

Supplemental Healthcare  
Regulatory Agreement –  
Operator  
Section 241(a)

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

OMB Approval No. 2502-0605  
(exp. mm/dd/yyyy)

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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.

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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.

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Recording requested by:

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After recording return to:

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**Project Name:**

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**FHA Project No.:**

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**Project Location:**

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**Lender:**

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**Original Principal Amount of Note:**

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33

**Originally endorsed for insurance under Section**

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**Date of Note:**

35 This Supplemental Healthcare Regulatory Agreement – Operator (this “**Agreement**”) is  
36 entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, a \_\_\_\_\_ organized  
37 and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_, its  
38 successors, heirs, and assigns (jointly and severally) (“**Operator**”) and the U.S. Department of  
39 Housing and Urban Development, acting by and through the Secretary, his or her successors,  
40 assigns or designates (“**HUD**”). If Operator is also Borrower, references to “Borrower” herein  
41 shall refer to Operator and the Borrower’s Regulatory Agreement, as defined below, is  
42 incorporated herein by this reference.

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

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

53 Violations of this Agreement or Program Obligations may subject Operator and other  
54 signatories hereto to adverse actions.

55 **Covenants.** Operator and HUD covenant and agree as follows:

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

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

63 “**Borrower**” shall mean \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of  
64 \_\_\_\_\_, the Borrower in connection with the Project and a party to the Borrower’s Security  
65 Instrument. Borrower is sometimes referred to in the Loan Documents or in Program  
66 Obligations as the “Owner” or the “Mortgagor.”

67 “**Borrower-Operator Agreement**” means any agreement relating to operation of the Healthcare  
68 Facility by and between [Borrower *OR* Master Tenant] and Operator, including any Operator  
69 Lease.

70 “**Borrower’s Regulatory Agreement**” means that certain Supplemental Healthcare Regulatory  
71 Agreement – Borrower dated as of \_\_\_\_\_, relating to the Project, and made by and  
72 between Borrower and HUD.

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

76 “**Business Day**” means any day other than a Saturday or a Sunday, a federal holiday or holiday  
77 in the state where the Project is located or other day on which the federal government or the  
78 government of the state where the Project is located is not open for business. When not  
79 specifically designated as a Business Day, the term “day” shall refer to a calendar day.  
80

81 “**First Lender**” has the meaning set forth in the Borrower’s Security Instrument.  
82

83 “**First Mortgage Documents**” has the meaning set forth in Borrower’s Security Instrument.

84 “**Healthcare Facility**” means that portion of the Project operated on the Land as a Nursing  
85 Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any  
86 other healthcare facility authorized to receive insured mortgage financing pursuant to Section  
87 232 of the National Housing Act, as amended, or other applicable federal law, including any  
88 commercial space included in the facility.

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

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

94 [“**Master Tenant**” means \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of  
95 \_\_\_\_\_, the master tenant pursuant to the Master Lease.]

96 [“**Master Tenant’s Regulatory Agreement**” means that certain Supplemental Healthcare  
97 Regulatory Agreement – Master Tenant relating to the Project and entered into by Master Tenant  
98 for the benefit of HUD.]

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

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

104 “**Program Obligations**” means (1) all applicable statutes and any regulations issued by HUD  
105 pursuant thereto that apply to the Project, including all amendments to such statutes and

106 regulations, as they become effective, except that changes subject to notice and comment  
107 rulemaking shall become effective only upon completion of the rulemaking process, and (2) all  
108 current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply  
109 to the Project, and all future updates, changes and amendments thereto, as they become effective,  
110 except that changes subject to notice and comment rulemaking shall become effective only upon  
111 completion of the rulemaking process, and provided that such future updates, changes and  
112 amendments shall be applicable to the Project only to the extent that they interpret, clarify and  
113 implement terms in this Agreement rather than add or delete provisions from such  
114 document. Handbooks, guides, notices, and mortgagee letters are available on HUD’s official  
115 website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that  
116 site).

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

121 “**Reasonable Operating Expenses**” means expenses that arise from the operation, maintenance  
122 and routine repair of the Project, including all payments and deposits required under this  
123 Agreement and any of the Loan Documents, and that comply with the requirements of 24 C.F.R.  
124 232.1007, or successor regulation.

