

**Healthcare Regulatory Agreement – Operator 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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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:

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After recording return to:

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Project Name:

HUD Project No.:

Project Location:

Lender:

Original Principal Amount of Note: \_\_\_\_\_

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

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This Regulatory Agreement (this "Agreement") is entered into as of [ \_\_\_\_\_ ], \_\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_\_, its successors, heirs, and assigns (jointly and severally) ("Operator") and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates ("HUD"). If Operator is also the Borrower, references to "Borrower" herein shall refer to Operator and Borrower's Regulatory Agreement, as defined below, is incorporated herein by this reference.

**Definitions:**

Any capitalized terms used but not defined herein shall have the meaning given them in the Borrower's Security Instrument, as defined below.

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

"Borrower" shall mean [ \_\_\_\_\_ ], the Borrower under that certain HUD-insured Note made in connection with HUD project [# \_\_\_\_\_ ]. Borrower is sometimes referred to in the Loan Documents or in Program Obligations as the "Owner" 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 Regulatory Agreement" means that certain Regulatory Agreement (Borrower) for Health Care dated as of [ \_\_\_\_\_ ] OR substantially even date herewith], relating to the Project, and made by Borrower for the benefit of HUD.

"Borrower's Security Instrument" means that certain Healthcare [*Mortgage, Deed of Trust, Deed to Secure Debt, or other designation*], Assignment of Leases and Revenue, and Security Agreement, made by the Borrower, relating to the Project.

"Healthcare Facility" means that portion of the Project operated on the Land as a Nursing Home, Intermediate Care Facility, Board and Care Home, Assisting 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.

"Healthcare Facility Working Capital" means current assets of the Healthcare Facility minus current liabilities of the Healthcare Facility, as current assets and current liabilities are defined in Generally Accepted Accounting Principles, provided that any calculation

of Healthcare Facility Working Capital shall be consistent with Program Obligations, including without limitation, if and to the extent Program Obligations impose valuation or other requirements affecting such calculation.

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

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

**“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.]

**“Project”** means any and all assets of whatever nature or wherever situated related to the insured mortgage loan known by the HUD project number listed on the first page of this Agreement, including without limitation the Mortgaged Property, any site improvements, and any collateral owned by operators securing the insured mortgage loan.

**“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.

NOW THEREFORE, [use the following language when Operator is not the same legal entity as the Borrower and Operator: in consideration of the consent of HUD to the Borrower-Operator Agreement and] in order to comply with the requirements of the National Housing Act and the Regulations adopted by HUD pursuant thereto, Operator agrees for itself, its successors, heirs and assigns, that in connection with the operation of the Healthcare Facility, the Mortgaged Property and the Project and so long as that certain Contract of Mortgage Insurance relating to the Project continues in effect, and during such further period of time as HUD shall be the owner, holder or reinsurer of the mortgage, or during any time HUD is obligated to insure a mortgage on the Mortgaged Property:

1. Any Borrower-Operator Agreement shall be subject and subordinate to this Regulatory Agreement, the Borrower’s Security Instrument, [the Master Tenant’s

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<#>Lessee shall make payments under lease when due.¶  
<#>Payments by the lessee to the lessor shall be sufficient to pay all mortgage payments including payments to reserves for taxes, insurance, etc., payments to the Reserve for Replacements, and to take care of necessary maintenance. If at the end of any calendar year, or any fiscal year if the project operates on the basis of a fiscal year, payments under the lease have not been sufficient to take care of the above items, the lessor and lessee upon request in writing from the Commissioner shall renegotiate the amounts due under the lease so that such amounts shall be sufficient to take care of such items; the Commissioner shall be furnished by the lessee, within thirty days after being called upon to do so, with a financial report in form satisfactory to the Commissioner covering the operations of the mortgaged property and of the project.¶  
<#>The lessee shall not sublease the project or any part thereof without the consent of the Commissioner.¶  
<#>The lessee shall at all times maintain in full force and effect a license from the State or other licensing authority to operate the project as a nursing home, but the owner shall not be required to maintain such a license.¶  
Lessee

Regulatory Agreement,] the Operator's Security Instrument, and the Borrower's Regulatory Agreement. Operator shall make payments under any Borrower-Operator Agreement when due. If and for so long as payments by the Operator to [Borrower OR Master Tenant], including without limitation any rent due pursuant to an Operator Lease, are required pursuant to a Borrower-Operator Agreement, such payments shall be sufficient to allow [Master Tenant to pay Borrower pursuant to the Master Lease such amounts as shall be sufficient to allow] Borrower to pay all Borrower's required mortgage loan payments, including without limitation, any payments to reserves for taxes or insurance, payments to replacement reserves, payments to debt service reserves, and to fund any maintenance and/or repairs for which the Borrower has responsibility.

