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

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

Recording requested by:

After recording return to:

Project Name: _____

FHA Project No.: _____

Project Location: _____

Lender: _____

Original Principal Amount of Note: _____

Date of Note: _____

Originally endorsed for insurance under Section

44 This Healthcare Regulatory Agreement – Operator (this “**Agreement**”) is entered into
45 this ___ day of ___, 20___, between ___, a ___ organized and
46 existing under the laws of ___, whose address is ___, its successors, heirs, and
47 assigns (jointly and severally) (“**Operator**”) and the U.S. Department of Housing and Urban
48 Development, acting by and through the Secretary, his or her successors, assigns or designates
49 (“**HUD**”). If Operator is also Borrower, references to “Borrower” herein shall refer to Operator
50 and the Borrower’s Regulatory Agreement, as defined below, is incorporated herein by this
51 reference.

52
53 *[Use the following language when Operator is not the same legal entity as Borrower:*
54 *In consideration of HUD’s consent to the Borrower-Operator Agreement, HUD and Operator*
55 *agree to the terms of this Agreement.]*
56

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

64
65 Violations of this Agreement or Program Obligations may subject Operator and other
66 signatories hereto to adverse actions.

67
68 **Covenants.** Operator and HUD covenant and agree as follows:
69

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

75
76 “**AR Financing Documents**” means the documents approved by HUD evidencing, securing, and
77 made as a condition to any accounts receivable loan to Operator in connection with the Project.

78
79 “**Borrower**” shall mean ___, a ___ organized and existing under the laws of
80 ___, the Borrower in connection with the Project and a party to the Borrower’s Security
81 Instrument. Borrower is sometimes referred to in the Loan Documents or in Program
82 Obligations as the “Owner” or the “Mortgagor.”

83
84 “**Borrower-Operator Agreement**” means any agreement relating to operation of the Healthcare
85 Facility by and between [Borrower *OR* Master Tenant] and Operator, including any Operator
86 Lease.
87

88 “**Borrower’s Regulatory Agreement**” means that certain Healthcare Regulatory Agreement –
89 Borrower dated as of _____, relating to the Project, and made by and between Borrower
90 and HUD.
91

92 “**Borrower’s Security Instrument**” means that certain Healthcare [*Mortgage, Deed of Trust,*
93 *Deed to Secure Debt, or other designation*], Assignment of Leases, Rents and Revenue, and
94 Security Agreement, made by Borrower, relating to the Project.
95

96 “**Business Day**” means any day other than a Saturday or a Sunday, a federal holiday or holiday
97 in the state where the Project is located or other day on which the federal government or the
98 government of the state where the Project is located is not open for business. When not
99 specifically designated as a Business Day, the term “day” shall refer to a calendar day.
100

101 “**Healthcare Facility**” means that portion of the Project operated on the Land as a Nursing
102 Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any
103 other healthcare facility authorized to receive insured mortgage financing pursuant to Section
104 232 of the National Housing Act, as amended, or other applicable federal law, including any
105 commercial space included in the facility.
106

107 “**Healthcare Facility Working Capital**” means current assets of the Healthcare Facility minus
108 current liabilities of the Healthcare Facility, pursuant to Generally Accepted Accounting
109 Principles, as Program Obligations may further clarify or define.
110

111 [“**Master Lease**” means that certain [*Name of Master Lease*], in which the Healthcare Facility is
112 aggregated with other HUD-insured healthcare facilities and leased to the Master Tenant.]
113

114 [“**Master Tenant**” means _____, a _____ organized and existing under the laws of
115 _____, the master tenant pursuant to the Master Lease.]
116

117 [“**Master Tenant’s Regulatory Agreement**” means that certain Healthcare Regulatory
118 Agreement – Master Tenant relating to the Project and entered into by Master Tenant for the
119 benefit of HUD.]
120

121 “**Operator Lease**” means a lease by [Borrower *OR* Master Tenant] to Operator providing for the
122 operation of the Healthcare Facility.
123

124 “**Operator’s Security Agreement**” means that certain Operator Security Agreement dated as of
125 substantially even date herewith, relating to the Project, and made by Operator for the benefit of
126 HUD.
127

128 “**Program Obligations**” means (1) all applicable statutes and any regulations issued by HUD
129 pursuant thereto that apply to the Project, including all amendments to such statutes and
130 regulations, as they become effective, except that changes subject to notice and comment
131 rulemaking shall become effective only upon completion of the rulemaking process, and (2) all
132 current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply
133 to the Project, and all future updates, changes and amendments thereto, as they become effective,

134 except that changes subject to notice and comment rulemaking shall become effective only upon
135 completion of the rulemaking process, and provided that such future updates, changes and
136 amendments shall be applicable to the Project only to the extent that they interpret, clarify and
137 implement terms in this Agreement rather than add or delete provisions from such
138 document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official
139 website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

140
141 **“Project”** means any and all assets of whatever nature or wherever situated related to the insured
142 mortgage loan known by the FHA Project Number listed on the first page of this Agreement,
143 including without limitation the Mortgaged Property, the Healthcare Facility, the Improvements,
144 and any collateral owned by Operator securing the insured mortgage loan.

145
146 **“Reasonable Operating Expenses”** means expenses that arise from the operation, maintenance
147 and routine repair of the Project, including all payments and deposits required under this
148 Agreement and any of the Loan Documents, and that comply with the requirements of 24 C.F.R.
149 232.1007, or successor regulation.

