

**Healthcare Regulatory Agreement – Borrower Section 232**

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

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

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Federal Housing Commissioner

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Public reporting burden for this collection of information is estimated to average 1 hour. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

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

Privacy Act Notice: The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in the form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Recording requested by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Name:

HUD Project No.:

Project Location:

Lender:

Original Principal Amount of Note:

Originally endorsed for insurance under Section \_\_\_\_\_ Date of Note:

Borrower: Profit-Motivated Public Body Non-Profit  
(Failure to check the appropriate space shall not affect the enforceability or application of this Agreement.)

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Section Break (Continuous)

<sp>1. Form of Mortgagor  
<#>Corporate Mortgagor - any form of Corporate Charter may be used which:  
(1)contains nothing inconsistent with the Regulatory Agreement;  
(2)gives the corporation powers necessary to operate the project and execute the note and mortgage, and  
(3)specifically authorizes the execution of the regulatory Agreement.  
Suggested charter provisions to accomplish the above purposes are attached.  
<#>Partnership Mortgagor - Unless all general partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:  
“The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.  
<#>Trust - any Trust Agreement before it is finally accepted generally should:  
(1)Give the trustee the powers necessary to execute the note and mortgage;  
(2)specifically authorize the execution of the Regulatory Agreement;  
(3)contain nothing inconsistent with the Regulatory Agreement;  
(4)prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and

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This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_\_, its successors, heirs, and assigns (jointly and severally) ("Borrower") and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates ("HUD"). Borrower is sometimes also referred to as "Owner" or "Mortgagor" in the Loan Documents and Program Obligations. If Borrower is also the Operator, references in this Agreement to Operator refer to Borrower. To the extent that Borrower contracts with any other party to perform any functions included in the Agreement, the Borrower shall maintain ultimate responsibility for performance of all required functions included herein.

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

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

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

**AGREEMENTS:** Borrower and HUD covenant and agree as follows:

### **I. DEFINITIONS**

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

"Affiliate" is defined in 24 CFR 200.215, or any successor regulation.

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“Approved Use” means the use of the Project for the operation of the Healthcare Facility as a \_\_\_\_\_ [Insert number of units/beds and type of facility (e.g. a 100-bed nursing home and 50-unit assisted living facility)] and such other uses as may be approved in writing from time to time by HUD based upon a request made by the Borrower, [Master Tenant,] Operator, lessee or management agent, but excluding any uses that are discontinued with the written approval of HUD.

“Borrower” means all persons or entities identified as “Borrower” in the first paragraph of the Borrower’s Security Instrument, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any person or entity taking title to the Mortgaged Property whether or not such person or entity assumes the Note. The Borrower is sometimes also referred to in the Loan Documents and Program Obligations as the “Obligor,” the “Owner,” and/or the “Mortgagor.”

“Borrower-Operator Agreement” means any agreement relating to the management and operation of the Health Care Facility by and between [Borrower OR Master Tenant] and Operator, including any Operator Lease.

“Borrower’s Security Instrument” means the Healthcare [Mortgage, Deed of Trust, Deed to Secure Debt, or other designation as appropriate in Jurisdiction], Assignment of Leases and Revenue and Security Agreement (HUD-\_\_\_\_\_), and shall be deemed to be the mortgage as defined by Program Obligations.

“Distribution” means any disbursement, conveyance, loan or transfer of cash, any asset of Borrower, or any other portion of the Mortgaged Property, other than in payment of Reasonable Operating Expenses.

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“Fixtures” has the meaning set forth in the Borrower’s Security Instrument.

“Healthcare Facility” means that portion of the Project operated on the Land as a Nursing Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility or any other healthcare facility authorized to receive mortgage insurance pursuant to Section 232 of the National Housing Act, as amended, or other applicable federal law.

“HUD” means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Project.

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**“Identity of Interest”** (whether or not such term is capitalized) shall be deemed to exist between two entities if: (i) an entity, or any owner of any direct or indirect ownership interest of such entity, or any family member of any such owner, is an owner of any direct or indirect interest in the other party or is an officer, director, trustee or manager of such other party; or (ii) any officer, director, trustee, manager, principal staff or contract employee of an entity, or any family member of any such officer, director, trustee, manager, principal staff or contract employee, is an owner of any direct or indirect interest in the other party or is an officer, director, trustee or manager of such other party. As used herein, “family member” means, with respect to any person, his/her spouse, parents, siblings, children, grandparents, grandchildren, aunts, uncles, mother-in-law, father-in-law, brothers-in-law and sisters-in-law.

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**“Improvements”** has the meaning set forth in the Borrower’s Security Instrument.

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

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

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

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

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

**“Master Tenant”** means [ \_\_\_\_\_ name of Master Tenant], the master tenant pursuant to the Master Lease.]

**“Master Tenant’s Regulatory Agreement”** means that certain Regulatory Agreement (Master Tenant) for Healthcare Under Section 232 of the National Housing Act, relating to the Project and entered into by Master Tenant for the benefit of HUD.]

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

“**Non-Profit Borrower**” means a Borrower that is treated under the firm commitment as a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith, pursuant to 501(c)(3) or other applicable provisions of the Internal Revenue Code. The entity may not make Distributions to any individual member or shareholder. This does not include nonprofit Owner-Borrower who are treated under the firm commitment as a for profit Owner-Borrower.