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

128 **2. SUBORDINATION.** Any Borrower-Operator Agreement shall be subject and  
129 subordinate to the First Mortgage Documents, this Agreement, the Borrower’s Security  
130 Instrument, [the Master Tenant’s Regulatory Agreement,] the Operator’s Security Agreement,  
131 and the Borrower’s Regulatory Agreement. Operator shall make payments under any Borrower-  
132 Operator Agreement when due. If and for so long as payments by Operator to [Borrower *or*  
133 Master Tenant], including without limitation any rent due pursuant to an Operator Lease, are  
134 required pursuant to a Borrower-Operator Agreement, such payments shall be sufficient to allow  
135 [Master Tenant to pay Borrower pursuant to the Master Lease such amounts as shall be sufficient  
136 to allow] Borrower to pay all Borrower’s required mortgage loan payments, including without  
137 limitation, any payments to reserves or escrows for taxes or insurance, payments to replacement  
138 reserves, payments to debt service reserves and/or escrows, and to fund any maintenance and/or  
139 repairs for which Borrower has responsibility.

140 **3. APPROVED USE; PERMITS AND APPROVALS.**

141 (a) As used herein, “**Approved Use**” means the use of the Project for the  
142 operation of the Healthcare Facility as a \_\_\_\_\_ [**insert type of facility – include all types**  
143 **of care**] [with \_\_\_\_\_ [**beds/units – insert total beds/units after completion of the 241(a)**]  
144 [of which not less than \_\_\_\_\_ [**beds/units**] are [**to be**] in use] and such other uses as may  
145 be approved in writing from time to time by HUD based upon a request made by Borrower [,

146 Master Tenant] or Operator, but excluding any uses that are discontinued with the written  
147 approval of HUD. Operator shall operate the Healthcare Facility in accordance with the  
148 Approved Use.

149 (b) As used herein, “**Permits and Approvals**” means and includes all  
150 certificates of need, bed authority, provider agreements, licenses, permits and approvals  
151 reasonably necessary to operate the Healthcare Facility or to fund the operation of the Project for  
152 the Approved Use. The security interests granted pursuant to the Operator’s Security Agreement  
153 referred to in Section 21 hereof shall constitute, to the extent permitted by law, a second lien  
154 upon all of Operator’s rights, titles and interest, if any, in the Permits and Approvals subject only  
155 to the rights of the First Lender under the First Mortgage Documents. However, in the event of  
156 either a monetary or other default under this Agreement, the Borrower’s Regulatory Agreement,  
157 any other regulatory agreement made for the benefit of HUD relating to the Project, or any note  
158 or security instrument with respect to the Project that is insured or held by HUD, Operator shall  
159 cooperate in any legal and lawful manner necessary or required to permit the continued operation  
160 of the Healthcare Facility for the Approved Use including, as determined by HUD, in  
161 consultation with Lender, the necessary conveyance, assignment or transfer of the Permits and  
162 Approvals. For the intents and purposes herein, Operator hereby irrevocably nominates and  
163 appoints HUD, and with HUD’s prior written approval, Lender, and the respective successors  
164 and assigns of each in its own capacity, as Operator’s attorney-in-fact coupled with an interest to  
165 do all things that any such attorney-in-fact deems to be necessary or appropriate in order to  
166 facilitate the continued operation of the Healthcare Facility for the Approved Use, including but  
167 not limited to the power and authority to provide any and all information and data, pay such fees  
168 as may be required, and execute and sign in the name of Operator, its successors or assigns, any  
169 and all documents, as may be required by any governmental entity exercising jurisdiction over  
170 the Project. Operator shall not alter or terminate, or suffer or permit the alteration,  
171 relinquishment or termination of any of the Permits and Approvals that are issued or held in the  
172 name of Operator without the prior written consent of HUD. In the event that any such  
173 alteration, relinquishment or termination is proposed, upon learning of such proposed alteration,  
174 relinquishment or termination, Operator shall advise HUD and Lender promptly.

