

**Hospital Regulatory
Agreement – Borrower
Section 242**

**U.S. Department of Housing
and Urban Development
Office of Hospital Facilities**

OMB Approval No. 2502-0602
(Exp. 08/31/2019)

Public reporting burden for this collection of information is estimated to average 12 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Recording requested by:

After recording return to:

Project Name:

FHA Project No.:

Project Location:

Lender:

Original Principal Amount of Note:

Date of Note:

Originally endorsed for insurance under Section:

Borrower: Profit-Motivated Non-Profit /Public Entity

(Failure to check the appropriate space(s) shall not affect the enforceability or application of this Agreement.)

This Hospital Regulatory Agreement – Borrower (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 (“**Borrower**”) and the U.S. 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” or “Hospital” in the Loan Documents and Program Obligations. To the extent that Borrower contracts with any other party to perform any functions included in this Agreement, 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.

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 the Note, as evidenced by the discharge or release of the Borrower’s Security Instrument, 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 Program Obligations may subject Borrower and other signatories hereto to adverse actions.

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 or Program Obligations incorporated by reference herein. Definitions are located in Exhibit D in this Agreement. The terms found in Exhibit D, when used in this Agreement (including when used in the above recitals), shall have the meaning given such term in Exhibit D, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results.

II. CONSTRUCTION.

2. **CONSTRUCTION FUNDS.** In the event the Borrower is holding the construction funds, then the Borrower shall keep construction funds of the Project, if any, separate and apart from operating funds of the Project, including without limitation any funds necessary to operate the Hospital. .
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 Project, 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) 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 provided for as 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.** Borrower shall not commence, and has not commenced, required repairs as part of a Section 223(a)(7), construction, substantial rehabilitation or limited rehabilitation of the Project prior to HUD's initial endorsement (or initial/final endorsement, as applicable) of the Note except as permitted by Program Obligations or as otherwise permitted by 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," as such term is referred to in such Construction Contract.
7. **REQUIRED CONSTRUCTION PERMITS.** Borrower has obtained all necessary certificates, permits, licenses, qualifications, authorizations, consents and approvals from all necessary Governmental Authorities to own, construct or 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 Borrower shall obtain in the future. The Borrower represents and warrants that the licenses and permits that are in effect as of the date hereof are sufficient to allow any construction, substantial rehabilitation, Limited Rehabilitation, or repairs as applicable, of the Project to proceed to completion in the

ordinary course. As the construction, substantial rehabilitation, Limited Rehabilitation, or repairs, as applicable, of the Project progresses, Borrower shall procure and submit all necessary building and other permits required by Governmental Authorities.

8. CONDITIONS TO BE SATISFIED DURING AND FOLLOWING CONSTRUCTION.

(a) Section 242 and 241

- (i) Application of Cost Savings. Any Cost Savings identified during the cost certification process shall be used to reduce the principal amount of the Note and Borrower's cash equity contribution proportionally, in accordance with Program Obligations unless the Borrower elects to have a greater portion of the Cost Savings used to reduce the principal amount of the Note.
- (ii) Submission of construction and performance review report. Between initial endorsement and final endorsement, the Borrower shall furnish HUD with a report, within forty (40) days of the close of each quarter, addressing:
 - 1. The progress of construction;
 - 2. Adherence to the construction budget and the projected schedule; and
 - 3. Unanticipated issues encountered during construction (including Project scope change, change orders, and/or cost overruns), and how the issues will be resolved.
- (iii) Completion of final endorsement
 - 1. Borrower shall complete final endorsement within 180 days from commencement of amortization of the construction note.
 - 2. If Borrower does not complete final endorsement within 180 days from commencement of amortization of the construction note, then Borrower may, in advance of the completion of the 180-day period, request from HUD one or more extensions in increments of 90 days. Extension requests must include a Board-approved timetable outlining tasks and dates necessary to achieve final endorsement..

(b) Section 223(f) and 223(a)(7) Projects [when construction is part of the refinance]

- (i) Application of Cost Savings. Any Cost Savings identified shall be used in accordance with the provisions of the Escrow Agreement for Limited Rehabilitation or Escrow Agreement for Deferred Work.
- (ii) Submission of construction and performance review report. Between initial/final endorsement and completion of the work, the Board shall

furnish HUD with a report, within forty (40) days of the close of each quarter, addressing:

1. The progress of construction;
2. Adherence to the construction budget and the projected schedule; and
3. Unanticipated issues encountered during construction (including Project scope change, change orders, and/or cost overruns), and how the issues will be resolved.