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

“**Notice**” is defined in Section [45].

“**Operator**” means [ \_\_\_\_\_ ], a [ \_\_\_\_\_ (state)] [ \_\_\_\_\_ (type of entity)], or any subsequent operator approved by HUD.

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

“**Operator’s Regulatory Agreement**” means that certain Regulatory Agreement [(Operator] for Healthcare Under Section 232 of the National Housing Act, relating to the Project and entered into by Operator for the benefit of HUD.

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

“**Principal**” is defined in 24 CFR 200.215, and any successor regulation, provided that Principal shall also include , if the Principal is a limited-liability company; the managing member and any other member that has a twenty-five percent (25%) or more interest in the Principal.

“**Project**” and “**Project Assets**” has the meaning set forth in the Borrower’s Security Instrument.

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

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

**“Property Jurisdiction”** is (are) the jurisdiction(s) in which the Land is located.

**“Public Body Borrower”** means a federal instrumentality, a state or political subdivision thereof, or an instrumentality of a state or a political subdivision thereof, that certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and that is acceptable to HUD.

**“Reasonable Operating Expenses”** means expenses that arise from the operation, maintenance and routine repair of the Project, including all payments and deposits required under this Agreement, any Loan Document, and that primarily benefit the Project as opposed to Borrower’s Principals or Affiliates, or as otherwise permitted by Program Obligations. Salaries or other compensation to Affiliates of the Borrower or entities with an Identity of Interest with the Borrower, except to the extent approved by HUD, including without limitation through Program Obligations, shall not be considered Reasonable Operating Expenses and shall be deemed Distributions.

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

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

**“Residual Receipts”** means certain funds held by certain Non-Profit, and Public Body Borrowers which are restricted in their use by this Agreement and Program Obligations.

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

“Surplus Cash” is defined in Section [15].

“State” includes the 50 States of the United States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

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

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

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

## II. CONSTRUCTION

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

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

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

5. **CONSTRUCTION COMMENCEMENT/REPAIRS.** Borrower shall not commence, and has not commenced, construction or substantial rehabilitation of the Mortgaged Property prior to HUD endorsement of the Note, except that this Section [5] is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion loan or involves a loan refinancing. In cases of purchase and/or refinance involving an existing building, Borrower shall not commence any critical repairs without the prior written approval of HUD.

6. **DRAWINGS AND SPECIFICATIONS.** The Project shall be constructed in accordance with the terms of the Construction Contract as approved by HUD, if any, and with the "Drawings and Specifications."

7. **REQUIRED CONSTRUCTION PERMITS.** Unless otherwise required in the Construction Contract and Building Loan Agreement, the Borrower has obtained all necessary certificates, permits, licenses, qualifications, authorizations, consents and approvals from all necessary Governmental Authorities to own, construct or substantially rehabilitate, to carry out all of the transactions required by the Loan Documents and to comply with all applicable federal statutes and regulations of HUD in effect on the date of the Firm Commitment, except for those, if any, which customarily would be obtained at a later date, at an appropriate stage of construction or completion thereof, and which the undersigned shall obtain in the future. The licenses and permits

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that are in effect as of the date hereof are sufficient to allow any construction of the improvements to proceed to completion in the ordinary course. As the construction of the Project progresses, unless otherwise required by the Construction Contract, the Borrower will procure and submit all necessary building and other permits required by Governmental Authorities. The Project shall not be available for residency by any resident, nor shall the Healthcare Facility commence operations, except to the extent approved by prior written consent of HUD and of all other legal authorities having jurisdiction of the Project.

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**8. OUTSTANDING OBLIGATIONS.** Borrower shall have no obligations as of the date of this Agreement except those approved by HUD in writing and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations. All contractual obligations relating to the Project have been fully disclosed to HUD.

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

### **III. FINANCIAL MANAGEMENT**

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

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**11. PROPERTY AND OPERATION; ENCUMBRANCES.**

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a. Borrower shall deposit all Borrower's receipts relating to the Project including all Rents, Advances, and equity or capital contributions required under the Firm Commitment or otherwise advanced for the purpose and as part of the Mortgaged Property, in the name of the Borrower, for the benefit of the Project, in a federally insured depository or depositories and in accordance with Program Obligations, provided that, in accordance with Program Obligations, an account held in an institution approved by the Government National Mortgage Association may have a balance that

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exceeds the amount to which such deposit insurance is limited. (Equity or capital contributions shall not include certain syndication proceeds, such as proceeds from Low Income Housing Tax Credit transactions used to repay bridge loans from members/partners of Borrower, all as more fully set forth in Program Obligations.) Such funds shall be withdrawn only in accordance with the provisions of this Agreement and Program Obligations. Any person or entity receiving Mortgaged Property or any other proceeds of the Project other than for eligible purposes pursuant to this Agreement shall immediately deliver such Mortgaged Property or other proceeds to the Owner for the benefit of the Project and failing so to do shall hold and be deemed to hold such Mortgaged Property in trust for the benefit of the Project.

b. Borrower shall not engage in any business or activity, including the operation of any other project or other Healthcare Facility, or other ancillary businesses, or incur any liability or obligation not in connection with the Project. Borrower shall not acquire an Affiliate or contract to enter into any affiliation with any party, except as approved by HUD.