175 (c) Except as otherwise provided below or in Program Obligations, Operator  
176 shall electronically deliver, within two (2) Business Days after Operator’s receipt thereof, to the  
177 assigned HUD personnel and Lender electronically, copies of any and all notices, reports,  
178 surveys and other correspondence (regardless of form) received by Operator from any  
179 governmental entity that includes any statement, finding or assertion that (i) Operator (or any  
180 principal, officer, director or employee of Operator), any management agent, the Healthcare  
181 Facility, or any portion of the Project is or may be in violation of or default under any of the  
182 Permits and Approvals or any governmental requirements applicable to the operation of the  
183 Healthcare Facility, (ii) any of the Permits and Approvals are to be terminated, limited in any  
184 way, or not renewed, (iii) any civil money penalty is being imposed with respect to the  
185 Healthcare Facility, or (iv) Operator (or any principal, officer, director or employee of Operator),  
186 any management agent, the Healthcare Facility, or any portion of the Project is subject to any  
187 governmental investigation or inquiry involving fraud. Operator shall also deliver to the  
188 Project’s HUD-assigned personnel and Lender, simultaneously with delivery thereof to any

189 governmental authority any and all responses given by or on behalf of Operator to any of the  
190 foregoing and shall provide to the HUD personnel and Lender, promptly upon request, such  
191 information regarding any of the foregoing as HUD or Lender may request. Unless otherwise  
192 requested by HUD, the reporting requirements of this provision shall not encompass regulators'  
193 communications relating solely to licensed nursing facility surveys where the most severe  
194 citation level is at the "G" level or its equivalent (pursuant to CMS State Operations Manual,  
195 Chapter 7, as may hereafter be edited or updated, or any successor guidance) unless a citation at  
196 such level is either (i) unresolved from the two most recent consecutive prior surveys, or (ii) is a  
197 repeat violation having the same citation number. Moreover, unless otherwise requested by  
198 HUD or Lender, the initial communication from the Operator pursuant to this paragraph shall be  
199 a notice by email to the Lender describing the conduct cited, the scope and duration of  
200 remedy(ies) imposed, and the timelines for corrective actions. Then, unless otherwise requested  
201 by HUD or Lender, the next communication from the Operator shall be notification that the  
202 citations have been cleared by the issuing regulatory agency. The receipt by HUD and/or Lender  
203 of notices, reports, surveys, correspondence and other information shall not in any way impose  
204 any obligation or liability on HUD, Lender or their respective agents, representatives or  
205 designees to take (or refrain from taking) any action, and HUD, Lender and their respective  
206 agents, representatives and designees shall have no liability for any failure to act thereon or as a  
207 result thereof.

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

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

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

229           **5.       CONDITION OF THE HEALTHCARE FACILITY.**

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

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

237           (c)       Operator shall not use any portion of the Project for any purpose except  
238 the Approved Use.

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

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

245           **6.       CONSULTANTS.**

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

257           (i)       Operator fails to make any payments pursuant to any Borrower-  
258 Operator Agreement, if such payments are intended to be used by  
259 Borrower to make the required debt service payments pursuant to  
260 the Loan Documents and if such failure, in HUD's sole  
261 determination, has a materially adverse effect on the Project;

262           (ii)       Debt service coverage, as calculated in accordance with HUD  
263 underwriting procedures, is below 1.0 for one quarter and if, upon  
264 request by HUD or lender, the operator does not promptly provide  
265 a plan that is acceptable to HUD to improve financial operations;