150
151 **“Residential Agreement”** means a lease, admission agreement or other resident agreement
152 between Operator and a resident setting forth the terms of the resident's living arrangements and
153 the provision of any related services.

154
155 **2. SUBORDINATION.** Any Borrower-Operator Agreement shall be subject and
156 subordinate to this Agreement, the Borrower's Security Instrument, [the Master Tenant's
157 Regulatory Agreement,] the Operator's Security Agreement, and the Borrower's Regulatory
158 Agreement. Operator shall make payments under any Borrower-Operator Agreement when due.
159 If and for so long as payments by Operator to [Borrower *or* Master Tenant], including without
160 limitation any rent due pursuant to an Operator Lease, are required pursuant to a Borrower-
161 Operator Agreement, such payments shall be sufficient to allow [Master Tenant to pay Borrower
162 pursuant to the Master Lease such amounts as shall be sufficient to allow] Borrower to pay all
163 Borrower's required mortgage loan payments, including without limitation, any payments to
164 reserves or escrows for taxes or insurance, payments to replacement reserves, payments to debt
165 service reserves and/or escrows, and to fund any maintenance and/or repairs for which Borrower
166 has responsibility.

167
168 **3. APPROVED USE; PERMITS AND APPROVALS.**

169
170 (a) As used herein, **“Approved Use”** means the use of the Project for the operation of
171 the Healthcare Facility as a _____ [insert type of facility] [with _____
172 [beds/units] [of which not less than _____ [beds/units] are [to be] in use] and such other
173 uses as may be approved in writing from time to time by HUD based upon a request made by
174 Borrower [, Master Tenant] or Operator, but excluding any uses that are discontinued with the
175 written approval of HUD. Operator shall operate the Healthcare Facility in accordance with the
176 Approved Use.

177
178 (b) As used herein, **“Permits and Approvals”** means and includes all certificates of
179 need, bed authority, provider agreements, licenses, permits and approvals reasonably necessary

180 to operate the Healthcare Facility or to fund the operation of the Project for the Approved Use.
181 The security interests granted pursuant to the Operator's Security Agreement referred to in
182 Section 21 hereof shall constitute, to the extent permitted by law, a first lien upon all of
183 Operator's rights, titles and interest, if any, in the Permits and Approvals. However, in the event
184 of either a monetary or other default under this Agreement, the Borrower's Regulatory
185 Agreement, any other regulatory agreement made for the benefit of HUD relating to the Project,
186 or any note or security instrument with respect to the Project that is insured or held by HUD,
187 Operator shall cooperate in any legal and lawful manner necessary or required to permit the
188 continued operation of the Healthcare Facility for the Approved Use including, as determined by
189 HUD, in consultation with Lender, the necessary conveyance, assignment or transfer of the
190 Permits and Approvals. For the intents and purposes herein, Operator hereby irrevocably
191 nominates and appoints HUD, and with HUD's prior written approval, Lender, and the
192 respective successors and assigns of each in its own capacity, as Operator's attorney-in-fact
193 coupled with an interest to do all things that any such attorney-in-fact deems to be necessary or
194 appropriate in order to facilitate the continued operation of the Healthcare Facility for the
195 Approved Use, including but not limited to the power and authority to provide any and all
196 information and data, pay such fees as may be required, and execute and sign in the name of
197 Operator, its successors or assigns, any and all documents, as may be required by any
198 governmental entity exercising jurisdiction over the Project. Operator shall not alter or
199 terminate, or suffer or permit the alteration, relinquishment or termination of any of the Permits
200 and Approvals that are issued or held in the name of Operator without the prior written consent
201 of HUD. In the event that any such alteration, relinquishment or termination is proposed, upon
202 learning of such proposed alteration, relinquishment or termination, Operator shall advise HUD
203 and Lender promptly.

204
205 (c) Except as otherwise provided below or in Program Obligations, Operator shall
206 electronically deliver, within two (2) Business Days after Operator's receipt thereof, to the
207 assigned HUD personnel and Lender electronically, copies of any and all notices, reports,
208 surveys and other correspondence (regardless of form) received by Operator from any
209 governmental entity that includes any statement, finding or assertion that (i) Operator (or any
210 principal, officer, director or employee of Operator), any management agent, the Healthcare
211 Facility, or any portion of the Project is or may be in violation of or default under any of the
212 Permits and Approvals or any governmental requirements applicable to the operation of the
213 Healthcare Facility, (ii) any of the Permits and Approvals are to be terminated, limited in any
214 way, or not renewed, (iii) any civil money penalty is being imposed with respect to the
215 Healthcare Facility, or (iv) Operator (or any principal, officer, director or employee of Operator),
216 any management agent, the Healthcare Facility, or any portion of the Project is subject to any
217 governmental investigation or inquiry involving fraud. Operator shall also deliver to the
218 Project's HUD-assigned personnel and Lender, simultaneously with delivery thereof to any
219 governmental authority any and all responses given by or on behalf of Operator to any of the
220 foregoing and shall provide to the HUD personnel and Lender, promptly upon request, such
221 information regarding any of the foregoing as HUD or Lender may request. Unless otherwise
222 requested by HUD, the reporting requirements of this provision shall not encompass regulators'
223 communications relating solely to licensed nursing facility surveys where the most severe
224 citation level is at the "G" level or its equivalent (pursuant to CMS State Operations Manual,
225 Chapter 7, as may hereafter be edited or updated, or any successor guidance) unless a citation at

