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| **Commitment to Insure Upon Completion**  Section 232 Pursuant to Section 223(f) |  | **U.S. Department of Housing**  **and Urban Development**  Office of Residential  Care Facilities |

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|  | FHA Project No.: | | **XXX-XXXXX** |
|  | Project Name: | | Project Name |
|  | Project Address: | | Project Street Address |
|  |  | | Project City, State, Zip |
| Lender Name |  | Borrower Name | |
| (Lender) |  | (Name of Borrower) | |
| Lender Street Address |  | Borrower Street Address | |
| (Address) |  | (Address) | |
| Lender City, State, Zip |  | Borrower City, State, Zip | |
| (City, State, & Zip Code) |  | (City, State, & Zip Code) | |
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We understand that you, as Lender, have agreed to make a loan (the “Loan”) to Borrower Name, (hereafter called the "Borrower"), in an amount not exceeding the sum of Loan Amount Written Out Dollars ($     ) to be evidenced by a Note (the “Note”) and secured by a security instrument (the "Security Instrument") covering real property with existing building(s) thereon identified above (hereinafter called the "Project"), as shown on the legal description of the property attached hereto and marked **Exhibit A**.

It is your intention to present the said Security Instrument to the Federal Housing Commissioner acting herein on behalf of the U.S. Department of Housing and Urban Development (“HUD”) for mortgage insurance under the provisions of Section 232, pursuant to Section 223(f) of the National Housing Act (the “NHA”), and the Regulations thereunder now in effect (the “Regulations”).

HUD hereby agrees to insure said Note and Security Instrument under the provisions of the NHA and the Regulations upon the following conditions:

1. The Note shall bear interest at the rate of       percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due not later than the first day of the second month following the date of endorsement of the Note for insurance (“Endorsement”). The Note shall be payable on a level annuity basis by       monthly payments of principal and interest in the amount of $     . The maturity and final payment date shall be       years and       months following the due date of the first payment to principal. NOTE: Any change in the interest rate may require reprocessing of the mortgage insurance application.

2. The Note and Security Instrument to be insured shall be in the form prescribed by HUD for use in connection with loans insured under Section 232, pursuant to Section 223(f) of the NHA in the locality in which the property is situated. In addition, the operator of the Project (the “Operator) shall provide a security agreement, UCC financing statements, and deposit account control agreement(s) granting a first lien security interest in such tangible and intangible personal property related to the Project as may be required by HUD (subject only to liens for taxes and assessments which are not delinquent and such other liens, such as with an accounts receivable financing transaction, as may be approved by HUD).

3. Prior to Endorsement, the Borrower shall present to HUD a title policy in conformity with the Regulations which shall show that title to the property (or, if approved by HUD, a leasehold estate therein) on the date of Endorsement is vested in the Borrower free of all exceptions to title (either junior or prior to said Security Instrument) except said Security Instrument and such other exceptions to title as are specifically determined to be acceptable by HUD. Said title policy shall (a) by its terms insure to the benefit of the Lender and/or HUD, as their interests may appear and (b) unless otherwise approved by HUD, be on the ALTA Loan Policy 2021 Form and include ALTA Form 9, 9.6, 8.1, 22, 17, 25, 3.1, and 18 (or 18.1, as appropriate) and an endorsement deleting the arbitration clause. The Borrower shall also furnish satisfactory proof that there exist no unpaid obligations contracted in connection with the Loan transaction, the purchase of the Project or refinancing of existing indebtedness, or the completion of any repairs, except such obligations as may be approved by HUD. Unless waived by HUD, prior to Endorsement, the Borrower shall present to HUD a survey of the Project in form and substance satisfactory to HUD.

4. The Borrower must possess the powers necessary for meeting all the requirements of HUD for insurance of the Note and Security Instrument. Prior to Endorsement, there shall be delivered to HUD and the Lender (a) copies of ownership entity documentation that complies with applicable requirements of HUD, including a copy of the instrument under which the Borrower entity is created, together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Security Instrument and the other closing documents, and (b) a Regulatory Agreement in the form prescribed by HUD for use in connection with loans insured under Section 232, pursuant to Section 223(f), of the NHA (the “Regulatory Agreement”). Accordingly, Section 38 of the Regulatory Agreement shall apply to the following individuals or Entities:          . Such Regulatory Agreement shall provide, among other things, for the establishment of a Reserve Fund for Replacements (the “Reserve for Replacements”) by payment of $      per annum to be accumulated monthly at the rate of, $      per month (rounded to the nearest dollar), under the control of the Lender, commencing on the date of the first payment to principal as established in the Note unless a later date is agreed to by HUD. In addition to the per annum amount required to be accumulated monthly under control of the Lender for the Reserve for Replacements, there shall be an initial deposit in the amount of $       made to the Reserve Fund for Replacements by the Borrower at the time of Endorsement. Attached hereto as **Exhibit B** is the Reserve for Replacement Funding Schedule which supports the per annum and initial deposits to the Reserve for Replacements.