(iii) Completion of supplemental cost certification, if required,

1. Borrower shall complete supplemental cost certification within 180 days from the Completion Date as required in the Escrow Agreement for Limited Rehabilitation or Escrow Agreement for Deferred Project Work.
2. If Borrower does not complete supplemental cost certification within 180 days from the Completion Date, then Borrower may, in advance of the completion of the 180-day period, request from HUD one or more extensions in increments of 90 days. Extension requests must include a Board-approved timetable outlining tasks and dates necessary to achieve supplemental cost certification.

III. FINANCIAL MANAGEMENT.

9. RESERVED.

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 the Borrower's Security Instrument.

11. PROPERTY AND OPERATION; ENCUMBRANCES. Borrower shall deposit all receipts of Borrower relating to the Project, including all Revenue, required under the Firm Commitment or otherwise advanced for the purpose and as part of the Mortgaged Property, in the name of Borrower, for the benefit of the Project, and in accordance with Program Obligations. Funds shall be deposited in a federally insured depository or depositories or in an investment brokerage account(s). 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 Borrower 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.

- (a) 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.
- (b) Borrower shall promptly notify HUD and Lender 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.
- (c) 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 and Lender of all payments received, or claimed, from an insurer on any property insurance policy in which the Borrower is the named insured.
- (d) Borrower shall notify HUD and Lender 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.
- (e) Borrower shall immediately notify HUD and Lender of any litigation proceeding filed against Borrower, the Project, Affiliates, Board members, or key management employees of the Borrower, in their capacity as such, if such litigation is not adequately covered by appropriate insurance. .

12. FINANCES AND FINANCIAL RECORDS

Borrower shall:

- (a) Make and keep books, records, and accounts, in such reasonable detail and in accordance with Program Obligations, so as to fully, accurately, and fairly reflect the activities of Borrower and the Project.
- (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 Borrower and the Project so as to permit the production of a balance sheet (or statement of financial position), a statement of operations, a statement of changes in net assets (or equity), and a statement of cash flows for Borrower and the Project.
- (c) If the Borrower has any business or activity other than the Project and operation of the Mortgaged Property, it shall maintain all income and other funds of such business or activity segregated from any funds of the Borrower included in the Mortgaged Property. Income and other funds of the Project, except for Surplus Cash, shall be

- expended only for the purposes of the Project, in connection with the Mortgaged Property, and in accordance with Program Obligations
- (d) Financial records of the Borrower and the Project shall be complete, accurate and current at all times. All expenditures in connection with the Project must be fully documented so as to provide reasonable assurance to HUD that such expenditures are permitted under Program Obligations. Undocumented expenses shall not be considered Reasonable Operating Expenses.
 - (e) Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
 - (i) Transactions are executed, and access to assets is permitted, only in accordance with Borrower's authorization;
 - (ii) Transactions are accurately and timely recorded to permit the preparation of financial reports in conformity with applicable Program Obligations;
 - (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 Program Obligations; and
 - (iv) Transactions are timely recorded in sufficient detail so as to maintain accountability of the Borrower's assets. The recorded accountability for assets shall be compared with the existing assets at reasonable intervals, but not less than annually, and appropriate action shall be taken with respect to any differences.
 - (f) 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 Hospital or other mutually agreeable location or, at HUD's request, provide legible copies of such documents to HUD or its authorized representatives within a reasonable time after HUD or its authorized representatives makes a request for such documents.
 - (g) Include as a requirement in any operating or management contract that the books, records, and accounts of any agent of Borrower, as they pertain to the operations of the Project, shall be kept in accordance with U.S. GAAP and the requirements of this Section 12 and be available for examination by HUD or its authorized representatives after reasonable prior notice during customary business hours at the Hospital or other mutually agreeable location.
 - (h) All books and records of Affiliates shall be maintained in accordance with U.S. GAAP and shall be available for inspection by HUD after reasonable prior notice during normal business hours at the Hospital or other mutually agreeable location.

13. FINANCIAL REPORTS.

For the purposes of this section, all Financial Reports required are for the Borrower and those Affiliates that are listed in Exhibit B and have pledged their assets, or such assets as required by HUD in the Firm Commitment, to the Lender in such form as approved by HUD.

Borrower shall file with HUD and Lender:

(a) Financial statements.