226 such level is either (i) unresolved from the two most recent consecutive prior surveys, or (ii) is a
227 repeat violation having the same citation number. Moreover, unless otherwise requested by
228 HUD or Lender, the initial communication from the Operator pursuant to this paragraph shall be
229 a notice by email to the Lender describing the conduct cited, the scope and duration of
230 remedy(ies) imposed, and the timelines for corrective actions. Then, unless otherwise requested
231 by HUD or Lender, the next communication from the Operator shall be notification that the
232 citations have been cleared by the issuing regulatory agency. The receipt by HUD and/or Lender
233 of notices, reports, surveys, correspondence and other information shall not in any way impose
234 any obligation or liability on HUD, Lender or their respective agents, representatives or
235 designees to take (or refrain from taking) any action, and HUD, Lender and their respective
236 agents, representatives and designees shall have no liability for any failure to act thereon or as a
237 result thereof. When providing required information to HUD or Lender, Operator shall be
238 responsible for redacting any and all personally identifiable resident information, per the Health
239 Insurance Portability and Accountabiliy Act (HIPAA) requirements.

240
241 (d) Operator shall at all times maintain in full force and effect the Permits and
242 Approvals. Without the prior written consent of HUD, Operator shall not convey, assign,
243 encumber, transfer, relinquish or alienate from the Project any of the Permits and Approvals.
244 Operator shall ensure that the Healthcare Facility is at all times operated in accordance with the
245 requirements of the Permits and Approvals, and that none of the Permits and Approvals is placed
246 at risk of suspension, revocation, rescission, termination or limitation, as evidenced by, without
247 limitation, any communication from regulatory or funding entities so indicating.

248
249 (e) Without limiting the generality of any other provision of this Agreement, within
250 two (2) Business Days after written request by HUD or Lender, Operator shall deliver to HUD or
251 Lender, as applicable, any financial or operational reports, or other information relating to the
252 performance of the Healthcare Facility that HUD or Lender, respectively, each in its discretion,
253 deems relevant to risk assessment, including without limitation any Medicare or Medicaid cost
254 reports. To the extent such reports or other information indicate, in HUD's or Lender's
255 respective determination, that mitigating action is necessary in order to preserve the Permits and
256 Approvals or otherwise to provide for operation of the Healthcare Facility in accordance with
257 Program Obligations, Operator shall take such mitigating action immediately.

258
259 **4. PROFESSIONAL LIABILITY INSURANCE.** Operator shall maintain, and/or
260 cause to be maintained, professional liability insurance that complies with Program Obligations.
261 Annually, upon such time periods as set forth in Program Obligations, Operator shall provide, or
262 cause to be provided, to HUD and Lender, a certification of compliance with such professional
263 liability insurance requirements, as approved by HUD.

264
265 **5. CONDITION OF THE HEALTHCARE FACILITY.**

266
267 (a) Operator shall maintain in decent, safe and sanitary condition and good repair the
268 Healthcare Facility and any other parts of the Project for which Operator is responsible for
269 maintaining pursuant to any Borrower-Operator Agreement.

271 (b) Operator shall not remodel, reconstruct, add to, or demolish, without prior consent
272 of HUD, any part of the Project or subtract from any real or personal property of the Project,
273 except in the ordinary course of business and which do not materially impair the value of the
274 Project.

275
276 (c) Operator shall not use any portion of the Project for any purpose except the
277 Approved Use.

278
279 (d) Operator shall permit HUD and/or Lender, or the designee of either, to conduct a
280 physical inspection of the Healthcare Facility at any reasonable time upon reasonable notice.

281
282 (e) If the Healthcare Facility is an Assisted Living Facility, no more than one person
283 shall occupy any residential unit of the Healthcare Facility unless Operator receives prior written
284 consent from all residents of such unit.

285 286 **6. CONSULTANTS.**

287
288 (a) If, based on review of financial information, state regulatory communications
289 and/or other data, HUD determines that a Project Operating Deficiency exists, HUD may
290 provide Operator with written notice that the Operator must select and engage (at the Operator's
291 expense and subordinate to all Reasonable Operating Expenses of the Healthcare Facility),
292 within ten (10) Business Days of such notice, the services of a management consultant (the
293 "**Consultant**") who is not an Affiliate with either Borrower or Operator. The Consultant must be
294 approved in writing by HUD (upon selection of the Consultant, Operator will give notice to
295 HUD, who will accept or reject the Consultant within three (3) Business Days), based upon the
296 review of the Consultant's directly relevant work experience, capacity, costs, and other relevant
297 factors. For purposes herein, any of the following circumstances constitute a Project Operating
298 Deficiency:

- 299
300 (i) Operator fails to make any payments pursuant to any Borrower-Operator
301 Agreement, if such payments are intended to be used by Borrower to make
302 the required debt service payments pursuant to the Loan Documents and if
303 such failure, in HUD's sole determination, has a materially adverse effect
304 on the Project;
- 305 (ii) Debt service coverage, as calculated in accordance with HUD
306 underwriting procedures, is below 1.0 for one quarter and if, upon request
307 by HUD or lender, the operator does not promptly provide a plan that is
308 acceptable to HUD to improve financial operations;
- 309 (iii) Centers for Medicare and Medicaid Services ("**CMS**"), or any applicable
310 or successor authority, or its agent, issues a notice to Operator of a denial
311 of payments by CMS (or a fiscal intermediary) for new admissions at the
312 Healthcare Facility and either (1) HUD concludes that the operator is not
313 diligently and adequately working to address such denial of payments or
314 (2) despite operator effort such denial is not released within one hundred
315 twenty (120) days;

