the Lender shall have agreed otherwise, if the Lender or another person or entity shall succeed to the interest of the Owner/Lessor by reason of foreclosure or other proceedings brought by Lender in lieu of or pursuant to a foreclosure, or by any other manner (Lender or such other person or entity being called a "Successor"), then this Lease shall terminate, or, at the option of the Successor, this Lease shall nevertheless continue in full force and effect, in which case the Lessee shall and does hereby agree to attorn to the Successor and to recognize the Successor as its landlord under the terms of this Lease.

(b) Agreements for provision of services to the Leased Premises or the granting of easements, rights of way or other allowances of use or placement of CATV, utilities or other items are, and shall always be, subordinate to (i) the right of Owner/Lessor, and (ii) the Mortgage and other Mortgage Loan Documents and all other mortgages and security interests now or hereafter encumbering the Leased Premises and/or the property of which it forms a part. Lessee must obtain HUD written approval prior to entering into any telecommunications services agreement and/or granting of any easements.

4. Ownership of FF&E. Lessee agrees that (a) except leases of FF&E entered into in the ordinary course of business with third-party lessees and property of tenants and residents of the Leased Premises, all FF&E located on the Leased Premises at the date of the Lease is and shall be the property of the Owner/Lessor, and (b) any FF&E acquired by Owner/Lessor or Lessee during the term of this Lease remaining on the Leased Premises at the termination of the Lease shall be and/or become the property of the Owner/Lessor. Lessee agrees, during the term of the Lease, not to remove any FF&E from the Leased Premises, except to replace such FF&E with other similar items of equal or greater quality and value.

5. Payments. Owner/Lessor and Lessee each acknowledges and agrees that the rent and other amounts payable by Lessee under this Lease (including rent, additional rent and all other sums payable under this Lease) are sufficient to properly maintain the Leased Premises, and to enable the Owner/Lessor to meet its debt service obligations and related expenses (including, without limitation, any required deposits to reserves) in connection with the Mortgage Loan and the Leased Premises, and shall be adjusted as appropriate, if necessary, annually to maintain the veracity of this provision. **[INCLUDE IF APPLICABLE: Without limiting the generality of the foregoing, the Lessee agrees to pay, as additional rent, when due all premiums for (i) FHA mortgage insurance, (ii) liability insurance and full coverage property insurance on the Leased Premises, and (iii) all other insurance coverage required under the Mortgage Loan Documents and/or applicable HUD Program Requirements. Unless the Lender and Owner/Lessor agree otherwise, the Lessee shall be responsible for funding all escrows for taxes, reserves for replacements, mortgage insurance premiums and/or other insurance premiums as may be required by the Lender and/or HUD.]**

6. Lessee Regulatory Agreement and Lessee Security Agreement. At the time of the closing of the Mortgage Loan, the Lessee agrees to execute the Lessee Regulatory Agreement and the Lessee Security Agreement, and other applicable documents evidencing the Lender's security interest in the collateral of the Lessee. The Lessee agrees to comply with its obligations under the Lessee Regulatory Agreement and the Lessee Security Agreement, and agrees that a

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default by the Lessee under the Lessee Regulatory Agreement or Lessee Security Agreement shall be deemed to be a default under this Lease.

7. Management Contract Requirements. The Lessee agrees not to enter into any management contract involving the Leased Premises unless such management contract complies with applicable HUD Program Requirements and contains provisions that, in the event of default under the Owner/Lessor Regulatory Agreement or the Lessee Regulatory Agreement, the management agreement shall be subject to termination upon not more than thirty (30) days notice without penalty upon written request of HUD. Upon such HUD termination request, the Lessee shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to HUD for continuing proper management of the Leased Premises.

8. Licenses; Bed Authority. Lessee shall ensure that the Leased Premises meets all state licensure requirements and standards at all times. Owner/Lessor and Lessee agree not to undertake or acquiesce to any modification to any license with respect to the Leased Premises or to any "bed authority" related thereto without the prior written approval of HUD.

9. Governmental Receivables. Lessee shall be responsible for obtaining and maintaining all necessary provider agreements with Medicaid, Medicare and other governmental third party payors. Lessee agrees to furnish HUD and Lender with copies of all such provider agreements and any and all amendments thereto promptly after execution thereof.

10. Financial Statements and Reporting Requirements. Lessee agrees to furnish HUD and Lender copies of its annual financial statements with respect to the Leased Premises, prepared in compliance with the requirements of the Lessee Regulatory Agreement, within ninety (90) days after the close of Lessee's fiscal year or such longer period as may be permitted by HUD. Lessee agrees to submit to HUD and Lender copies of all other financial reports as specified in the Lessee Regulatory Agreement.