- (i) Annual audited financial statements from a certified public accountant or other person acceptable to HUD in accordance with Program Obligations.
 1. States, local governments, and not-for-profit organizations shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04) and OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) in effect at the time of the Audit.
 2. Profit motivated organizations shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04) in effect at the time of the Audit.
 3. The annual audited financial statements shall identify any change in accounting policies and its effect on the balance sheet and on the statement of operations. The audited financial statements shall include the prior year to facilitate comparison.
- (ii) Board-certified annual financial statements within 120 days following the close of the Borrower's fiscal year if the annual audited financial statements have not yet been provided to HUD and Lender, or anytime at HUD's and Lender's request. The board-certified annual financial statements shall identify any change in accounting policies and its effect on the balance sheet and on the statement of operations. The board-certified annual financial statements shall include the prior year to facilitate comparison.
- (iii) Monthly unaudited financial statements 40 days following the end of the month, in accordance with Program Obligations, until final endorsement has occurred, or at HUD's request.
- (iv) Quarterly unaudited financial statements and utilization statistics within 40 days following the end of each quarter of the Borrower's fiscal year, in accordance with Program Obligations.
- (v) If the Borrower has operations that are not included in the Mortgaged Property or Affiliates that are not listed in Exhibit B, , then financial reporting shall occur according to Program Obligations.

- (b) Management letter.
 - (i) Management letter related to the most current audit, from a certified public accountant or other person acceptable to HUD, within 30 days of receiving the audited financial statements.
 - (ii) Borrower's response to the management letter no later than 60 days following the Borrower's receipt of the management letter.
- (c) Board-approved annual budget prior to the start of Borrower's fiscal year in accordance with Program Obligations.
- (d) Upon request, a copy of any applicable Medicare Cost Report(s) most recently submitted to the Centers for Medicare and Medicaid Services (an agency of the Department of Health and Human Services) or its successor.
- (e) When applicable and upon request, a copy of the Form 990 most recently submitted to the Internal Revenue Service.
- (f) Upon request, all other financial and utilization reports HUD and Lender may require promptly and in a timely manner.

14. MORTGAGE RESERVE FUND (MRF). Borrower agrees to maintain throughout the term of the Note, an MRF in accordance with the terms and conditions of the MRF Agreement. No withdrawal that would result in a fund balance lower than that appearing in the MRF funding and disbursement schedule attached to the MRF Agreement shall be made without the prior written approval of HUD. Borrower shall possess a copy of the most up-to-date schedule for payments due to the MRF at all times.

15. EQUIPMENT REPLACEMENT RESERVE FUND [PROFIT-MOTIVATED BORROWERS ONLY]. Borrower agrees to establish an Equipment Replacement Reserve Fund (ERRF) as a trust fund with the Lender or a banking institution acceptable to HUD, in accordance with Program Obligations

16. [RESERVED.] *[If a specific escrow is required, insert deal-specific provisions in accordance with Program Obligations and the Firm Commitment.]*

17. TRANSACTIONS WITH AFFILIATES

- (a) Notwithstanding Section 36 of this Agreement,
 - (i) Transactions with Affiliates that are not arms-length shall be considered a Distribution of Assets and subject to the provisions in Section 18. Notwithstanding the foregoing, if the Affiliate is listed in Exhibit B and has pledged its assets or such assets as required by HUD in the Firm Commitment, to the Lender in such form as approved by HUD, then such non-arms-length transactions do not require HUD approval.

- (ii) All arms-length transactions with Affiliates do not require HUD's approval.
 - (iii) A transaction is determined to be arms-length if, in the case of the sale or exchange of property or rendering of any service by the Borrower to any Affiliate, the property or service is provided at a cost no less than the lower of:
 - 1. The market value; or
 - 2. The fully allocated cost to Borrower.
 - (iv) In the case of the purchase of any good or service by the Borrower from an Affiliate the fully allocated cost to the Borrower is equal to or less than the amount ordinarily paid for such good or service in the area where the services are rendered or the good is furnished/acquired.
- (b) Payment for any good or service provided by Borrower to an Affiliate must be received by Borrower within ninety (90) days of providing such service. If timely payments are not received, then Borrower must cease providing services to that Affiliate until the Affiliate brings the account current for those services that are ninety (90) days past due, unless such payment is a permitted distribution pursuant to Section 18. This provision shall not apply to any Affiliate that is listed in Exhibit B and has pledged its assets, or such assets as required by HUD in the Firm Commitment, to the Lender in such form as approved by HUD.