- 266 (iii) Centers for Medicare and Medicaid Services (“CMS”), or any  
267 applicable or successor authority, or its agent, issues a notice to  
268 Operator of a denial of payments by CMS (or a fiscal  
269 intermediary) for new admissions at the Healthcare Facility and  
270 either (1) HUD concludes that the operator is not diligently and  
271 adequately working to address such denial of payments or (2)  
272 despite operator effort such denial is not released within one  
273 hundred twenty (120) days;
- 274 (iv) CMS, or its agent, designates the Healthcare Facility to be a  
275 “Special Focus Facility” or another governmental authority has  
276 made an equivalent designation;
- 277 (v) A notice is issued to Operator of a proposed denial, proposed  
278 refusal to issue, or proposed termination of the Permits and  
279 Approvals for the Healthcare Facility and either (1) HUD  
280 concludes that the operator is not diligently and adequately  
281 working to address the matter or (2) despite operator effort that  
282 proposed denial, proposed refusal to issue or proposed termination  
283 is not rescinded within 120 days; or
- 284 (vi) A second revisit survey is required as a result of failure to clear  
285 deficiencies cited in any survey or equivalent examination by any  
286 applicable government authority.
- 287 (b) The Consultant shall review the management of the Healthcare Facility  
288 and, subject to applicable legal requirements governing the confidentiality of patient records,  
289 have complete access to the Healthcare Facility and its records, offices and facilities in order to  
290 carry out its duties under such engagement. Operator shall instruct Consultant to prepare and  
291 deliver to HUD, the Lender, and Operator a written report, in a format approved by HUD, of the  
292 Consultant’s findings and recommendations related to the operational and/or financial  
293 deficiencies noted in HUD’s written notice to Operator, within thirty (30) calendar days after its  
294 engagement.
- 295 (c) Operator shall, within twenty (20) Business Days of receiving  
296 Consultant’s report, implement any and all reasonable recommendations, as approved by HUD in  
297 consultation with Operator, Lender, and Borrower, made by the Consultant to address any  
298 performance deficiencies, provided however, in no event shall Operator implement any  
299 recommendations that are in conflict with Program Obligations or otherwise not in compliance  
300 with this Agreement or any other legal requirements.
- 301 (d) HUD’s decision to require or not require the engagement of a Consultant  
302 is within HUD’s sole discretion and such decision shall not affect or limit any of HUD’s other  
303 rights and remedies, nor cause HUD to be deemed the operator of the Healthcare Facility.

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

311           **8. NOTICE OF VIOLATION AND EVENT OF DEFAULT.**

312           (a) Subject to subsection (c) below, upon any violation of any provision of  
313 this Agreement by Operator, HUD may give written notice (“Notice of Violation”) thereof to  
314 Operator, with a copy to Borrower and Lender. Operator shall have thirty (30) days following  
315 receipt of such notice in which to cure any such violation, provided that HUD shall extend such  
316 thirty (30) day period by such time as HUD may reasonably determine is necessary to correct the  
317 violation for so long as, HUD determines, in its reasonable discretion, that: ***[if there is an***  
318 ***identity of interest:*** (i) Borrower is timely satisfying all payment obligations in the Loan  
319 Documents] OR [ ***if there is no identity of interest between Borrower and Operator:***  
320 (i) Operator is timely satisfying all payment obligations in the Borrower-Operator Agreement];  
321 (ii) none of the Permits and Approvals material to the operation of the Healthcare Facility is at  
322 substantial and imminent risk of being terminated, suspended or otherwise restricted in such a  
323 way that such termination, suspension or restriction would have a materially adverse effect on  
324 the operation of the Healthcare Facility; (iii) such violation cannot reasonably be corrected  
325 during such thirty (30) day period, but can reasonably be corrected in a timely manner; and  
326 (iv) cure is commenced during such thirty (30) day period and thereafter diligently and  
327 continuously pursued. If upon the expiration of such cure period, the violation has not been  
328 cured to HUD’s satisfaction, HUD may, without further notice, declare an Event of Default.

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

331                   (i) Terminate or cause the termination of any Borrower-Operator  
332 Agreement, seek the appointment of a receiver for the Healthcare  
333 Facility, and/or require Borrower to immediately procure a  
334 replacement operator (including an interim operator where  
335 appropriate).

336                   (ii) Apply to any court, state or federal, for specific performance of  
337 this Agreement, for an injunction against any violation of this  
338 Agreement, or for such other relief as may be appropriate.

339           (c) Notwithstanding any other provisions of this Agreement, if HUD  
340 determines at any time that any of the Permits and Approvals are at substantial and imminent risk  
341 of being terminated, suspended or otherwise restricted, if such termination, suspension, or other  
342 restriction would have a materially adverse effect on the Project, including without limitation,  
343 HUD’s determination that there is a substantial risk that deficiencies identified by applicable

344 state and/or federal regulatory and/or funding agencies cannot be cured in such manner and  
345 within such time periods as would avoid the loss, suspension, or diminution of any Permits and  
346 Approvals that would have a materially adverse effect on the Project, or if HUD determines at  
347 any time that the health and safety of the residents of the Healthcare Facility are at substantial  
348 and imminent risk, then HUD may immediately (without thirty (30) days notice) declare an  
349 Event of Default of this Agreement and may immediately proceed to take actions pursuant to  
350 subsections (b)(i) and/or (b)(ii) above.