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

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

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

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

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

h. Borrower shall notify HUD of any litigation proceeding filed against Borrower or Principals, the Operator, the Healthcare Facility, or the Project, or any litigation proceeding filed by Borrower.

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

**12. FINANCIAL ACCOUNTING.** Borrower and Project financial records shall be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Reasonable Operating Expenses must be fully documented so as to provide reasonable assurance to all persons or entities that review such expenses that they are Reasonable Operating Expenses. Undocumented expenses shall not be considered Reasonable Operating Expenses.

**13. RESERVE FOR REPLACEMENT.**

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

b. Borrower shall deposit at endorsement of the Note an initial amount of \$ \_\_\_\_\_, if applicable, and Borrower shall deposit a monthly amount of \$ \_\_\_\_\_, concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of endorsement, and more frequently at HUD's discretion, Borrower shall submit to HUD a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement funds during the coming ten years in accordance with Program Obligations. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement. In connection therewith, every ten years, the Lender shall obtain a physical and capital needs assessment report for HUD to evaluate. The cost of such report may be paid from the Reserve for Replacements. HUD may, in its sole discretion, require Borrower to maintain a minimum balance in the account, in an amount to be set by HUD. [Insert if applicable: The amount of such required minimum balance is: \_\_\_\_\_] [Insert the following sentence, if applicable: In addition to the required monthly deposits to the said reserve fund, the

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- Deleted:** shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated
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balance in the replacement reserve fund existing with respect to the Project under FHA Project No. \_\_\_\_\_ [old project number] shall be transferred to the replacement reserve fund to be established pursuant to this Agreement under FHA Project No. \_\_\_\_\_ [new project number].]

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

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

e. Where the Mortgaged Property is already subject to a security instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such account under this Agreement, and payments hereunder shall begin with the first payment due on the Borrower's Note after acquisition, unless some other method of establishing and maintaining the account is approved in writing by HUD.

f. Upon Borrower's full satisfaction of all Lender and HUD obligations, Borrower shall receive any monies remaining in the Reserve for Replacement.

g. Borrower may, only with the advance written approval of HUD, borrow funds from the Reserve for Replacement for Reasonable Operating Expenses as provided in Program Obligations. Such funds shall be refunded to the Reserve for Replacement pursuant to the terms approved by HUD prior to the making of such loan. To the extent HUD does not specify specific refunding requirements, Borrower shall refund the Reserve for Replacement in full within thirty (30) days of the approved withdrawal. If Borrower fails to timely make any refunding installment pursuant to the terms approved by HUD, upon notice from HUD, Borrower shall immediately refund such loan from non-Project funds.

#### 14. DEBT SERVICE RESERVE.

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a. Borrower shall establish and maintain a debt service reserve account ("Debt Service Reserve"). The account shall be deposited with Lender or in a safe and responsible depository designated by Lender. Such funds shall at all times remain under the control of Lender, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD. Such funds are to be drawn upon only with HUD's consent, which consent may require replenishment to the minimum balance. The purpose of this reserve is to protect the insured loan in circumstances where Borrower's funds generated by the Project are insufficient to make the required debt service payments on the Note while other Project obligations remain current.

b. Borrower shall deposit at endorsement of the Note an initial amount of \$ \_\_\_\_\_. Thereafter, the minimum allowable balance shall be \$ \_\_\_\_\_, and if at any time the balance of the Debt Service Reserve is less than the minimum allowable balance, Borrower shall make such deposits as necessary to cause the balance to be no less than such minimum allowable balance. The Borrower may make or take no Distribution at any time when the balance of that account is below the minimum allowable balance.

c. Borrower shall carry the balance in this account on the financial records as a restricted asset. The Debt Service Reserve shall be invested in accordance with Program Obligations, and any interest earned on the investment shall be deposited in the Debt Service Reserve.

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

e. Where the Mortgaged Property is already subject to a security instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by Borrower as of the date hereof, the Debt Service Reserve now to be established shall be equal to the amount due to be in such account under this Agreement, and payments hereunder shall begin with the first payment due on the Borrower's Note after acquisition, unless some other method of establishing and maintaining the account is approved in writing by HUD.

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(This paragraph 4 is not applicable to cases insured under Section 232.)¶

<#>(a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.¶  
<#>Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.¶

<#>For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:¶

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<#><sp><sp>Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;¶

<#>Deny the increase stating the reasons therefor.¶

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f. Upon Borrower's full satisfaction of all Lender and HUD obligations, Borrower shall receive any monies remaining in the Debt Service Reserve.