18. DISTRIBUTION OF ASSETS.

- (a) Notwithstanding Section 36 of this Agreement, Borrower may distribute Surplus Cash and other assets to an Affiliate, its Parent, owners and/or stockholders with prior HUD approval.
- (b) Borrower may distribute Surplus Cash and other assets to an Affiliate, its Parent, owners and/or stockholders without prior HUD approval if the following conditions are met:
 - (i) Final endorsement of the Note has occurred;
 - (ii) For the preceding 12 months, Borrower has made the required monthly payments due on the Note on or before the due date of the payment, including any grace period;
 - (iii) The MRF is fully funded as of the date of the distribution in conformity with the MRF schedule;
 - (iv) All taxes and employee payroll contributions (including penalties and interest if applicable) have been deposited as required; and

- (v) The Borrower meets the following guidelines in both the Most Recent Audited Financial Statements and immediately after the date of distribution:
 - 1. Debt service coverage ratio greater than or equal to 1.50,
 - 2. Days in Accounts Receivable less than or equal to 80 days,
 - 3. Average Payment Period less than or equal to 80 days,
 - 4. Current Ratio is greater than or equal to 1.50,
 - 5. Days of Cash on Hand greater than or equal to 21 days, and
 - 6. The Equity less any assets excluded from Mortgaged Property is greater than 0.00.
- (c) A distribution may not be more than fifty percent (50%) of Net Income, unless the Equity Financing Ratio is equal to or greater than twenty percent (20%), as reflected in both the Most Recent Audited Financial Statements and immediately after the distribution.
- (d) Prior to any distributions made pursuant to Section 18(b) (and Section 18(c), if applicable), Borrower must furnish to HUD a certification signed by the chairperson of the Board, the chief executive officer, and chief financial officer, stating:
 - (i) The distribution is permitted without HUD's prior approval;
 - (ii) The calculations confirming that the distribution is permitted pursuant to Section 18(b) (and Section 18(c), if applicable);
 - (iii) The actual amount of the distribution; and
 - (iv) The Hospital is in substantial compliance with regulations of the Department of Health and Human Services and the regulations of the State governing the operation and reimbursement of the Hospital.
- (e) This Agreement does not permit a Surplus Cash Note without the prior written permission of HUD.
- (f) Notwithstanding the foregoing, this Section shall not apply to any distribution made to any Affiliate that is listed in Exhibit B, subject to the Borrower's agreement (in a certification signed by the chairperson of the Board, the chief executive officer, and the chief financial officer) that it will ensure that the distribution is used only to meet obligations that arise from the operation, maintenance and routine repair of the Project, or for the benefit of the Project.

19. BUSINESS PLAN/CONSULTANT'S REPORT

- (a) The Board shall, at least twice a year, review the financial statements of Borrower and those Affiliates that are listed in Exhibit B and have pledged their assets or such assets as required by HUD in the Firm Commitment, to the Lender in such form as approved by HUD. This review shall include, but is not limited to, the fiscal year audited financial statements, any board-certified financial statements, and the six-month interim financial statements. Such Board review shall occur no later than the date the financial statements are due to be presented to HUD as reflected in Section 13 above (or within 30 days of receiving the report, whichever is earlier). Further, the Board shall provide HUD and Lender with a written report ("Report") within thirty (30) days after its review as to what measures are being taken to improve Borrower's financial operations if any of the conditions listed below exist:
- (i) Loss from operations equal to or greater than one percent (1%) of the Total Operating Revenues;
 - (ii) Net Income is less than 0.0; or
 - (iii) Failure to fully fund the MRF in accordance with the MRF schedule.
- (b) Upon receipt of the Report (or in its absence, upon expiration of the prescribed timeframe), HUD may request Borrower to submit a business plan (the "Business Plan"), reviewed and approved by the Board as evidenced by a corporate resolution, within sixty (60) days of HUD's request.
- (c) The Business Plan shall be updated yearly in conjunction with Borrower's preparation of an annual budget and provided to HUD and Lender, along with the budget, prior to the start of each fiscal year until audited financial statements show two (2) consecutive years in which Net Income is positive and the loss from operations is no greater than one percent (1%) of Total Operating Revenue. The Business Plan and each update shall include the following information:
- (i) A detailed analysis of the major factors contributing to the negative financial results;
 - (ii) A turnaround plan addressing the measures Borrower has taken or will take to rectify each of Borrower's problem areas, projected timeline for implementation of the measures, and key officials accountable for the achievement of each measure;
 - (iii) Projections of the cost savings and/or revenue increases resulting from each step and a projected timeline for the realization of the cost savings and/or Revenue enhancements (as a part of the turnaround plan),

- (iv) Financial forecast, including significant assumptions and utilization statistics, of no less than twelve (12) months displaying the expected results and including:
 1. Pro forma balance sheet (statement of position) and revenue and expense projections (statement of operations) on a monthly basis;
 2. Cash flow projections on a monthly basis; and
 3. Assumptions for all major line item projections in sufficient detail to show how the projections were derived.
- (v) An approval resolution by the Board.