351 (d) Operator agrees that, in the event that HUD requires a replacement  
352 operator pursuant to this Agreement, Operator shall cooperate with such replacement and take all  
353 actions necessary to (i) provide for an orderly transition to the replacement operator of licensed  
354 operations with applicable Medicare and Medicaid certifications intact, (ii) maintain normal  
355 operations, (iii) avoid displacement of residents, and (iv) transfer all transferable provider  
356 agreements to the replacement operator. Upon completion of transition as determined by HUD,  
357 [Borrower *or* Master Tenant] shall terminate any Borrower-Operator Agreement and Operator  
358 hereby agrees to waive any termination fees and penalties due to Operator if the termination is at  
359 the direction of HUD. Operator acknowledges that such termination is consistent with the  
360 provisions of any Borrower-Operator Agreement.

361 (e) Notwithstanding any other provisions of this Agreement, upon receipt of a  
362 Notice of Violation pursuant to section 8(a), no funds derived from or in connection with the  
363 operation of the Healthcare Facility may be distributed, advanced, or otherwise used for any  
364 purpose other than, as applicable, (i) making payments to Borrower [or Master Tenant] due  
365 pursuant to any Borrower-Operator Agreement, (ii) making payments required to be made under  
366 the Loan Documents and/or the First Mortgage Documents, (iii) making payments pursuant to  
367 any of the AR Financing Documents, and (iv) making payments for Goods and Services,  
368 provided that payments for Goods and Services shall be subject to the limitations set forth in  
369 Section 20 (e).

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

377 **10. PAYMENTS FOLLOWING NOTICE OF DEFAULT.** In the event that  
378 Operator receives a written notice from HUD, First Lender or Lender (i) stating that a default  
379 exists under the Borrower's Regulatory Agreement, [Master Tenant's Regulatory Agreement,]  
380 the First Mortgage Documents or any note or security instrument with respect to the Project that  
381 is insured or held by HUD, and (ii) directing Operator to make future payments due under any  
382 Borrower-Operator Agreement to HUD, First Lender or Lender, Operator shall thereafter make  
383 all future payments under any Borrower-Operator Agreement to HUD, First Lender or Lender as  
384 so directed. In the event that Operator receives conflicting directions from HUD, First Lender

385 and/or Lender: (i) any directions provided by HUD shall control over any directions provided by  
386 First Lender or Lender and (ii) any directions provided by First Lender shall control over any  
387 directions provided by Lender.

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

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

394 (a) Without the prior written approval of HUD, a Borrower-Operator  
395 Agreement shall not be assigned or terminated prior to the expiration date thereof. In the event  
396 of any assignment of a Borrower-Operator Agreement, as a condition to such assignment, the  
397 new Operator must execute a Supplemental Healthcare Regulatory Agreement – Operator (Form  
398 HUD-92466A-ORCF, modified as required by HUD), as approved by HUD, a Supplemental  
399 Operator Security Agreement (Form-HUD-92323-ORCF, modified as required by HUD),  
400 deposit account control agreements in form and substance satisfactory to Lender and HUD and  
401 any and all documents required by HUD and/or First Lender with respect to the First Mortgage  
402 Documents.

403 (b) Without the prior written approval of HUD, a Borrower-Operator  
404 Agreement shall not be amended so as to (i) materially increase any management fees or other  
405 payments paid by Borrower [*or* Master Tenant] thereunder, (ii) materially increase the  
406 obligations of Borrower [*or* Master Tenant] or the rights of Operator, (iii) materially decrease the  
407 rights of Borrower [*or* Master Tenant] or the obligations of Operator, or (iv) alter any provision  
408 of any Borrower-Operator Agreement that HUD required to be included therein. Prior written  
409 notice of and subsequent executed copies of all amendments to any Borrower-Operator  
410 Agreement shall be promptly provided to HUD and the Lender.