#### **15. SURPLUS CASH**

a. For purposes of this Section [15], "cash" includes the following of Borrower's Project-related assets, at the close of business on the last day of Borrower's annual or semi-annual fiscal period, as follows: (i) all cash and cash-equivalents (i.e., short-term investments) except for funds held for tenant security deposits, if any, or funds in the Reserve for Replacement, Debt Service Reserve, or Residual Receipts account; and (ii) all amounts approved by HUD for withdrawal, but not yet withdrawn, from the Project's reserve and/or Residual Receipts accounts. In addition, if and for so long as Borrower is also the Operator, "cash" shall include Medicare and Medicaid receivables that are expected to be collected within thirty (30) days after the end of the annual or semi-annual fiscal period for which Surplus Cash is calculated.

b. For purposes of this Section [15], "current obligations" include obligations arising from the operation of the Project, at the close of business on the last day of Borrower's annual or semi-annual fiscal period, including: (i) all sums immediately due or currently required to be paid under the terms of the Loan Documents and this Agreement including, without limitation, all amounts required to be deposited in the Reserve for Replacement and the Debt Service Reserve, or other reserves as may be required by HUD, except required Residual Receipts deposits, as applicable, that are not delinquent; (ii) all other of Borrower's obligations for Reasonable Operating Expenses of the Project, if any (such as, if applicable, accounts payable and accrued, un-escrowed expenses), or other obligations approved by HUD, unless funds for payment are set aside or deferment of payment has been approved by HUD; (iii) an amount equal to the aggregate of all special funds required to be maintained by Borrower, if required by HUD; and (vi) all other accrued items payable by Borrower within thirty (30) days after the end of the annual or semi-annual fiscal period for which Surplus Cash is calculated.

c. "Surplus Cash" means "cash" after subtracting "current obligations."

d. Surplus Cash must be calculated at least semi-annually, at the end of the first six months of the Borrower's fiscal period and at the end of the annual fiscal period. Each mid-year and year-end calculation shall be submitted to Lender and HUD with the timely filing of Borrower's Annual Financial Reports, unless otherwise requested by HUD.

#### **16. DISTRIBUTIONS**

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a. Borrower may make and take Distributions of Mortgaged Property, to the extent and as permitted by the law of the applicable jurisdiction, pursuant to the restrictions below, including without limitation the Reconciliation requirements, provided that (unless a check in the following space denotes waiver of the following proviso: \_\_\_\_\_), Distributions of Mortgaged Property are prohibited for non-profit and public body Borrowers.

b. Restrictions on Use: Distributions shall not be made:

(i) from borrowed funds, or prior to the completion of the construction or rehabilitation of the Project;

(ii) after HUD has given notice to Borrower of a violation or default under this Agreement and/or after Lender has given notice to Borrower of a violation or default under any Loan Document;

when the Borrower or the Project is under a forbearance agreement.

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

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

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

## 17. RESIDUAL RECEIPTS.

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<#>Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.¶

<#>Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.¶

<#>Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.¶

<#>Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.¶

<#>Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.¶

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a. Non-Profit and Public Body Borrowers that are prohibited from making or taking Distributions pursuant to this Agreement and Program Obligations, for so long as they are so prohibited, shall establish and maintain a Residual Receipts account. Unless and until otherwise approved in writing by HUD, Residual Receipts and the Residual Receipts account shall be restricted as set forth in this Section [17].

b. Such Residual Receipts must be deposited into the Residual Receipts account within ninety (90) days after the end of the annual or semi-annual fiscal period for which Surplus Cash and Residual Receipts are calculated.

c. Such account shall be deposited with Lender or in a safe and responsible depository designated by Lender in accordance with Program Obligations. Such funds shall at all times remain under the control of Lender or Lender's designee, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD and shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations.

d. Borrower shall carry the balance in such account on the financial records as a restricted asset. The Residual Receipts account shall be invested in accordance with Program Obligations, and any interest earned on the investment shall be deposited in the Residual Receipts account for use by the Project in accordance with this Section [17].

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

f. Upon Borrower's full satisfaction of all HUD obligations, all funds remaining in the Residual Receipts account shall revert to the Borrower.

g. Borrower may, only with the advance written approval of HUD, borrow funds from Residual Receipts for Reasonable Operating Expenses as provided in Program Obligations. Such funds shall be refunded to the Residual Receipts account pursuant to the terms approved by HUD prior to the making of such loan. To the extent HUD does not specify specific refunding requirements, Borrower shall refund the

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Residual Receipts account in full within thirty (30) days of the approved withdrawal. If Borrower fails to timely make any refunding installment pursuant to the terms approved by HUD, upon notice from HUD, Borrower shall immediately refund such loan from non-Project funds.

**18. ADVANCES.**

a. All advances made by Borrower (or by a member, partner, or shareholder of Borrower) for Reasonable Operating Expenses or otherwise for the benefit of the Project must be deposited into the Healthcare Facility's operating account, or otherwise as directed by HUD, as required by Program Obligations.

b. Repayments of advances may only be made in accordance with Loan Documents and Program Obligations and, to the extent that they are not considered Distributions pursuant to this Agreement.

c. Interest may accrue, and be paid, on such advances pursuant to terms approved by HUD in advance in writing.

d. Monthly repayments of advances and payments of interest accrued thereon, may be allowed with prior written approval by HUD.

e. Repayments of Advances and payments of interest thereon that are approved by HUD shall be considered Reasonable Operating Expenses.

**19. PROJECT RECORDS.** The Borrower shall:

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

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

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

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(i) Transactions are executed, and access to assets is permitted, only in accordance with the Borrower's authorization.

(ii) Transactions are accurately and timely recorded to permit the preparation of quarterly and annual financial reports in conformity with Generally Accepted Accounting Principles (GAAP) and other applicable HUD requirements.

(iii) Transactions are timely recorded in sufficient detail so as to permit an efficient audit of the Borrower's books and records in accordance with Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Standards (GAGAS), and other applicable HUD requirements.