HUD will monitor Borrower's compliance with the Business Plan.

- (d) If HUD does not receive the Business Plan within the required sixty (60) days, or if the Business Plan is not acceptable to HUD, or if Borrower is not attaining the goals of the Business Plan, HUD may require that Borrower engage, within forty-five (45) calendar days of HUD's request, at Borrower's expense, an independent consultant (the "**Review Consultant**"), acceptable to HUD. The Review Consultant shall review Borrower's previously submitted Business Plan (if any) and performance and make recommendations in a written report (the "**Review Consultant's Report**") for corrective action that address: (i) the adequacy and sufficiency of the Business Plan in returning Borrower to a profitable operation, (ii) the operational or financial problems that have caused Borrower's operating losses and cash flow deficiencies; and (iii) any additional items identified by HUD. The scope, milestones and timeframe for completion and receipt of the Review Consultant's Report must be approved by HUD with status updates provided to HUD and Lender on an agreed-upon schedule.
- (e) If the Review Consultant's Report is not submitted on time to HUD and Lender, or if the Review Consultant's Report is not acceptable to HUD, or Borrower is not making progress toward implementing or achieving the recommendations contained in the Review Consultant's Report and/or the Business Plan as affirmed by the Review Consultant, HUD may require that Borrower engage, within forty-five (45) calendar days of HUD's request, at Borrower's expense, a separate, independent consultant, acceptable to HUD. This separate independent consultant will conduct a review of management performance and make recommendations in a written report (the "**Independent Consultant's Report**") for corrective action that address governance, organizational structure, management, and any additional items identified by HUD. The scope, milestones, and timeframe for completion and receipt of the Independent Consultant's Report and implementation of the Independent Consultant's Report must be approved by HUD with status updates provided to HUD and Lender on an agreed-upon schedule.

- (f) In the event a Review Consultant's Report or an Independent Consultant's Report has been required by HUD, the Board agrees to provide HUD and Lender with a detailed implementation plan (the "Implementation Plan") of the Review Consultant's or Independent Consultant's recommendations, including reasons, if any, for not implementing the Review Consultant's or Independent Consultant's recommendations. A copy of the Review Consultant's Report or Independent Consultant's Report shall be submitted to HUD and Lender within the agreed-upon timeframe. The Implementation Plan shall be prepared in the above Business Plan format and shall be submitted to HUD and Lender within the agreed-upon timeframe. In the event no timeframe is agreed upon, the Board will provide HUD and Lender with the Implementation Plan within sixty (60) calendar days of Borrower's receipt of the Review Consultant's Report or Independent Consultant's Report. HUD will monitor Borrower's compliance with the Implementation Plan.
- (g) HUD in its sole discretion may direct the MRF to be used to pay, in full or in part, for the services detailed in this Section 19, including implementation of the Review Consultant's or Independent Consultant's recommendations. In such event, HUD must approve the related contract(s). Any funds used from the MRF under this Section 19 shall be replenished in accordance with a revised MRF schedule to be issued by HUD.

20. ADDITIONAL INDEBTEDNESS AND LEASING

Notwithstanding Section 36(b) of this Agreement, Borrower may incur either secured or unsecured additional indebtedness pursuant to the following:

- (a) Long-Term Debt
- (i) Additional debt or lease obligations with a term over one year in length ("**Long-Term Debt**") may be incurred with the prior written approval of HUD.
 - (ii) Long-Term Debt may be incurred without the prior approval of HUD if the Borrower can demonstrate, and the chief financial officer of Borrower certifies to HUD that:
 - 1. The debt is for acquisition of real estate or capital assets or for improvements to the Mortgaged Property, either by leases, loans, or installment purchase agreements;
 - 2. Borrower has maintained a Historical Pro Forma Debt Service Coverage Ratio of 1.50 or greater for the two (2) most recent fiscal years based on audited financial statements;
 - 3. Borrower is maintaining a Debt Service Coverage Ratio of 1.50 or greater for the current fiscal year;

4. The new debt will not cause the Debt Service Coverage Ratio to drop below 1.50;
5. The combined debt service payments for all Long-Term Debt and Short-Term Debt in the current fiscal year are not projected to exceed 10 percent (10%) of the average Adjusted Operating Revenue for the three (3) most recent fiscal years;
6. MRF funding is current; and
7. No condition of default exists under this Agreement or under any other agreement entered in connection with any Short-Term Debt or Long-Term Debt.