411 **13. MANAGEMENT AGREEMENTS.** No property management agreement  
412 relating to the Healthcare Facility or any portion of the Project (“**Management Agreement**”)  
413 shall be executed unless such Management Agreement is approved by HUD. Any management  
414 agent must be approved by HUD and must execute and deliver a Management Agent  
415 Certification – Residential Care Facilities (form HUD-9839-ORCF, or successor form) in such  
416 form as approved by HUD. Any Management Agreement shall contain the following provisions:  
417 (1) the Management Agreement shall terminate without penalty upon failure to comply with the  
418 provisions of the Management Agent Certification to HUD, or for other good cause, including  
419 without limitation for violations of the Borrower’s Regulatory Agreement, Operator’s  
420 Regulatory Agreement, and/or Master Tenant’s Regulatory Agreement, if any, thirty (30) days  
421 after HUD has mailed the Operator a written notice of its desire to terminate the Management  
422 Agreement; (2) in the event that HUD determines that any of the Permits and Approvals  
423 reasonably necessary to operate the Healthcare Facility is at substantial and imminent risk of  
424 being terminated, suspended or otherwise restricted, if such termination, suspension or other  
425 restriction would have a materially adverse effect on the Project, the Management Agreement

426 shall terminate immediately without penalty upon HUD's issuance of a notice of termination to  
427 Operator and Agent; and (3) the Management Agreement may not be assigned without the prior  
428 written approval of HUD. Upon request for termination, Operator shall immediately arrange to  
429 terminate any such Management Agreement and shall make arrangements satisfactory to HUD  
430 for the continuing proper management of the Healthcare Facility and the Project. Any material  
431 amendment to the management agreement must be acceptable to HUD, in accordance with  
432 Program Obligations.

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

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

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

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

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

466           **19. NON-DISCRIMINATION.** There shall be full compliance with the provisions  
467 of (1) any state or local laws prohibiting discrimination in housing on the basis of race, color,  
468 ~~creed, or~~ national origin, religion, sex, familial status or disability; and (2) the regulations of  
469 HUD providing for non-discrimination and equal opportunity in housing. It is understood and  
470 agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD  
471 to take any corrective action it may deem necessary including, but not limited to, the refusal to  
472 consent to a further renewal of any Borrower-Operator Agreement, the rejection of applications  
473 for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which  
474 Operator is identified; and further, if Operator is a corporation or any other type of business  
475 association or organization which may fail or refuse to comply with the aforementioned  
476 provisions, HUD shall have a similar right of corrective action (1) with respect to any individuals  
477 who are officers, directors, trustees, managers, partners, associates or principal stockholders of  
478 Operator; and (2) with respect to any other type of business association or organization with  
479 which the officers, directors, trustee, managers, partners, associates or principal stockholders of  
480 Operator may be identified.

481           **20. BOOKS, ACCOUNTS, FINANCIAL REPORTS, AND FINANCIAL**  
482 **COVENANTS.**

483           (a) Operator shall keep the books and accounts of the operation of the  
484 Healthcare Facility in accordance with Program Obligations, to the extent not inconsistent with  
485 state requirements, which would allow for the audit of the Project. Financial records of Operator  
486 and the Healthcare Facility shall be complete, accurate and current at all times. Posting must be  
487 made at least monthly to the ledger accounts, and year-end adjusting entries must be posted  
488 promptly in accordance with sound accounting principles. All expenditures in connection with  
489 the Healthcare Facility must be fully documented so as to provide reasonable assurance to all  
490 persons or entities that review such expenditures that such expenditures are Reasonable  
491 Operating Expenses. Undocumented expenses shall not be considered Reasonable Operating  
492 Expenses.

493           (b) Except as provided in the AR Financing Documents or as otherwise  
494 approved by HUD, Operator must deposit in an operating account in the Operator's name, in  
495 trust for the Project, (the "**Healthcare Facility Operating Account**") all revenue it receives in  
496 connection with the business it conducts with respect to the Healthcare Facility or in a general  
497 collection account maintained for Operator and affiliated operators, provided deposits to such  
498 general collection account can be traced to the applicable facility that generated such deposit. If  
499 HUD determines that such deposits cannot be reliably and readily so traced, HUD may direct  
500 Operator to deposit such funds in a segregated operating account. The account must be with a  
501 financial institution whose deposits are insured by an agency of the federal government, provided  
502 that an account held in an institution approved by the Government National Mortgage  
503 Association may have a balance that exceeds the amount to which such deposit insurance is  
504 limited. Operator may transfer funds from the Healthcare Facility Operating Account to one or  
505 more central disbursement or other accounts (which need not be in the name of Operator) in  
506 which such funds are commingled with other funds, provided that a complete and accurate  
507 accounting of such funds (including deposits and disbursements ) is maintained.