## 2. APPROVED USE; PERMITS AND APPROVALS:

(a) As used herein, "Approved Use" means the use of the Project for the operation of a 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 or Operator, but excluding any uses that are discontinued with the written approval of HUD. Operator shall operate the Healthcare Facility in accordance with the Approved Use.

(b) As used herein, "Permits and Approvals" means and includes all certificates of need, bed authority, provider agreements, licenses, permits and approvals required to operate the Healthcare Facility—or to fund the operation of the Project—for the Approved Use. The security agreement and UCC financing statements referred to in paragraph [20] hereof shall constitute, to the extent permitted by law, a first lien upon all of Operator's 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 Borrower's Regulatory Agreement, any other regulatory agreement made for the benefit of HUD relating to the Project, or any note or mortgage with respect to the Project that is insured or held by HUD, Operator shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the Healthcare Facility for the Approved Use including, as determined by HUD, the necessary conveyance, assignment or transfer of Permits and Approvals. For the intents and purposes herein, Operator hereby irrevocably nominates and appoints HUD, its successors and assigns, as its attorney-in-fact coupled with an interest to do all things necessary to continue to operate the Healthcare Facility for the Approved Use, 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 Operator, its successors or assigns, any and all documents, to the extent that such information, data, fees and documents may be required by any governmental entity exercising jurisdiction over the Project. Operator will not alter or terminate, or suffer or permit the alteration or termination of any Permit or Approval that is issued or held in the name of Operator without the prior written consent of HUD. In the event that any such

alteration or termination is proposed, upon learning of such proposed alteration or termination, Operator will advise HUD and Lender promptly.

(c) Operator shall deliver to the assigned HUD personnel and Lender electronically, within 48 hours after receipt thereof, copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by Operator from any governmental authority that includes any statement, finding or assertion that (i) Operator (or any Operator principle, officer, director or employee), the Healthcare Facility, or any portion of the Project is or may be in violation of (or default under) any of the Permits and Approvals or any governmental requirements applicable to the operation of the Healthcare Facility, (ii) any of the Permits and Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil money penalty is being or may be imposed, or (iv) Operator (or any Operator principle, officer, director or employee), the Healthcare Facility, or any portion of the Project is subject to any governmental investigation or inquiry involving fraud. Operator shall also deliver to the Project's HUD-assigned personnel and Lender, simultaneously with delivery thereof to any governmental authority, any and all responses given by or on behalf of Operator to any of the foregoing and shall provide to the HUD personnel and Lender, promptly upon request, such information regarding any of the foregoing as HUD or 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 HUD and/or Lender of notices, reports, surveys, correspondence and other information shall not in any way impose any obligation or liability on HUD, Lender or their respective agents, representatives or designees to take (or refrain from taking) any action, and HUD, Lender and their respective agents, representatives and designees shall have no liability for any failure to act thereon or as a result thereof.

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

(e) Without limiting the generality of any other provision of this Agreement, within 48 hours of written request by HUD, Operator shall deliver to HUD any financial or operational reports, or other information relating to the performance of the Healthcare Facility that HUD, in its discretion, deems relevant to risk assessment, including without limitation any Medicare or Medicaid cost reports. To the extent such reports or other information indicate, in HUD's determination, that mitigating action is necessary in order

to preserve the Permits and Approvals or otherwise to provide for operation of the Healthcare Facility in accordance with Program Obligations, Operator shall take such mitigating action immediately.

3. PROFESSIONAL LIABILITY INSURANCE: Operator shall maintain, and/or cause to be maintained, professional liability insurance that complies with the applicable requirements of HUD. Annually, upon such time periods as set forth in Program Obligations, Operator shall provide, or cause to be provided, to HUD and Lender, a certification of compliance with HUD's professional liability insurance requirements.