(iv) Transactions are timely recorded in sufficient detail so as to maintain accountability of the Borrower's assets. The recorded accountability for assets is compared with the existing assets at reasonable intervals, but not less than annually, and appropriate action is taken with respect to any differences.

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

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

## 20. ANNUAL FINANCIAL REPORTS.

a. For so long as any portion or portions of this Section [20] are not expressly waived in writing by HUD, within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, Borrower shall furnish HUD and Lender with a complete annual financial report of all of the Borrower's financial activities for the immediately preceding fiscal year, or for such other period as approved by HUD in writing, prepared in accordance with Generally Accepted Accounting Principles (GAAP). For purposes of this Section [20], where the Borrower is also the Operator, and without limiting the requirements for the Operator's submission

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of financial reports to HUD under the Operator's Regulatory Agreement, the Borrower's and the Project's financial activities shall include all of the activities of both the Borrower and the Operator. To the extent any Project records or other information is held by an operator, management agent, or Affiliate, Borrower shall cause such entity to provide such information to Borrower, Lender, and HUD, and every contract related to the Project with any operator, management agent, or Affiliate shall include the provision that such information shall be provided on demand. All annual financial reports furnished to HUD required herein shall be furnished in accordance with 24 CFR 5(g) and other Program Obligations, and shall include a certification in content and form prescribed by HUD and certified by Borrower.

b. In addition, except as otherwise provided in this Section [20], annual financial reports shall be audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS), and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a state or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with Borrower.

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

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

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

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#### **IV. PROJECT MANAGEMENT**

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

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

**23. CONTRACTS FOR GOODS AND SERVICES.** Consistent with Program Obligations, Borrower shall obtain, or cause to be obtained, contracts for goods, materials, supplies, and services ("Goods and Services") at costs, amounts, and terms that do not exceed reasonable and necessary levels and those customarily paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods and Services shall be based on quality, durability and scope of work and shall be made upon the most advantageous terms to the Project operation. Reasonable Operating Expenses do not include amounts paid for betterments as defined in the Property Jurisdiction or Improvements unless determined by HUD to be prudent and appropriate. If the Borrower is acquiring goods and services whose usual costs are expected to exceed the greater of \$10,000 or five (5) percent of the Borrower's gross annual revenue, Borrower shall solicit written cost estimates to ensure that prices paid by Borrower for Goods and Services, including the preparation of the annual audit, are competitive with prices paid in the area for Goods and Services of similar quality. Borrower shall keep copies of all written contracts or other instruments relating to the Project, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

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

25. **PERMITS AND APPROVALS.**

a. The Borrower shall at all times cause any lessee, operator, or management agent (as applicable) to maintain in full force and effect, all appropriate certificates of need, bed authority, provider agreements, licenses, permits and approvals required to operate the Healthcare Facility for the Approved Use (collectively, the "Permits and Approvals"). Without the prior written consent of HUD, none of the Permits or Approvals shall be conveyed, assigned, encumbered, transferred or alienated from the Healthcare Facility or the Project. The Borrower shall ensure that the Healthcare Facility and the Project are at all times operated in accordance with the requirements of the Permits and Approvals.

b. The security agreement and UCC financing statements referred to in paragraph [27] below shall constitute, to the extent permitted by law, a first lien upon all of the Borrower' rights, titles and interest, if any, in the Permits and Approvals. However, in the event of either a monetary or other default under this agreement, the Note, the Borrower's Security Instrument, or any of the Loan Documents, the Borrower shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the Healthcare Facility for the Approved Use. For the intents and purposes herein, Borrower hereby irrevocably nominates and appoints Lender and HUD, its successors and assigns, each in its own capacity, as Borrower's attorney-in-fact coupled with an interest to do all things necessary, including but not limited to, the power and authority to provide any and all information and data, pay such fees as may be required, and execute and sign in the name of the Borrower, its successors or assigns, required by any governmental entity exercising jurisdiction over the Project, any and all documents, necessary to continue to operate the Healthcare Facility and the Project for the Approved Use.

c. The Borrower will not alter, or suffer or permit the alteration of, any Permit or Approval, without the prior written approval of HUD. In the event that any such alteration is proposed, upon learning of such proposed alteration, the Borrower will advise HUD and Lender promptly. The Borrower will insert the foregoing requirements into any operating lease for the Project.

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d. The Borrower shall deliver to the assigned HUD personnel and the Lender electronically, within 48 hours after receipt thereof, copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by the Borrower from any governmental authority that includes any statement, finding or assertion that (i) the Borrower, any operator, lessee, management agent or the Project is or may be in violation of (or default under) any of the Permits or Approvals or any governmental requirements applicable thereto, (ii) any of the Permits or Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil money penalty relating to the Project is being or may be imposed, or (iv) the Borrower, any operator, any lessee, any management agent or the Project is subject to any governmental investigation or inquiry involving fraud. The Borrower shall deliver to the assigned HUD personnel and the Lender, simultaneously with delivery thereof to any governmental authority, any and all responses given by or on behalf of the Borrower to any of the foregoing and shall provide to HUD and the Lender, promptly upon request, such other information regarding any of the foregoing as HUD or the Lender may request. Unless otherwise requested by HUD, the reporting requirement of this provision shall not encompass regulators' communications relating solely to Licensed Nursing Facility surveys wherein all cited violations are less severe than a "g" level, or its equivalent, and, collectively, do not result in an imposition of remedy level greater than CMS Remedy Category 1, or its equivalent, (pursuant to CMS State Operations Manual, Chapter 7, as may hereafter be edited or updated, or any successor guidance). The receipt by the Project's Account Executive and/or the Lender of notices, reports, surveys, correspondence and other information shall not in any way impose any obligation or liability on HUD, the Lender or their respective agents, representatives or designees to take (or refrain from taking) any action, and HUD, the Lender and their respective agents, representatives and designees shall have no liability for any failure to act thereon or as a result thereof.