508 (c) Unless otherwise specified by HUD, Operator shall submit to HUD and  
509 Lender, on a quarterly and year-to-date basis (or more frequently if specified by HUD), prepared  
510 and certified by an authorized representative or agent of Operator, such financial reports relating  
511 to the operation of the Healthcare Facility (including, but not limited to, financial statements,  
512 accounts receivable/payable aging reports and occupancy reports) in the formats and at such  
513 times as may be approved by HUD in accordance with Program Obligations. Such reports must  
514 be submitted no later than thirty (30) days after the period covered by the reports, except for  
515 reports relating to the final quarter of each year, which shall be submitted no later than sixty (60)  
516 days after end of the fiscal year. Such reports are subject to the sanctions contained in 18 U.S.C.  
517 Sections 1001, 1010, and 1012. Operator shall submit to HUD and Lender, simultaneously with  
518 any such report that demonstrates negative Healthcare Facility Working Capital, a plan to restore  
519 positive Healthcare Facility Working Capital.

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

529 (e) Consistent with Program Obligations, Operator shall obtain, or cause to be  
530 obtained, contracts for goods, materials, supplies, and services ("**Goods and Services**") at costs,  
531 amounts, and terms that do not exceed reasonable and necessary levels and those customarily  
532 paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods  
533 and Services shall be based on quality, durability and scope of work. Reasonable Operating  
534 Expenses do not include amounts paid for betterments as defined in the Project's jurisdiction or  
535 improvements unless determined by HUD to be prudent and appropriate. If the Operator is  
536 acquiring Goods and Services whose costs exceed five percent (5%) of the gross annual revenue  
537 of the Healthcare Facility, Operator shall solicit written cost estimates. Operator shall keep  
538 copies of all written cost estimates and contracts or other instruments relating to the Project, all  
539 or any of which may be subject to inspection and examination by HUD at the Healthcare Facility  
540 or other mutually agreeable location.

541 (f) If a quarterly/year-to-date financial statement demonstrates negative  
542 Healthcare Facility Working Capital as defined by HUD, or if Operator fails to timely submit  
543 such statement, then until a current quarterly, year-to-date financial statement demonstrates  
544 positive Healthcare Facility Working Capital or until otherwise authorized by HUD, no funds  
545 derived from or in connection with the operation of the Healthcare Facility may be distributed,  
546 advanced, or otherwise used for any purpose other than, as applicable, making payments due  
547 pursuant to any Borrower-Operator Agreement and/or Master Lease (if any), making payments  
548 required to be made under the First Mortgage Documents and/or the Loan Documents, making  
549 payments pursuant to any of the AR Financing Documents, and making payments for Goods and

550 Services, provided that payments for Goods and Services shall be subject to the limitations set  
551 forth in subsection (e) above.

552 (g) At request of HUD, Operator shall give specific answers, satisfactory to  
553 HUD, to questions posed from time to time relating to income, assets, liabilities, contracts,  
554 operation, and condition of the Healthcare Facility, and shall provide to HUD copies of all  
555 books, contracts, records, documents and other papers relating to the Healthcare Facility from  
556 time to time as HUD may request.

557 (h) Operator acknowledges that the financial information referenced above is  
558 necessary for HUD to review from time to time, given the risk inherent in the operation of the  
559 Healthcare Facility, and given the necessity of the Operator's financial and operational stability  
560 in order to ensure timely payment of amounts due under the Loan Documents (whether directly  
561 from Operator where Operator is the Borrower, or indirectly from amounts due under any  
562 Borrower-Operator Agreement where Operator is not Borrower). At HUD's option, HUD may  
563 direct that any financial or operational reports required by this Agreement be submitted to  
564 Lender and/or another third party, as directed by Lender or HUD to review such report(s), in  
565 addition to or in lieu of submission to HUD.