4. CONDITION OF MORTGAGED PROPERTY:

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

(b) Operator shall not remodel, reconstruct, add to, or demolish any part of the Project or subtract from any real or personal property of the Project.

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

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

(e) If the Healthcare Facility is an Assisted Living Facility, 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.

5. CONSULTANTS

(a) If, based on review of financial information, state regulatory communications and/or other data, HUD determines that the Operator's performance may be placing the operational and/or financial viability of the Healthcare Facility at risk, HUD may provide the Operator with written notice that the Operator must select and engage (at the Operator's expense and subordinate to all Reasonable Operating Expenses of the Healthcare Facility), within ten (10) Business Days of such notice, the services of a management consultant ("Consultant") who is not an Affiliate with either the Borrower or Operator. The Consultant must be approved in writing by HUD (upon selection of the Consultant, Operator will give notice to HUD, who will accept or reject the Consultant within three (3) Business Days), based upon the review of the Consultant's directly relevant work experience, capacity, costs, and other relevant factors.

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- <#>The lease maybe cancelled upon thirty days written notice by the Commissioner given to the lessor and the lessee for a violation of any of the above provisions unless the violation is corrected to the satisfaction of the Commissioner within said thirty day period.
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(b) The Consultant shall review the management of the Healthcare Facility and, subject to applicable legal requirements governing the confidentiality of patient records, have complete access to the Healthcare Facility and its records, offices and facilities in order to carry out its duties under such engagement. Operator shall instruct Consultant to prepare and deliver to HUD, the Lender, and Operator a written report, in a format approved by HUD, of Consultant's findings and recommendations related to the operational and/or financial deficiencies noted in HUD's written notice to the Operator, within thirty (30) calendar days after its engagement.

(c) Operator shall, within twenty (20) Business Days of receiving Consultant's report, implement any and all reasonable recommendations, as reasonableness is determined by HUD in its sole discretion, made by the Consultant to address any performance deficiencies, provided however, in no event shall Operator implement any recommendations that are in conflict with Program Obligations or otherwise not in compliance with this Agreement and other legal requirements.

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

(e) "Business Day" means any day other than a Saturday or a Sunday, a Federal holiday or holiday in the State where the Project is located or other day on which the Federal government or the government of the State where the Project is located is not open for business. When not specifically designated as a Business Day, the term "day" shall refer to calendar day.

6. RISK MANAGEMENT PROGRAM. Operator shall implement and maintain a risk management program which incorporates a real-time incident reporting and tracking system that informs Operator's senior management of all incidents with the potential to expose the Operator to liability for personal injury or other damages. Each incident must be reviewed by Operator's appropriately-trained professional staff, and such staff must follow-up on incidents as necessary. The risk management program must include appropriate training for Operator's staff.

#### 7. DECLARATION OF VIOLATION AND DEFAULT

(a) Subject to subparagraph (b) and (c) below, upon any violation of any provision of this Agreement by Operator, HUD may give written notice thereof to Operator, with a copy to Borrower and Lender. Operator shall have thirty (30) days to cure any such 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) Operator commences to correct such violation during such thirty (30) day period and thereafter diligently and continuously proceeds to correct such violation. If upon the expiration of such cure period, the violation is not satisfied to HUD's satisfaction, HUD may, without further notice, declare an Event of Default. Upon declaring an Event of Default, HUD may:

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

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

(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 Operator cannot cure deficiencies identified by applicable State and/or Federal regulatory and/or funding agencies 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 or collateral under the Operator's Security Agreement is at substantial and imminent risk of material adverse diminution, then HUD may immediately (without thirty days notice) declare an Event of Default of this Agreement and may immediately proceed to take actions pursuant to subsections (a)(i) and/or (a)(ii) above.