**26. Operator; Cooperation in Change of Operator.**

a. Unless Borrower is itself the licensed operator of the Healthcare Facility, Borrower has or shall enter into and maintain [the Borrower-Operator Agreement] [OR Master Lease, and shall cause Master Tenant to enter into and maintain the Borrower-Operator Agreement], in such form as approved by HUD. Any operator of the Healthcare Facility must be approved by HUD and shall execute a regulatory agreement upon such terms as acceptable to HUD. If Borrower is the operator of the Healthcare Facility, Borrower shall execute another regulatory agreement relating to its role as such operator.

b. Borrower shall require Operator to comply with the terms of the Operator's Regulatory Agreement and shall set forth such requirements, or cause such requirements to be set forth, in any Borrower-Operator Agreement. [Borrower shall

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require Master Tenant to comply with the terms of the Master Tenant's Regulatory Agreement and shall set forth such requirements in any Master Lease.]

c. In the event that, consistent with the Operator's Regulatory Agreement [OR Master Tenant Regulatory Agreement], HUD directs Borrower to terminate the Operator's [OR Master Tenant's] services and procure a new operator acceptable to HUD, Borrower shall expeditiously do so consistent with the continued operation of the Healthcare Facility for its Approved Use, and in cooperation with necessary regulatory and/or funding entities. Doing so shall in no way obviate the Borrower's obligation to comply with all other terms of this Agreement of affect any enforcement action by HUD.

d. In the event that the Borrower is itself the licensed operator of the Healthcare Facility and HUD determines that (i) any of the Permits and Approvals have been or are at substantial and imminent risk of being terminated, suspended or otherwise restricted, as evidenced by, without limitation, letters of warning or imposition of penalties from applicable state and/or Federal regulatory and/or funding agencies, or (ii) the financial viability of the Healthcare Facility is at substantial and imminent risk, then, without prejudice to any enforcement actions otherwise set forth in this Agreement, HUD may direct the Borrower to retain the services of an operator acceptable to HUD. Upon such direction from HUD, Borrower shall expeditiously do so.

27. **Personal Property; Security Interests.** The Borrower shall suitably equip, or cause to be equipped, the Project for the Approved Use. Except as otherwise approved in writing by HUD, the Borrower shall grant to the Lender and HUD a first lien security interest in all personal property of the Borrower related to the Project as additional security for the obligations of the Borrower under the Note, Mortgage and this Agreement. Such security interest shall be evidenced by such security agreements as the Lender and/or HUD may require and, in connection therewith, the Borrower shall execute or cause to be executed and deliver such deposit account control agreements as may be required by the Lender and/or HUD. Borrower hereby authorize each of the Lender and HUD to file such UCC financing statements and continuation statements as either of them may deem to be necessary or appropriate in connection with the foregoing security interest. The Borrower shall not be permitted to grant any other liens on any of the Mortgaged Property without the prior written approval of the Lender and HUD.

28. **Professional Liability Insurance.** The Borrower shall maintain, or cause the operator, lessee or management agent (as applicable) to maintain, professional liability insurance that complies with the applicable requirements of HUD. Annually, the Borrower shall provide, or cause the operator, lessee or management agent (as applicable) to provide, to HUD and Lender, a certification of compliance with HUD's

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professional liability insurance requirements as evidenced by an Accord or certified copy of the insurance policy.

**29. PROPERTY MANAGEMENT AGREEMENTS.** If, in addition to or in lieu of any Borrower-Operator Agreement, Borrower enters into a property management agreement or other document outlining procedures for managing the Healthcare Facility, such agreement or document must be consistent with Program Obligations. Borrower and the management agent shall submit and maintain a current management certification meeting standards consistent with Program Obligations. Any agreement relating to management of the Project must contain a provision that it cannot be assigned without the prior written approval of HUD.

**30. ACCEPTABILITY OF MANAGEMENT OF THE MORTGAGED PROPERTY.** Borrower shall provide management of the Mortgaged Property in a manner consistent with Program Obligations and acceptable to HUD. At HUD's discretion, HUD may require replacement of the management or require Borrower take such actions as shall cause the Project to conform to Program Obligations.

**31. TERMINATION OF CONTRACTS.** Any management contract entered into by Borrower or any other third-party vendor contract pertaining to the Project shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision that gives no more than a thirty day notice of termination. Upon such request by HUD, Borrower shall immediately arrange to terminate the contract, and Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Project effective as of the termination date of the contract.

**32. MANAGEMENT AGENT.** In the event that a management agent is (or will be) the holder of the Healthcare Facility license or is (or will be) the payee under one or more third-party payer agreements with respect to the Healthcare Facility, the management agent will be treated as an operator in accordance with Program Obligations.