566 **21. UNIFORM COMMERCIAL CODE/LIENS.** Operator shall execute and  
567 deliver a Supplemental Operator Security Agreement (Form HUD-92323-ORCF, modified as  
568 required by HUD) in accordance with Program Obligations. Operator shall execute and deliver  
569 such deposit account control agreements as may be required by Lender and/or HUD. Operator  
570 hereby authorizes each of the Lender and HUD to file such UCC financing statements,  
571 amendments and continuation statements as either of them may deem to be necessary or  
572 appropriate in connection with the security interests granted pursuant to the Operator's Security  
573 Agreement. Except as provided in this Section 21 and/or the First Mortgage Documents, without  
574 the prior written approval of Lender and HUD, Operator shall not be permitted to grant any other  
575 liens on any of the property related to the Project. [If the Project includes government  
576 receivables, Operator shall be permitted to pledge the Healthcare Facility's accounts receivable  
577 to an accounts receivable lender pursuant to AR Financing Documents consented to by Lender  
578 and HUD.] In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien  
579 shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such  
580 terms as consented to by Lender and HUD, including any HUD-required rider, and (ii) Operator  
581 and Borrower shall agree to comply with the terms required by Lender and HUD in connection  
582 therewith.

583 **22. ACCOUNTS RECEIVABLE FINANCING.** No accounts receivable or receipts  
584 from the Healthcare Facility may be pledged without prior written approval of Lender and HUD  
585 of the terms of such financing and the documents evidencing and securing such financing. In the  
586 event that Lender and HUD grant such approval, (i) the holder(s) of such lien shall enter into an  
587 intercreditor agreement with Lender and/or HUD in such form and upon such terms as consented  
588 to by Lender and HUD, and (ii) Operator and Borrower shall agree to comply with the terms  
589 required by Lender and HUD in connection therewith. Until the Loan is paid in full, no  
590 modifications, extensions, amendments, or renewals on different terms and conditions, to a

591 Material Term, as defined below, of the accounts receivable loan or any accounts receivable  
592 related loan document shall take effect without prior written consent of HUD and Lender. For  
593 purposes herein, “**Material Term**” shall mean any term of an accounts receivable loan or in any  
594 document evidencing or securing such financing that: (1) extends the maturity date of the loan;  
595 (2) adds guarantors to the loan; (3) releases guarantors from the loan; (4) adds borrowers to the  
596 loan; (5) adds an interest reserve to the loan; (6) amends the interest rate payable on the  
597 outstanding principal balance of the loan; (7) increases or decreases the principal amount of the  
598 loan; (8) adds collateral as additional security for the loan; and/or (9) amends or expands the  
599 type of obligations secured by the loan. In the event of conflict between this Section 22 and any  
600 HUD-approved intercreditor agreement, the HUD-approved intercreditor agreement shall  
601 control.

602 **23. NOTICE.**

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

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

615 **OPERATOR:**

616 **HUD:**

617 **LENDER:**

618 **24. MASTER LEASE SUBORDINATION [NON-DISTRUBANCE AND**  
619 **ATTORNMEN] AGREEMENT.** [If a master lease structure, include the appropriate  
620 provisions (SNDA used if there is no identity of interest between Borrower and Master Tenant or  
621 Operator, Subordination Agreement used if there is an identity of interest): HUD agrees to honor  
622 the provisions of [Sections 4, 5, and 7 of that certain Master Lease Subordination, Non-  
623 Disturbance and Attorment Agreement] OR [Section 5 of that certain Master Lease  
624 Subordination Agreement] relating to the Project by and between Lender and Borrower, among  
625 others, insofar as such sections call for HUD’s consent or the release of the Project from the

626 Master Lease and/or the Loan Documents, on the terms and subject to the limitations set forth in  
627 such sections.]

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

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

631

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

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

639 **OPERATOR**  
640 (Insert signature block)

641 BY: \_\_\_\_\_  
642 Name of Authorized Agent

643 \_\_\_\_\_  
644 Title

645 **U.S. DEPARTMENT OF HOUSING**  
646 **AND URBAN DEVELOPMENT,**  
647 acting by and through the **Secretary:**

648  
649 By: \_\_\_\_\_  
650 Name: \_\_\_\_\_  
651 Authorized Agent  
652 Office of Residential Care Facilities  
653

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

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