- 316 (iv) CMS, or its agent, designates the Healthcare Facility to be a “Special
317 Focus Facility” or another governmental authority has made an equivalent
318 designation;
319 (v) A notice is issued to Operator of a proposed denial, proposed refusal to
320 issue, or proposed termination of the Permits and Approvals for the
321 Healthcare Facility and either (1) HUD concludes that the operator is not
322 diligently and adequately working to address the matter or (2) despite
323 operator effort that proposed denial, proposed refusal to issue or proposed
324 termination is not rescinded within 120 days; or
325 (vi) A second revisit survey is required as a result of failure to clear
326 deficiencies cited in any survey or equivalent examination by any
327 applicable government authority.
328

329 (b) The Consultant shall review the management of the Healthcare Facility and,
330 subject to applicable legal requirements governing the confidentiality of patient records, have
331 complete access to the Healthcare Facility and its records, offices and facilities in order to carry
332 out its duties under such engagement. Operator shall instruct Consultant to prepare and deliver
333 to HUD, the Lender, and Operator a written report, in a format approved by HUD, of the
334 Consultant’s findings and recommendations related to the operational and/or financial
335 deficiencies noted in HUD’s written notice to Operator, within thirty (30) calendar days after its
336 engagement.
337

338 (c) Operator shall, within twenty (20) Business Days of receiving Consultant’s report,
339 implement any and all reasonable recommendations, as approved by HUD in consultation with
340 Operator, Lender, and Borrower, made by the Consultant to address any performance
341 deficiencies, provided however, in no event shall Operator implement any recommendations that
342 are in conflict with Program Obligations or otherwise not in compliance with this Agreement or
343 any other legal requirements.
344

345 (d) HUD’s decision to require or not require the engagement of a Consultant is within
346 HUD’s sole discretion and such decision shall not affect or limit any of HUD’s other rights and
347 remedies, nor cause HUD to be deemed the operator of the Healthcare Facility.
348

349 **7. RISK MANAGEMENT PROGRAM.** In accordance with Program Obligations,
350 Operator shall implement and maintain a risk management program which incorporates a real-
351 time incident reporting and tracking system that informs Operator’s senior management of all
352 incidents with the potential to expose the Operator to liability for personal injury or other
353 damages. Each incident must be reviewed by Operator’s appropriately-trained professional staff,
354 and such staff must follow-up on incidents as necessary. The risk management program must
355 include appropriate training for Operator’s staff.
356

357 **8. NOTICE OF VIOLATION AND EVENT OF DEFAULT.**
358

359 (a) Subject to subsection (c) below, upon any violation of any provision of this
360 Agreement by Operator, HUD may give written notice (“Notice of Violation”) thereof to
361 Operator, with a copy to Borrower and Lender. Operator shall have thirty (30) days following

362 receipt of such notice in which to cure any such violation, provided that HUD shall extend such
363 thirty (30) day period by such time as HUD may reasonably determine is necessary to correct the
364 violation for so long as, HUD determines, in its reasonable discretion, that: [*if there is an*
365 *identity of interest*: (i) Borrower is timely satisfying all payment obligations in the Loan
366 Documents] OR [*if there is no identity of interest between Borrower and Operator*:
367 (i) Operator is timely satisfying all payment obligations in the Borrower-Operator Agreement];
368 (ii) none of the Permits and Approvals material to the operation of the Healthcare Facility is at
369 substantial and imminent risk of being terminated, suspended or otherwise restricted in such a
370 way that such termination, suspension or restriction would have a materially adverse effect on
371 the operation of the Healthcare Facility; (iii) such violation cannot reasonably be corrected
372 during such thirty (30) day period, but can reasonably be corrected in a timely manner, and
373 (iv) cure is commenced during such thirty (30) day period and thereafter diligently and
374 continuously pursued. If upon the expiration of such cure period, the violation has not been
375 cured to HUD's satisfaction, HUD may, without further notice, declare an Event of Default.

376
377 (b) Upon declaring an Event of Default hereunder, HUD may without limitation:

- 378
379 (i) Terminate or cause the termination of any Borrower-Operator Agreement,
380 seek the appointment of a receiver for the Healthcare Facility, and/or
381 require Borrower to immediately procure a replacement operator
382 (including an interim operator where appropriate).
383 (ii) Apply to any court, state or federal, for specific performance of this
384 Agreement, for an injunction against any violation of this Agreement, or
385 for such other relief as may be appropriate.
386