(c) Notwithstanding anything else in this Agreement, upon the Healthcare Facility's failure to maintain positive Healthcare Facility Working Capital ("Working Capital Violation"), without any further notice from HUD, Operator shall have thirty (30) days to cure such Working Capital Violation and provide evidence satisfactory to HUD that positive Healthcare Facility Working Capital has been restored, provided that HUD shall extend such thirty-day period by such time as HUD may reasonably determine is necessary to correct the Working Capital 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 Working Capital Violation cannot reasonably be corrected during such thirty (30) day period, but can reasonably be corrected in a timely manner, and (iv) Operator commences to correct such Working Capital Violation during such thirty (30) day period and thereafter diligently and continuously proceeds to correct such violation (such 30-day cure period, together with such extensions, "Working Capital Cure Period"). Such Working Capital Cure Period shall commence no later than the date upon which the Healthcare Facility's quarterly financial report, required pursuant to Section [19(c) below], which quarterly report shows or should show negative Healthcare Facility Working Capital, is due to be submitted to HUD. If upon the expiration of the

Working Capital Cure Period, the violation is not satisfied to HUD's satisfaction, HUD may, without further notice, declare an Event of Default and may proceed to take actions pursuant to subsections (a)(i) and/or (a)(ii) above.

(d) Operator agrees that, in the event that HUD requires a replacement operator pursuant to this Agreement, Operator shall cooperate with such replacement and take all actions necessary to (i) provide for an orderly transition to the replacement operator, (ii) maintain normal operations, and (iii) avoid displacement of residents. Upon completion of transition as determined by HUD, [Borrower OR Master Tenant] shall terminate the Borrower-Operator Agreement. Operator acknowledges that such termination is consistent with the provisions of the Borrower-Operator Agreement, without any penalty to [Borrower or Master Tenant].

8. Operator acknowledges that the viable operation of the Healthcare Facility, and thus the preservation of the security for the insured Loan, depends upon timely satisfaction of debts incurred related to the operation of the Healthcare Facility. In addition to fully complying with any payment obligations in any Borrower-Operator Agreement, Operator shall timely pay all debts incurred related to the operation of the Healthcare Facility.

9. In the event that Operator receives a written notice from HUD or Lender (i) stating that a default exists under the Borrower Regulatory Agreement[, Master Tenant Regulatory Agreement,] or any note or mortgage with respect to the Project that is insured or held by HUD, and (ii) directing Operator to make future payments due under any Borrower-Operator Agreement to HUD or Lender, Operator will thereafter make all future payments under any Borrower-Operator Agreement to HUD or Lender as so directed.

10. TRANSFERS: The prior written approval of HUD shall be required for (a) any change in or transfer of the management, operation, or control of the Project or the Healthcare Facility or (b) any change in the ownership or control of Operator as set forth in Program Obligations.

11. BORROWER-OPERATOR AGREEMENT TERMINATION AND/OR AMENDMENT. This Section [11] shall not apply if Borrower is the Operator.

(a) Without the prior written approval of HUD, the Borrower-Operator Agreement shall not be assigned or terminated prior to the expiration date thereof. In the event of any assignment of the Borrower-Operator Agreement, as a condition to such assignment, the Operator must execute a HUD regulatory agreement for operators, as approved by HUD.

(b) Without the prior written approval of HUD, the Borrower-Operator Agreement shall not be amended so as to (i) increase any management fees or other payments paid by Borrower [OR Master Tenant] thereunder, (ii) increase the obligations of the Borrower [OR Master Tenant] or the rights of Operator, (iii) decrease the rights of the

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<#><sp>The lessee shall not reduce or expand, allow to be reduced or expanded, or cause the expansion or reduction of the bed capacity of the project without the consent of the Commissioner. Any change in the bed capacity shall violate this Regulatory Agreement.¶  
The lessee

Borrower [OR Master Tenant] or the obligations of Operator, or (iv) alter any provision of the Borrower-Operator Agreement that HUD required to be included therein. Prior written notice of and subsequent executed copies of all amendments to the Borrower-Operator Agreement shall be promptly provided to HUD and the Lender.

12. MANAGEMENT AGREEMENTS: Operator shall not enter into any property management agreements relating to the Healthcare Facility or any portion of the Project ("Management Agreement"), unless such Management Agreement is approved by HUD. Any such Management Agreement shall contain a provision that, in the event HUD issues any notice of violation under this Agreement or the Borrower Regulatory Agreement, the Management Agreement shall be subject to termination without penalty upon written request of HUD. Upon such request, Operator shall immediately arrange to terminate any such Management Agreement within a period of not more than thirty (30) days and shall make arrangements satisfactory to HUD for the continuing proper management of the Healthcare Facility and the Project.