The amount of the annual deposits to the Reserve Fund for Replacements shall be subject to change in accordance with the requirements of HUD. In connection therewith, the Lender shall obtain a new Project Capital Needs Assessment (“PCNA”) for HUD to evaluate on or before [10 year anniversary date of the latest PCNA], and a new PCNA will be provided every ten (10) years thereafter. The cost of each such PCNA report may be paid from the Reserve Fund for Replacements. The Request for Endorsement of Credit Instrument to be delivered prior to Endorsement and the Regulatory Agreement each shall include a statement confirming the requirement for such periodic PCNA reports.

The Healthcare Regulatory Agreement – Borrower (HUD – 92466 – ORCF) executed at closing shall indicate that the Borrower is:

 Profit-Motivated;

 Non-Profit, and the Non-Profit Borrower is **not** permitted to take distributions; OR

 Non-Profit, and the Non-Profit Borrower is permitted to take distributions.

5. The provisions of this Paragraph 5 shall apply to any critical repairs required by this Commitment to be completed and inspected prior to Endorsement and to any non-critical or borrower-elective repairs required by this Commitment to be completed after Endorsement. All repairs are listed in the Critical, Non-Critical & Borrower-Elective Repairs List, as applicable, attached hereto as **Exhibit C** and must meet the specific requirements contained in Chapters 5 and 6 of HUD’s Minimum Property Standards. HUD estimates that these critical repairs will cost $     . Non-critical repairs and borrower-elective repairs, if any, must begin promptly following Endorsement and must be completed within 12 months of Endorsement (unless a shorter timeframe is required by Special Condition below).  HUD estimates that these repairs will cost $     . An escrow of 120% of this amount must be established prior to Endorsement. It is understood that 100% of the estimated cost of any non-critical and borrower-elective repairs will come from loan proceeds and an additional cash amount (or letter of credit) of not less than 20% of the repair cost estimate will also be placed in escrow. To cover latent defects, the Borrower shall furnish satisfactory evidence that the non-critical and borrower-elective repairs will be covered by an escrow in cash, or letter of credit, or a surety bond acceptable to HUD (which escrow may be funded upon completion of the repairs from the repair escrow established at the time of Endorsement.) HUD encourages Borrowers to utilize energy saving devices and methods when making repairs.  
  
During the course of such repairs, if any, HUD and its representatives shall at all times have access to the Project and the right to inspect the progress of the repairs. In addition, if required by HUD, the Borrower will furnish at the Project site all necessary facilities for the use by HUD's inspector.  The inspection of the repairs by a representative or representatives of HUD shall be for the benefit and protection of HUD.  HUD shall have no obligation to endorse the Note for insurance unless and until all critical repairs have been completed to the satisfaction of HUD.

6. Evidence satisfactory to HUD shall be submitted prior to Endorsement showing that adequate sewer, water, gas and electrical facilities (as applicable) have been or will timely be fully installed. All off-site facilities or utilities required in connection with the repairs shall be included in such evidence.

7. Upon Endorsement, the Loan must be current with respect to all payments required to be made by its terms, including all deposits required to be made with the Lender for mortgage insurance premiums, fire, and other property insurance premiums, ground rents, water rates, taxes and other assessments; and there shall be in full force and effect fire and other property insurance as required by the Security Instrument. Prior to closing, the Borrower must provide evidence of all required insurance in conformance with current program requirements. Property insurance coverage must be a minimum $     , which is at least 90% of Estimated Replacement Cost Value, with a deductible of $     .

8. Upon Initial Endorsement, the Lender shall pay to HUD, in advance, a mortgage insurance premium equal to      % of the principal amount of the Loan to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

9. Prior to Endorsement, the Lender must submit a loan closing statement signed by the Lender and the Borrower detailing the amount of any promissory notes, cash contributions, amounts to be paid to satisfy Borrower’s obligations for existing or other indebtedness, acquisition, repairs, discounts, financing fees, legal expenses, organizational expenses, title and recording costs, and any Lender-required escrows.

10. Prior to Endorsement, the Borrower must certify to the actual cost of this Loan using form HUD-2205A-ORCF, Borrower’s Certificate of Actual Costs. A draft form HUD-2205A-ORCF with supporting documentation is required at least 10 days prior to Endorsement. Supporting documentation must include a current pay-off statement for any existing indebtedness and evidence of prepaid third-party costs.

11. The Borrower shall not be required to pay to the Lender an initial service charge in excess of two percent (2%) of the original amount of the Mortgage.

12. This Commitment shall expire ninety (90) days from the date hereof, unless extended by HUD. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, HUD may, at its option, reexamine this Commitment to determine whether it shall be extended, extended in the same amount, or amended to include a lesser amount.

13. A request for reopening received within ninety (90) days of expiration of this Commitment must be accompanied by a reopening fee of $0.50 per $1,000.00 of the amount of the expired commitment.