387 (c) Notwithstanding any other provisions of this Agreement, if HUD determines at
388 any time that any of the Permits and Approvals are at substantial and imminent risk of being
389 terminated, suspended or otherwise restricted, if such termination, suspension, or other
390 restriction would have a materially adverse effect on the Project, including without limitation,
391 HUD's determination that there is a substantial risk that deficiencies identified by applicable
392 state and/or federal regulatory and/or funding agencies cannot be cured in such manner and
393 within such time periods as would avoid the loss, suspension, or diminution of any Permits and
394 Approvals that would have a materially adverse effect on the Project, or if HUD determines at
395 any time that the health and safety of the residents of the Healthcare Facility are at substantial
396 and imminent risk, then HUD may immediately (without thirty (30) days notice) declare an
397 Event of Default of this Agreement and may immediately proceed to take actions pursuant to
398 subsections (b)(i) and/or (b)(ii) above.
399

400 (d) Operator agrees that, in the event that HUD requires a replacement operator
401 pursuant to this Agreement, Operator shall cooperate with such replacement and take all actions
402 necessary to (i) provide for an orderly transition to the replacement operator of licensed
403 operations with applicable Medicare and Medicaid certifications intact, (ii) maintain normal
404 operations, (iii) avoid displacement of residents, and (iv) transfer all transferable provider
405 agreements to the replacement operator. Upon completion of transition as determined by HUD,
406 [Borrower or Master Tenant] shall terminate any Borrower-Operator Agreement and Operator
407 hereby agrees to waive any termination fees and penalties due to Operator if the termination is at

408 the direction of HUD. Operator acknowledges that such termination is consistent with the
409 provisions of any Borrower-Operator Agreement.

410
411 (e) Notwithstanding any other provisions of this Agreement, upon receipt of a Notice
412 of Violation pursuant to section 8(a), no funds derived from or in connection with the operation
413 of the Healthcare Facility may be distributed, advanced, or otherwise used for any purpose other
414 than, as applicable, (i) making payments to Borrower [or Master Tenant] due pursuant to any
415 Borrower-Operator Agreement, (ii) making payments required to be made under the Loan
416 Documents, (iii) making payments pursuant to any of the AR Financing Documents, and (iv)
417 making payments for Goods and Services, provided that payments for Goods and Services shall
418 be subject to the limitations set forth in Section 20(e).

419
420 **9. PAYMENT OF DEBTS BY OPERATOR.** Operator acknowledges that the
421 viable operation of the Healthcare Facility, and thus the preservation of the security for the
422 insured Loan, depends upon timely satisfaction of debts incurred related to the operation of the
423 Healthcare Facility. In addition to fully complying with any payment obligations in any
424 Borrower-Operator Agreement, Operator shall timely pay all debts incurred related to the
425 operation of the Healthcare Facility, provided, Operator may withhold payments of amounts due
426 vendors for operational expenses that Operator, in good faith, disputes.

427
428 **10. PAYMENTS FOLLOWING NOTICE OF DEFAULT.** In the event that
429 Operator receives a written notice from HUD or Lender (i) stating that a default exists under the
430 Borrower's Regulatory Agreement [, Master Tenant's Regulatory Agreement,] or any note or
431 security instrument with respect to the Project that is insured or held by HUD, and (ii) directing
432 Operator to make future payments due under any Borrower-Operator Agreement to HUD or
433 Lender, Operator shall thereafter make all future payments under any Borrower-Operator
434 Agreement to HUD or Lender as so directed.

435
436 **11. TRANSFERS.** The prior written approval of HUD shall be required for (a) any
437 assignment of a Borrower-Operator Agreement; (b) any change in or transfer of the management
438 agent of the Project or the Healthcare Facility or (c) any change in the ownership or control of
439 Operator which requires HUD approval under Program Obligations.

440
441 **12. BORROWER-OPERATOR AGREEMENT TERMINATION AND/OR**
442 **AMENDMENT.** This Section 12 shall not apply if Borrower is Operator.

443
444 (a) Without the prior written approval of HUD, a Borrower-Operator Agreement
445 shall not be assigned or terminated prior to the expiration date thereof. In the event of any
446 assignment of a Borrower-Operator Agreement, as a condition to such assignment, the new
447 Operator must execute a Healthcare Regulatory Agreement – Operator (Form HUD-92466A-
448 ORCF), as approved by HUD, an Operator Security Agreement (Form-HUD-92323-ORCF) and
449 deposit account control agreements in form and substance satisfactory to Lender and HUD.

450
451 (b) Without the prior written approval of HUD, a Borrower-Operator Agreement
452 shall not be amended so as to (i) materially increase any management fees or other payments
453 paid by Borrower [or Master Tenant] thereunder, (ii) materially increase the obligations of

454 Borrower [or Master Tenant] or the rights of Operator, (iii) materially decrease the rights of
455 Borrower [or Master Tenant] or the obligations of Operator, or (iv) alter any provision of any
456 Borrower-Operator Agreement that HUD required to be included therein. Prior written notice of
457 and subsequent executed copies of all amendments to any Borrower-Operator Agreement shall
458 be promptly provided to HUD and the Lender.
459