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13. PROHIBITION OF CERTAIN FEES. Operator shall not charge any resident of the Healthcare Facility an admission fee, key fee, finder's fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish residential units or services to persons making such payments.

14. SECURITY DEPOSITS AND OTHER FEES. Operator shall not require as a condition of occupancy or leasing of any unit in the Healthcare Facility, any consideration or deposit, provided that Operator may require 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 any tenant lease terms. Operator may charge certain application processing fees such as credit check or criminal background fees or pet deposits.

15. SUBLEASES: Except for any Residential Agreement, Operator shall not lease or sublease the Project or any part thereof without the prior written consent of HUD.

16. 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. Operator shall deliver an executed copy of any commercial lease to HUD.

17. AUDITS AND INSPECTIONS: All portions of the Project, including without limitation all Mortgaged Property and any other equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating to the operation of the Healthcare Facility shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD, the Lender, or the duly authorized agents of either. Operator 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 HUD or its duly

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authorized agents. The obligations of Operator under this paragraph shall be limited to the extent necessary in order for Operator to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

18. **NON-DISCRIMINATION:** 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 any corrective action it may deem necessary including, but not limited to, the refusal to consent to a further renewal of the Borrower-Operator Agreement between the Borrower and the Operator, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which Operator is identified; and further, if Operator 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 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 Operator may be identified.

19. **BOOKS, ACCOUNTS, FINANCIAL REPORTS, AND FINANCIAL COVENANTS:**

(a) Operator shall keep the books and accounts of the operation of the Healthcare Facility in accordance with the requirements of HUD, to the extent not inconsistent with state requirements, which would allow for the audit of the Project.

(b) Operator must deposit in an operating account in the Operator's name, in trust for the Project, ("Healthcare Facility Operating Account") all revenue it receives in connection with the business it conducts with respect to the Healthcare Facility. The account must be with a financial institution whose deposits are insured by an agency of the federal government, provided that an account held in an institution approved by the Government National Mortgage Association may have a balance that exceeds the amount to which such deposit insurance is limited.

(c) Operator shall submit to HUD and Lender, on a quarterly and year-to-date basis (or more frequently if specified by HUD), prepared and certified by a responsible officer of Operator, such financial reports relating to the operation of the Healthcare Facility (including, but not limited to, financial statements, accounts receivable, aging reports and occupancy reports) in the formats and at such times as may be required by HUD. Such reports must be submitted no later than thirty (30) days after the period covered by the reports. Operator shall submit to HUD and Lender, simultaneously with any such report that demonstrates negative Healthcare Facility Working Capital, a plan

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Instructions to Closing Attorney¶

Regulatory Agreement—form HUD-92466-NHL

Nursing Homes—Section 232¶

This Regulatory Agreement must be executed by the Lessee and the Commissioner and recorded before the Note is endorsed for insurance.¶

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The execution by the Commissioner and by the Lessee must be

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The Agreement is to be executed in the name

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A copy of the Commissioner-approved lease shall be attached to this Regulatory Agreement. If the lease has already been filed or recorded, re-recording will be unnecessary, and a copy of the recorded lease (with recording data) will be attached following recording of the form HUD92466-NHL.¶

The Agreement must be executed by the Lessee prior to execution by the Commissioner.¶

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form HUD-92466-NHL (1/92)¶

Page 2 of 2 ref Handbook 4600.1

to restore positive Healthcare Facility Working Capital, provided that such plan shall not be deemed to obviate declaration of an Event of Default.

(d) Within thirty (30) days following the end of each fiscal year, Operator shall furnish to HUD and Lender a complete annual financial report based upon an examination of the books and records of the operations of the Healthcare Facility prepared in accordance with the requirements of HUD, prepared and certified by a responsible officer of Operator and subject to the sanctions contained in 18 U.S.C. Sections 1001, 1010, and 1012. If Operator (or any direct or indirect parent of Operator) is required to provide an audited financial statement to any lender, Operator shall simultaneously provide copies of such audited financial statements to HUD and Lender. If HUD has reason to believe that the Operator-certified statements submitted may be unreliable, inconsistent, or are not presented in a manner that is consistent with Generally Accepted Accounting Principles, HUD may require financial statements from the Operator which have been certified by an independent public accountant, at the Operator's expense, after ninety (90) days notice to Operator from HUD.