**33. COMMERCIAL (NON-RESIDENTIAL) LEASES.** No portion of the Project shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount. Borrower must deliver an executed copy of any commercial lease to HUD.

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

**34.** Borrower shall not without the prior written approval of HUD, including without

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<b>Deleted:</b> <#>Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.¶
<#>The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.¶
-----Section Break (Next Page)-----
<sp><sp>(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.¶
(e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.¶
(f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property ad the status of the insured mortgage.¶
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limitation through Program Obligations:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of the Mortgaged Property or any interest therein, or permit the conveyance, assignment, or transfer of any interest or control in Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal) unless permitted by Program Obligations. Borrower need not obtain the prior written approval of HUD for: (i) conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Borrower's Security Instrument; (ii) inclusion of Mortgaged Property in a bankruptcy estate by operation of law under the United States Bankruptcy Code; (iii) acquisition of an interest by inheritance or by Court decree; (iv) corporate restructuring mergers when there is no change in control; (v) first user syndication prior to final endorsement of the Note by HUD.

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

c. Pay out any funds except as provided this Agreement, the Loan Documents, or Program Obligations.

d. Except for Distributions allowed pursuant to this Agreement, pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal of Borrower, or to any nominee thereof.

e. Enter into or change any contract, agreement or arrangement for supervisory or managerial services or leases for operation of the Healthcare Facility or any portion of the Project, except as permitted under Program Obligations.

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

g. Remodel, add to, subtract from, construct, reconstruct or demolish any part of the Project, except as required by HUD under Section [25(c)] and except that Borrower may, without the prior written approval of HUD, dispose of or cause to be disposed, obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value and make minor alterations that do not impair the security.

h. Permit the use of the Project, including any portion of the Healthcare Facility, for any other purpose except the Approved Use, or permit commercial use

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greater than that originally approved by HUD.

i. Receive any endowment that is not pledged as security for its obligations to HUD or Lender unless the endowment by its terms is restricted to a specific purpose or purposes that do not permit such a pledge.

j. Amend the organizational documents of Borrower that modifies the terms of the organization, including, but not limited to: any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional partner or member; any amendment that in any way affects the Loan Documents; any amendment that would authorize any partner or member other than the general partner or the managing member of the partnership or company or pre-approved successor general partner or managing member to bind the partnership or company for all matters concerning the Project which requires HUD's consent or approval; a change in the general partner or managing member or pre-approved successor general partner or managing member of the partnership or company or any change in a guarantor of any obligation to HUD and any proposed changes to the mandatory HUD article included in the organizational documents. Copies of all fully executed amendments to the organizational documents must be provided to HUD within ten (10) days of the effective date of the amendment. If the amendments to the organizational documents are recorded, copies of the recorded documents must be provided to HUD within ten (10) days of receipt by Borrower.

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

l. Reimburse any party for payment of expenses or costs of the Project except for Reasonable Operating Expenses.

m. Receive any fee or payment of any kind from any operator, managing agent, employee of the Project or of the managing agent, or other provider of Goods or Services of the Project, except for warranty claims from providers of Goods and Services.

n. Enter into, or agree to the assignment of, any commercial lease for all or part of the Mortgaged Property.

o. Enter into any amendment of any contract or lease relating to Project, including without limitation any commercial lease, that (i) reduces the rent or other payments due thereunder, (ii) increases the obligations of the Borrower or the rights of

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the other parties, (iii) decreases the rights of the Borrower or the obligations of the other parties, or (iv) alters any provision of such contract or lease required by HUD to be included therein.

## **VI. ENFORCEMENT**

**35. VIOLATION OF AGREEMENT.** The occurrence of any one or more of the following shall constitute a “Violation” under this Agreement:

a. Any failure by Borrower to comply with any of the provisions of this Agreement;

b. Any failure by Borrower to comply with any of the provisions any other of the Loan Documents;

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

d. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD’s reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD’s interest in the Mortgaged Property.

## **36. DECLARATION OF DEFAULT.**

a. At any time during the existence of a Violation, HUD may give written notice of the Violation to Borrower, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written Notice to HUD, be designated by Borrower as its legal business address. Borrower shall have thirty (30) days to cure any Violation, provided that HUD shall extend such thirty-day period by such time as HUD may reasonably determine is necessary to correct the Violation for so long as, HUD determines, in its discretion, that: (i) Borrower is timely satisfying all payment obligations in the Loan Documents; (ii) none of the Permits or Approvals is at substantial and imminent risk of being terminated; (iii) such violation cannot reasonably be corrected during such thirty (30) day period, but can reasonably be corrected in a timely manner, and (iv) Borrower commences to

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correct such violation, or cause such correction to be commenced, during such thirty (30) day period and thereafter diligently and continuously proceeds to correct, or cause correction of, such violation. If, after such Notice and applicable cure period, the Violation is not corrected to the satisfaction of HUD, HUD may declare a default under this Agreement without further Notice. Alternatively, if necessary in HUD's determination to protect the health and safety of the tenants or the financial or operational viability of the licensed facility, HUD may declare a default at any time during the existence of a Violation without providing prior written notice of the Violation.