460 **13. MANAGEMENT AGREEMENTS.** No property management agreement
461 relating to the Healthcare Facility or any portion of the Project (“**Management Agreement**”)
462 shall be executed unless such Management Agreement is approved by HUD and includes HUD-
463 92071-ORCF, Management Agreement Addendum . Any management agent must be approved
464 by HUD and must execute and deliver a Management Agent Certification – Residential Care
465 Facilities (form HUD-9839-ORCF, or successor form) in such form as approved by HUD. Any
466 Management Agreement shall contain the following provisions: (1) the Management
467 Agreement shall terminate without penalty upon failure to comply with the provisions of the
468 Management Agent Certification to HUD, or for other good cause, including without limitation
469 for violations of the Borrower’s Regulatory Agreement, Operator’s Regulatory Agreement,
470 and/or Master Tenant’s Regulatory Agreement, if any, thirty (30) days after HUD has mailed the
471 Operator a written notice of its desire to terminate the Management Agreement; (2) in the event
472 that HUD determines that any of the Permits and Approvals reasonably necessary to operate the
473 Healthcare Facility is at substantial and imminent risk of being terminated, suspended or
474 otherwise restricted, if such termination, suspension or other restriction would have a materially
475 adverse effect on the Project, the Management Agreement shall terminate immediately without
476 penalty upon HUD’s issuance of a notice of termination to Operator and Agent; and (3) the
477 Management Agreement may not be assigned without the prior written approval of HUD. Upon
478 request for termination, Operator shall immediately arrange to terminate any such Management
479 Agreement and shall make arrangements satisfactory to HUD for the continuing proper
480 management of the Healthcare Facility and the Project. Any material amendment to the
481 management agreement must be acceptable to HUD, in accordance with Program Obligations.
482

483 **14. PROHIBITION OF CERTAIN FEES.** Except as permitted by Program
484 Obligations or otherwise approved by HUD, Operator shall not charge any resident of the
485 Healthcare Facility an admission fee, key fee, finder’s fee, continuing care retirement community
486 fee, life-care fee or similar fee pursuant to any agreement to furnish residential units or services
487 to persons making such payments.
488

489 **15. SECURITY DEPOSITS AND OTHER FEES.** Except as permitted by
490 Program Obligations or otherwise approved by HUD, Operator shall not require as a condition of
491 occupancy or leasing of any unit in the Healthcare Facility, any consideration or deposit,
492 provided that Operator may require the prepayment of the first month’s rent plus a security
493 deposit in an amount not in excess of one month’s rent, to guarantee the performance of any
494 tenant lease terms. Operator may charge (i) application processing fees such as credit check or
495 criminal background fees, (ii) fees for assessing the condition of potential residents in order to
496 determine their suitability for residing in the Healthcare Facility, and/or (iii) pet deposits.
497

498 **16. SUBLEASES.** Except for Residential Agreements and as provided in Section 17,
499 Operator shall not lease or sublease the Project or any part thereof without the prior written
500 consent of HUD.

501
502 **17. COMMERCIAL (NON-RESIDENTIAL) LEASES.** No portion of the Project
503 shall be leased for any commercial purpose or use without receiving HUD's prior written
504 approval as to terms, form and amount, except for commercial leases for support or ancillary
505 services which are subordinate to the Borrower's Security Instrument, have terms of not more
506 than five (5) years and otherwise comply with Program Obligations. Operator shall deliver an
507 executed copy of any commercial lease to HUD and Lender within thirty (30) days after its
508 effective date.

509
510 **18. AUDITS AND INSPECTIONS.** All portions of the Project, including without
511 limitation all of the Mortgaged Property and any other equipment, buildings, plans, offices,
512 apparatus, devices, books, contracts, records, documents, and other papers relating to the
513 operation of the Healthcare Facility shall at all times be maintained in reasonable condition for
514 proper audit and subject to examination and inspection at any reasonable time by HUD, Lender,
515 or the duly authorized agents of either. Operator shall keep copies of all written contracts or
516 other instruments which affect the Mortgaged Property, all or any of which may be subject to
517 inspection and examination by HUD or its duly authorized agents. The obligations of Operator
518 under this Section shall be limited to the extent necessary in order for Operator to comply with
519 applicable laws regarding the confidentiality of resident/patient medical records and information.

520
521 **19. NON-DISCRIMINATION.** There shall be full compliance with the provisions
522 of (1) any state or local laws prohibiting discrimination in housing on the basis of race, color,
523 ~~creed, or~~ national origin, religion, sex, familial status or disability; and (2) the regulations of
524 HUD providing for non-discrimination and equal opportunity in housing. It is understood and
525 agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD
526 to take any corrective action it may deem necessary including, but not limited to, the refusal to
527 consent to a further renewal of any Borrower-Operator Agreement, the rejection of applications
528 for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which
529 Operator is identified; and further, if Operator is a corporation or any other type of business
530 association or organization which may fail or refuse to comply with the aforementioned
531 provisions, HUD shall have a similar right of corrective action (1) with respect to any individuals
532 who are officers, directors, trustees, managers, partners, associates or principal stockholders of
533 Operator; and (2) with respect to any other type of business association or organization with
534 which the officers, directors, trustee, managers, partners, associates or principal stockholders of
535 Operator may be identified.

536
537 **20. BOOKS, ACCOUNTS, FINANCIAL REPORTS, AND FINANCIAL**
538 **COVENANTS.**

539
540 (a) Operator shall keep the books and accounts of the operation of the Healthcare
541 Facility in accordance with Program Obligations, to the extent not inconsistent with state
542 requirements, which would allow for the audit of the Project. Financial records of Operator and
543 the Healthcare Facility shall be complete, accurate and current at all times. Posting must be

544 made at least monthly to the ledger accounts, and year-end adjusting entries must be posted
545 promptly in accordance with sound accounting principles. All expenditures in connection with
546 the Healthcare Facility must be fully documented so as to provide reasonable assurance to all
547 persons or entities that review such expenditures that such expenditures are Reasonable
548 Operating Expenses. Undocumented expenses shall not be considered Reasonable Operating
549 Expenses.