(e) Operator must first use funds derived from operation of the Healthcare Facility, or otherwise received for use in operation of the Healthcare Facility, only to make payments to the Borrower due pursuant to the Borrower-Operator Agreement, to make payments pursuant to any AR Financing Documents, and to pay for goods, materials, supplies and services that are reasonable and necessary for the operation of the Healthcare Facility prior to expending funds for any other purposes ("Goods and Services"). Operator shall obtain contracts for 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 facility. The purchase prices of Goods and Services shall be based on quality, durability and scope of service and shall be made upon the most advantageous terms to the Healthcare Facility operation. When acquiring Goods and Services whose usual costs are expected to exceed the greater of \$10,000 or five percent (5%) of the gross annual revenue of the Healthcare Facility, Operator shall solicit written cost estimates and shall ensure that prices paid are competitive with prices paid in the area for Goods and Services of similar quality.

(f) Operator shall at all times maintain positive Healthcare Facility Working Capital. If at any time Healthcare Facility Working Capital is negative, Operator may not use funds derived from operation of the Healthcare Facility, or otherwise received for use in operation of the Healthcare Facility, for any purpose other than to make payments to the Borrower due pursuant to the Borrower-Operator Agreement, to make payments pursuant to any AR Financing Documents, or to pay for Goods and Services, provided that the payment for Goods and Services shall be subject to the limitations set forth in subsection [(e)] above.

(g) At request of HUD, Operator shall give specific answers, satisfactory to HUD, to questions posed from time to time relating to income, assets, liabilities, contracts, operation, and condition of the Healthcare Facility, and shall provide to HUD

copies of all books, contracts, records, documents and other papers relating to the Healthcare Facility from time to time as HUD may request.

(h) Operator acknowledges that the financial information referenced above is necessary for HUD to review from time to time, given the risk inherent in the operation of the Healthcare Facility, and given the necessity of the Operator's financial and operational stability in order to ensure timely payment of amounts due under the Borrower-Operator Agreement essential to the Borrower's debt service.

20. UNIFORM COMMERCIAL CODE/LIENS:

Except as otherwise approved in writing by HUD, Operator shall grant to Lender and HUD a first lien security interest in all personal property of Operator used in the operation of the Healthcare Facility or the Project as additional security for the obligations of the Borrower under the Note, Borrower's Security Instrument, and Borrower Regulatory Agreement, and the Operator's obligations under this Agreement. Such security interest shall be evidenced by such security agreements as Lender and/or HUD may require in connection therewith. Operator shall execute and deliver such deposit account control agreements as may be required by Lender and/or HUD. Operator hereby authorizes 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. Except as provided in this paragraph [20], without the prior written approval of Lender and HUD, Operator shall not be permitted to grant any other liens on any of the property related to the Project. If the Project includes a skilled nursing home, Operator shall be permitted to pledge the Healthcare Facility's accounts receivable to an accounts receivable lender in such form and upon such terms as consented to by Lender and HUD. In the event that Lender and HUD grant such approval, (i) the holder(s) of such lien shall enter into an intercreditor agreement with Lender and/or HUD in such form and upon such terms as consented to by Lender and HUD, including any HUD-required rider, and (ii) Operator and Borrower shall agree to comply with the terms required by Lender and HUD in connection therewith.

21. 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 the intended recipients at their respective addresses set forth herein, and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made and payment of charges for next Business Day delivery; or (3) the third (3<sup>rd</sup>) Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

(b) Any Notice hereunder shall be addressed as follows:

Operator: [Insert Address]

HUD: [Insert Address]

22. The legal description of the Land is attached hereto as Exhibit A.

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

**OPERATOR**

(Insert signature block)

BY: \_\_\_\_\_

Name of Authorized Agent \_\_\_\_\_

Title \_\_\_\_\_

**U.S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT**

BY: \_\_\_\_\_

Name of Authorized Agent \_\_\_\_\_

Title \_\_\_\_\_

**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).**