11. Inspections. The Lessee agrees that upon reasonable request, the Lender, HUD and their respective designees and representatives may at all reasonable times, upon reasonable notice, subject to the rights of patients, residents and tenants, examine and inspect the Leased Premises. The Lessee will, on the request of the Lender and/or HUD, promptly make available for inspection by the Lender and/or HUD, and their designees and representatives, copies of all of the Lessee's correspondence, books, records and other documentation relating to the Leased Premises, excepting communications between the Lessee and its attorneys. The Lessee agrees to maintain accounting records for the Leased Premises in accordance with its customary practice and the Lessee Regulatory Agreement, separate from any general accounting records which the Lessee may maintain in connection with the Lessee's other activities. The Lessee agrees that the Lender and/or HUD, and their designees and representatives, shall at any reasonable time, have access to and the right to examine all accounting records of the Lessee which relate directly or indirectly to the Leased Premises. The obligations of Lessee under this Section shall be limited to the extent necessary in order for Lessee to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

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12. Insurance; Casualty; Condemnation. The Lessee agrees to procure and maintain, or cause to be procured and maintained, the insurance coverage required pursuant to the Mortgage Loan Documents and/or applicable HUD Requirements, including HUD Notices H 04-01 and H 04-15. Insurance proceeds and the proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the exercise of such power, with respect to the Leased Premises or any portion thereof shall be applied in accordance with the terms of the Mortgage Loan Documents and applicable HUD Program Requirements. The decision to repair, reconstruct, restore or replace the Leased Premises following a casualty or condemnation shall be subject to the terms of the Mortgage Loan Documents and applicable HUD Requirements.

13. Assignment of Operating Lease and Subletting of the Leased Premises. This Lease shall not be assigned or subleased by Lessee, in whole or in part (including any transfer of title or right to possession and control of the Leased Premises, or of any right to collect fees or rents), without the prior written approval of HUD. The prior written approval of HUD shall be required for (a) any change in or transfer of the management, operation, or control of the project or (b) any change in the ownership of the lessee that requires HUD approval under the Department's previous participation approval requirements. Owner/Lessor and Lessee acknowledge that any proposed assignee will be required to execute a Lessee Regulatory Agreement and a Lessee Security Agreement, each in form and substance satisfactory to HUD, as a prerequisite to any such approval. Any assignment or subletting of the Leased Premises made without such prior approval shall be null and void. This restriction on subletting does not apply to Lessee's leasing of individual units or beds to patient / residents.

14. Accounts Receivable (AR) Financing. The Lessee shall not pledge its accounts receivable or receipts to an accounts receivable lender for any loan without the prior written approval of the Lender and HUD. In the event that the Lender and HUD grant such approval; (i) the holder(s) of such lien shall enter into an Intercreditor and a Rider to Intercreditor Agreement with the AR Lender and Lender on such terms and conditions as may be required by HUD; and (ii) Lessee shall agree to comply with the requirements imposed by the Lender and HUD in connection therewith. Until such approved loan is paid in full, the written approval of HUD is required for any proposed modifications, extensions, renewals or amendments to a Material Term of the AR loan or the security agreement, prior to the effective date of such amendments.

15. Termination of Lease. The Lease shall not be terminated prior to its expiration date without the prior written approval of HUD. HUD ~~may~~ terminate ~~or cause the termination of~~ the Lease (A) for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease, (B) for any violation of the Lessee Regulatory Agreement or ~~of~~ other Program ~~Obligations~~ that is not cured within thirty (30) days after receipt by Lessee of written notice of such violation or (C) if HUD, as a result of the occurrence of either of the events described in the foregoing items (A) or (B), is required to advance funds for the operation of the facility located on the Leased Premises.

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16. Master Lease. Projects proposed for FHA financing under the Section 232 program that are affiliated by common ownership among Mortgagors and/or Lessee/Operator entities must receive written approval from HUD, and may be required to use a Master Lease between

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the Mortgagor/Landlord and the Master Tenant/Subtenant/Operator. The Master Lease and the HUD Master Lease Subordination Agreement or Master Lease Subordination Non Disturbance Agreement shall be approved by HUD and the Mortgagee. The Master Lease shall only contain Mortgagors and Operators of FHA-insured projects.

17. Notwithstanding any other terms contained in the Lease, in the event of an assignment of the Lease to HUD or FHA, neither HUD nor FHA shall have any indemnification obligations under the Lease. In addition, any payment obligations of HUD or FHA pursuant to the Lease shall be limited to actual amounts received by HUD or FHA, and otherwise not prohibited by applicable law or regulation, including without limitation, the Anti Deficiency Act, 31 U.S.C. § 1341 et seq.

LESSEE SIGNATURE PAGE  
FOR  
HUD ADDENDUM TO OPERATING LEASE

In witness whereof, the undersigned has executed and delivered this Addendum as of the date first above set forth.

LESSEE:

_____ <b>LLC</b> , a _____ limited liability company
By: _____ Name: _____ Title: _____

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OWNER/LESSOR SIGNATURE PAGE  
FOR  
HUD ADDENDUM TO OPERATING LEASE

In witness whereof, the undersigned have executed and delivered this Addendum as of the date first above set forth.

OWNER/LESSOR:

_____ , a _____ corporation
By _____ Name _____ Title _____

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