14. It is a condition of this Commitment that any change in ownership upon which this Commitment was predicated must be indicated in writing by the Borrower and such request must be approved in writing by HUD. Any principals of the Borrower or lessee/operator that are added prior to Endorsement and were not disclosed in the mortgage insurance application shall be subject to HUD’s credit review and previous participation clearance before Endorsement.

15. The Operator must execute form HUD-92466A-ORCF, Healthcare Regulatory Agreement – Operator. If there is a master lease, form HUD-92333-ORCF, Master Lease Subordination[, Non-disturbance and Attornment] Agreement will be required. If there is an operating lease but no master lease, form HUD-91110-ORCF, Subordination, Non-Disturbance and Attornment Agreement (SNDA) of Operating Lease will be required. Form HUD-92323-ORCF, Operator Security Agreement will be required, as will the Operator’s Attorney’s Opinion.

Any Operating Lease between the Borrower/Master Tenant and the Lessee/Operator must conform to current program requirements, include form HUD-91116-ORCF, Addendum to Operating Lease, be approved by HUD and be executed prior to closing. This lease must have an annual lease payment of at least $     , which is at least 1.05 times the sum of: annual principal and interest payments; annual mortgage insurance premium; annual deposit to reserve for replacement; annual property insurance; and annual property taxes. Any reduction to the minimum lease payment amount listed above must be explained and HUD review and approval is required.

[Please place an “X” in the following box, if applicable.]

An Identity of Interest exists between the Borrower and Operator; therefore, nondisturbance language must not be included in the subordination

Management agreements must include language to support the Program Obligations.

16. Any accounts receivable financing obtained by the Borrower, operator, or Management Agent, as applicable, will be subject to approval by HUD and the Lender.

17. In the event that additional code requirements are imposed by any state or local authority after the issuance of this Commitment that would cause the total cost of all required repairs to exceed fifteen percent (15%) of HUD’s total estimate of value after repairs, this Commitment shall be null and void.

18. HUD reserves the right to examine the Lender’s file materials related to the underwriting of the Loan at any time during the ten-year period following Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Loan for a period of ten (10) years, even though the Loan itself may be sold to another entity.

19. All financing arrangements (other than any other mortgage insured by HUD), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to, and approved by, HUD and must comply with HUD’s requirements applicable to loans insured under the applicable Section of the NHA .

20. Prior to Endorsement, the Borrower must provide evidence that a management conference has been scheduled with the ORCF Account Executive assigned to the project. The contact information for the Account Executive assigned to this project is below.

Name: The ORCF Underwriter will complete this

Email: The ORCF Underwriter will complete this

21. All comments in the Legal Punch List must be addressed to HUD’s satisfaction prior to closing.

22. This Commitment is conditioned upon and shall not be enforceable against HUD until and unless all conditions to Endorsement stated herein have been satisfied or waived by HUD. HUD reserves the right to suspend processing or terminate this Commitment in the event that any of the factors (a)-(d) listed in paragraph 23 below occur prior to Endorsement.

23. Prior to Endorsement, the Borrower and Operator must certify that between issuance of Firm Commitment and closing, none of the following have occurred: (a) federal, state, municipal and or other regulatory authority action against the project that demonstrates or alleges substantial deficiencies in the operation of the project which may be evidenced by an administrative or judicial proceeding or final audit finding; (b) filing of a bankruptcy petition of mortgagor, or operator; (c) filing of a lawsuit or criminal charges against the operator or mortgagor entity or any principal thereof; or (d) placement of a Special Focus Designation or ban on new admissions on the project.

24. This Commitment is:

Subject to Special Conditions numbered 1 through          , that are attached hereto and are made a part hereof.

Not subject to any Special Conditions.

**Special Conditions:**

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| [Insert Other Special Conditions] |

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Draft closing documents, conforming to the terms of this Commitment must be submitted not less than ten (10) business days prior to Endorsement. This Commitment and exhibits referred to herein together with the Portfolio Acceptance Letter (as amended), if any, applicable Handbooks and the statute, and applicable Regulations constitute the entire agreement among the parties, and acceptance of the terms hereof is evidenced by the signature of the Borrower and Lender upon the lines provided below. Please return one original of this Commitment, signed by the Lender and the Borrower, within ten (10) business days of the date of HUD's execution of this Commitment.

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| U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,  acting by and through the **Secretary**: | | | | |
| By: |  |  | Date: |  |
|  | Authorized Agent |  |  |  |

Office of Residential Care Facilities

The above Commitment to Insure Upon Completion, including Special Conditions (if applicable), is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| BORROWER: | |  |  | Borrower Name |
| Date: |  |  | By: |  |
|  |  |  | Name: |  |
|  |  |  | Title: |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| LENDER: | |  |  | Lender Name |
| Date: |  |  | By: |  |
|  |  |  | Name: |  |
|  |  |  | Title: |  |

Attachments:

Exhibit A Legal Description

Exhibit B Reserve for Replacement Funding Schedule

Exhibit C Critical, Non-Critical & Borrower-Elective Repairs List, as applicable

Form HUD-92264a-ORCF