550
551 (b) Except as provided in the AR Financing Documents or as otherwise approved by
552 HUD, Operator must deposit in an operating account in the Operator's name, in trust for the
553 Project, (the "**Healthcare Facility Operating Account**") all revenue it receives in connection
554 with the business it conducts with respect to the Healthcare Facility or in a general collection
555 account maintained for Operator and affiliated operators, provided deposits to such general
556 collection account can be traced to the applicable facility that generated such deposit. If HUD
557 determines that such deposits cannot be reliably and readily so traced, HUD may direct Operator
558 to deposit such funds in a segregated operating account. The account must be with a financial
559 institution whose deposits are insured by an agency of the federal government, provided that an
560 account held in an institution approved by the Government National Mortgage Association may
561 have a balance that exceeds the amount to which such deposit insurance is limited. Operator
562 may transfer funds from the Healthcare Facility Operating Account to one or more central
563 disbursement or other accounts (which need not be in the name of Operator) in which such funds
564 are commingled with other funds, provided that a complete and accurate accounting of such
565 funds (including deposits and disbursements) is maintained.

566
567 (c) Unless otherwise specified by HUD, Operator shall submit to HUD and Lender,
568 on a quarterly and year-to-date basis (or more frequently if specified by HUD), prepared and
569 certified by an authorized representative or agent of Operator, such financial reports relating to
570 the operation of the Healthcare Facility (including, but not limited to, financial statements,
571 accounts receivable/payable aging reports and occupancy reports) in the formats and at such
572 times as may be approved by HUD in accordance with Program Obligations. Such reports must
573 be submitted no later than sixty (60) days after the period covered by the reports, except for
574 reports relating to the final quarter of each year, which shall be submitted no later than ninety
575 (90) days after end of the fiscal year. Such reports are subject to the sanctions contained in 18
576 U.S.C. Sections 1001, 1010, and 1012. Operator shall submit to HUD and Lender,
577 simultaneously with any such report that demonstrates negative Healthcare Facility Working
578 Capital, a plan to restore positive Healthcare Facility Working Capital.

579
580 (d) If Operator (or any direct or indirect principal of Operator) is required to provide
581 an audited financial statement to any lender, Operator shall simultaneously provide copies of
582 such audited financial statements to HUD and Lender. If HUD has reason to believe that
583 particular Operator-certified statements may be unreliable (for example, indicate a likely
584 prohibited use of funds of the Project), or are presented in a manner that is inconsistent with
585 Program Obligations, HUD may, on a case-by-case basis, require audited financial statements
586 from Operator. Such audited financial statements shall be certified by an independent public
587 accountant, at Operator's expense, and delivered to HUD and Lender within ninety (90) days
588 after HUD's notice to Operator requiring such statements.

589

590 (e) Consistent with Program Obligations, Operator shall obtain, or cause to be
591 obtained, contracts for goods, materials, supplies, and services (“**Goods and Services**”) at costs,
592 amounts, and terms that do not exceed reasonable and necessary levels and those customarily
593 paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods
594 and Services shall be based on quality, durability and scope of work. Reasonable Operating
595 Expenses do not include amounts paid for betterments as defined in the Project’s jurisdiction or
596 improvements unless determined by HUD to be prudent and appropriate. If the Operator is
597 acquiring Goods and Services whose costs exceed five percent (5%) of the gross annual revenue
598 of the Healthcare Facility, Operator shall solicit written cost estimates. Operator shall keep
599 copies of all written cost estimates and contracts or other instruments relating to the Project, all
600 or any of which may be subject to inspection and examination by HUD at the Healthcare Facility
601 or other mutually agreeable location.
602

603 (f) If a quarterly/year-to-date financial statement demonstrates negative Healthcare
604 Facility Working Capital as defined by HUD, or if Operator fails to timely submit such
605 statement, then until a current quarterly, year-to-date financial statement demonstrates positive
606 Healthcare Facility Working Capital or until otherwise authorized by HUD, no funds derived
607 from or in connection with the operation of the Healthcare Facility may be distributed, advanced,
608 or otherwise used for any purpose other than, as applicable, making payments due pursuant to
609 any Borrower-Operator Agreement and/or Master Lease (if any), making payments required to
610 be made under the Loan Documents, making payments pursuant to any of the AR Financing
611 Documents, and making payments for Goods and Services, provided that payments for Goods
612 and Services shall be subject to the limitations set forth in subsection (e) above.
613

614 (g) At request of HUD, Operator shall give specific answers, satisfactory to HUD, to
615 questions posed from time to time relating to income, assets, liabilities, contracts, operation, and
616 condition of the Healthcare Facility, and shall provide to HUD copies of all books, contracts,
617 records, documents and other papers relating to the Healthcare Facility from time to time as
618 HUD may request.
619

620 (h) Operator acknowledges that the financial information referenced above is
621 necessary for HUD to review from time to time, given the risk inherent in the operation of the
622 Healthcare Facility, and given the necessity of the Operator’s financial and operational stability
623 in order to ensure timely payment of amounts due under the Loan Documents (whether directly
624 from Operator where Operator is the Borrower, or indirectly from amounts due under any
625 Borrower-Operator Agreement where Operator is not Borrower). At HUD’s option, HUD may
626 direct that any financial or operational reports required by this Agreement be submitted to
627 Lender and/or another third party, as directed by Lender or HUD to review such report(s), in
628 addition to or in lieu of submission to HUD.
629