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b. Notwithstanding any other provisions of this agreement, if HUD determines at any time that any of the Permits and Approvals are at substantial and imminent risk of being terminated, suspended or otherwise restricted, including without limitation, HUD's determination that there is a substantial risk that deficiencies identified by applicable State and/or Federal regulatory and/or funding agencies cannot be cured in such manner and within such time periods as would avoid the loss, suspension, or diminution of any Permits and Approvals, or if HUD determines at any time that the value of the Mortgaged Property is at substantial and imminent risk of material adverse diminution, then HUD may immediately (without thirty days notice) Declare a Default of this Agreement and may immediately proceed to take actions to pursue its remedies.

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c. Upon any Declaration of Default HUD may:

(i) If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Borrower's Security Instrument or otherwise dispose of HUD's interest in the Note and Security Instrument pursuant to Program Obligations;

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(ii) If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Borrower's Security Instrument, and the holder after receiving such Notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Borrower's Security Instrument or assignment of the Note and Borrower's Security Instrument to HUD as provided in Program Obligations. Upon assignment of the Note and Borrower's Security Instrument to HUD, HUD may then proceed with the foreclosure of the Borrower's Security Instrument or otherwise dispose of HUD's interest in the Note and Security Instrument pursuant to Program Obligations;

(iii) Collect all Rents and charges in connection with the Project or the operation of the Healthcare Facility and use such collections to pay Borrower's obligations under this Agreement and under the Note and Loan Documents and the necessary expenses of preserving and operating the Project;

(iv) Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

(v) Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any Violations of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with this terms of the Agreement, or for such other relief as may be appropriate, as the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and,

(vi) Collect reasonable attorney fees related to enforcing Borrower's compliance with this Agreement.

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

**37. MEASURE OF DAMAGES.** The damage to HUD as a result of Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain, or cause to be maintained, the Project as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

**38. NONRECOURSE DEBT.**

The following individuals/entities as identified in the Firm Commitment (which means the commitment for insurance of advances or commitment for insurance upon completion issued to Lender by HUD under which the debt evidenced by the Note is to be insured pursuant to a Section of the Act, dated \_\_\_\_\_): do not assume personal liability for payments due under the Note and Borrower's Security Instrument, or for the payments to the Reserve for Replacements, or for matters not under their control, provided that said individuals/entities shall remain personally liable under this Agreement only with respect to the matters hereinafter stated: namely: (a) for funds or property of the Project coming into its hands which, by the provisions of this Agreement, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of this Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds

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**<sp><sp>**13. As used in this Agreement the term:¶

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;¶

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;¶

(c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;¶

(d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the ( ...

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of others, which it has authorized in violation of the provisions of this section. The obligations of the individuals/entities listed in this paragraph shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of this Agreement, and any release of record of this Borrower's Security Instrument.

\_\_\_\_\_  
Individual  
Title

\_\_\_\_\_  
Individual  
Title

## **VII. MISCELLANEOUS**

### **39. COMPLIANCE WITH LAWS.**

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

b. There shall be full compliance with the provisions of (1) any State or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin; and (2) the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD to take

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any corrective action it may deem necessary including, but not limited to, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which Borrower is identified; and further, if Borrower is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, HUD shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of Lessee-Operator; and (2) with respect to any other type of business association, or organization with which the officers, directors, trustee, managers, partners, associates or principal stockholders of Borrower may be identified.

c. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by Borrower with these requirements, including any remedies available hereunder.

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

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

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

43. **RULES OF CONSTRUCTION.** The captions and headings of the sections of this Regulatory Agreement are for convenience only and shall be disregarded in construing this Regulatory Agreement. Any reference in this Regulatory Agreement to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Regulatory Agreement or to a Section of this Regulatory Agreement. All Exhibits attached to or referred to in this Regulatory Agreement are incorporated by reference into this Regulatory Agreement. Any reference in this Regulatory Agreement to Program Obligations shall be construed as referring to those Program Obligations which are amended from time to time. Use of the singular in this Regulatory Agreement includes the plural and use of the plural

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Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:¶  
<#>for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and¶  
<#>for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.¶  
(To be executed with formalities for recording a deed to real estate.)
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includes the singular. As used in this Regulatory Agreement, the term, "including" means "including, but not limited to."

44. **PRESENT ASSIGNMENT.** Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort that it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Borrower's Security Instrument. Until a default is declared under this Agreement, a revocable license is granted to Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Borrower's Security Instrument, this revocable license is automatically terminated.

45. **NOTICE.**

a. All notices, demands and other communications (**Notice**) under or concerning this Regulatory Agreement shall be in writing. Each Notice shall be addressed to Borrower at its address set forth below (and notices to HUD shall be addressed to the appropriate HUD field office responsible for servicing the Mortgaged Property), and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery, or (iii) the third Business Day after the Notice is deposited in the United State mail with postage prepaid, certified mail, return receipt requested. As used in this Section [45], the Term "**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or HUD is not open for business.

b. Any party to this Regulatory Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section[45]. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section [45], that it shall acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section [45] to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

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

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

BORROWER \_\_\_\_\_ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(insert name)

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
Authorized Agent Authorized Agent  
Title

\_\_\_\_\_  
Principal  
Title

\_\_\_\_\_  
Principal  
Title

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

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).

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**EXHIBIT A**  
**[DESCRIPTION OF THE LAND]**

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