630 **21. UNIFORM COMMERCIAL CODE/LIENS.** Operator shall execute and
631 deliver an Operator Security Agreement (Form HUD-92323-ORCF) in accordance with Program
632 Obligations. Operator shall execute and deliver such deposit account control agreements as may
633 be required by Lender and/or HUD. Operator hereby authorizes each of the Lender and HUD to
634 file such UCC financing statements, amendments and continuation statements as either of them
635 may deem to be necessary or appropriate in connection with the security interests granted

636 pursuant to the Operator's Security Agreement. Except as provided in this Section 21, without
637 the prior written approval of Lender and HUD, Operator shall not be permitted to grant any other
638 liens on any of the property related to the Project. [If the Project includes government
639 receivables, Operator shall be permitted to pledge the Healthcare Facility's accounts receivable
640 to an accounts receivable lender pursuant to AR Financing Documents consented to by Lender
641 and HUD.] In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien
642 shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such
643 terms as consented to by Lender and HUD, including any HUD-required rider, and (ii) Operator
644 and Borrower shall agree to comply with the terms required by Lender and HUD in connection
645 therewith.

646
647 **22. ACCOUNTS RECEIVABLE FINANCING.** No accounts receivable or
648 receipts from the Healthcare Facility may be pledged without prior written approval of Lender
649 and HUD of the terms of such financing and the documents evidencing and securing such
650 financing. In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien
651 shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such
652 terms as consented to by Lender and HUD, and (ii) Operator and Borrower shall agree to comply
653 with the terms required by Lender and HUD in connection therewith. Until the Loan is paid in
654 full, no modifications, extensions, amendments, or renewals on different terms and conditions, to
655 a Material Term, as defined below, of the accounts receivable loan or any accounts receivable
656 related loan document shall take effect without prior written consent of HUD and Lender. For
657 purposes herein, "**Material Term**" shall mean any term of an accounts receivable loan or in any
658 document evidencing or securing such financing that: (1) extends the maturity date of the loan;
659 (2) adds guarantors to the loan; (3) releases guarantors from the loan; (4) adds borrowers to the
660 loan; (5) adds an interest reserve to the loan; (6) amends the interest rate payable on the
661 outstanding principal balance of the loan; (7) increases or decreases the principal amount of the
662 loan; (8) adds collateral as additional security for the loan; and/or (9) amends or expands the
663 type of obligations secured by the loan. In the event of conflict between this Section 22 and any
664 HUD-approved intercreditor agreement, the HUD-approved intercreditor agreement shall
665 control.

666
667 **23. NOTICE.**

668
669 (a) All notices, demands and other communications ("**Notice**") under or concerning
670 this Agreement shall be in writing. A courtesy copy of any Notice, not affecting the validity of
671 such Notice, given by Operator or HUD shall be sent simultaneously to Lender. Any Notice
672 shall be addressed to the intended recipients at their respective addresses set forth herein, and
673 shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the
674 addressee; (2) the first or second Business Day after the Notice is delivered to a recognized
675 overnight courier service, with arrangements made and payment of charges for next or second
676 Business Day delivery, respectively; or (3) the third (3rd) Business Day after the Notice is
677 deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

678
679 (b) Any party to this Agreement and Lender may change the address to which
680 Notices intended for it are to be directed by means of Notice given in accordance with this
681 Section 23. Any Notice hereunder shall be addressed as follows:

682
683
684



DRAFT

685 OPERATOR: [REDACTED]

686

687

688 HUD: [REDACTED]

689

690

691 LENDER: [REDACTED]

692

693 **24. MASTER LEASE SUBORDINATION [NON-DISTRUBANCE AND**
694 **ATTORNMEN] AGREEMENT.** [If a master lease structure, include the appropriate
695 provisions (SNDA used if there is no identity of interest between Borrower and Master Tenant or
696 Operator, Subordination Agreement used if there is an identity of interest): HUD agrees to honor
697 the provisions of [Sections 4, 5, and 7 of that certain Master Lease Subordination, Non-
698 Disturbance and Attorment Agreement] OR [Section 5 of that certain Master Lease
699 Subordination Agreement] relating to the Project by and between Lender and Borrower, among
700 others, insofar as such sections call for HUD's consent or the release of the Project from the
701 Master Lease and/or the Loan Documents, on the terms and subject to the limitations set forth in
702 such sections.]

703

704 **25. COUNTERPARTS.** This document may be signed in counterparts.

705

706 **26. LEGAL DESCRIPTION.** The legal description of the Land is attached hereto
707 as Exhibit A.

708

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

711

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

717

718

719 **OPERATOR**
720 (Insert signature block)

721

722

723 BY: [REDACTED]
724 Name of Authorized Agent

725

726 [REDACTED]
727 Title

727

728

729

730

731 U.S. DEPARTMENT OF HOUSING
732 AND URBAN DEVELOPMENT,
733 acting by and through the Secretary:

734
735 By: _____
736 Name: _____
737 Authorized Agent
738 Office of Residential Care Facilities

739
740
741
742
743
744
745
746
747

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

DRAFT