(iii) The new Long-Term Debt may be secured only by:

1. Assets that are not pledged as collateral for the Borrower's Security Instrument, or
2. Assets being acquired with the new debt.

(iv) For assets acquired through a financing permitted by this Agreement that are pledged as security to another lender, Borrower shall ensure a Financing Successor Clause is included in the financing agreement;

(v) For real property that is to be leased with a term of 12 months or greater, Borrower shall ensure a Realty Lease Successor Clause is part of the leasing agreement.

(vi) For equipment that is to be leased with a term of 12 months or greater, Borrower shall ensure a Personalty Lease Successor Clause is part of the leasing agreement;

(b) Short-Term Debt

(i) Additional debt with a term under one year in length ("**Short-Term Debt**") may be incurred, with the prior approval of HUD.

(ii) Unsecured Short-Term Debt, with the exception of lines of credit, may be incurred without prior approval of HUD if the Borrower can demonstrate, and the Chief Financial Officer of Borrower certifies to HUD, that:

1. Total Short-Term Debt for the current fiscal year will not exceed five percent (5%) of the average Adjusted Operating Revenue for the three (3) most recent fiscal years based on audited financial statements;
2. The combined debt service payments for all Long-Term Debt and Short-Term Debt in the current fiscal year is not projected to exceed 10 percent (10%) of the average Adjusted Operating

Revenue for the three (3) most recent fiscal years based on audited financial statements;

3. MRF funding is current; and
4. No condition of default exists under this Agreement or under any other agreement entered in connection with any Short-Term Debt or Long-Term Debt.

(iii) Short-Term Debt in the form of a line of credit (“Short-Term LOC”) is permitted with prior approval of HUD pursuant to the following:

1. The Short-Term LOC may not have a limit exceeding fifteen (15) days of Adjusted Operating Expenses, as reflected on the Most Recent Audited Financial Statements;
2. The Short-Term LOC may be secured by patient accounts receivable, subject to consent by the Lender and HUD. The total amount of the patient accounts receivable used to secure the Short-Term LOC cannot be greater than 150 percent (150%) of the Short-Term LOC.
3. Total Short-Term Debt for the current fiscal year will not exceed five percent (5%) of the average Adjusted Operating Revenue for the three most recent fiscal years based on audited financial statements;
4. The combined debt service payments for all Long-Term Debt and Short-Term Debt in the current fiscal year is not projected to exceed 10 percent of the average Adjusted Operating Revenue for the three most recent fiscal years based on audited financial statements;
5. MRF funding is current;
6. No condition of default exists under this Agreement or under any other agreement entered in connection with any Short-Term Debt, or Long-Term Debt.
7. For All Short-term Debt that is secured by Borrower’s Accounts Receivable, Borrower must obtain an intercreditor agreement executed by Borrower, Lender and the Short-Term Debt lender, which shall be approved by HUD.

(c) Limitation on Total Debt Service Payments

The combined debt service payments for all Long-Term Debt and Short-Term Debt in the current fiscal year shall not exceed 10 percent (10%) of the average Adjusted Operating Revenue for the three (3) most recent fiscal years based on audited financial statements.

(d) Reporting Requirements

Prior to incurring any Long-Term Debt or Short-Term Debt, Borrower shall notify HUD of the type, amount, annual principal, and the annual interest payments for both the new and existing indebtedness.

21. SUCCESSOR CLAUSE

- (a) For new leases entered into by Borrower not covered by Section 20, Borrower shall insert a Personalty Lease Successor Clause into said lease. If the Personalty Lease Successor Clause cannot be obtained, Borrower shall not enter into the new or renewal lease without the prior approval of HUD.
- (b) For all existing indebtedness which is secured by property that is not part of the Borrower's Security Instrument, Borrower shall insert a Financing Successor Clause into the financing agreement when the financing agreement is eligible for renewal. If the Borrower is unable to include the Financing Successor Clause in the renewed financing agreement, then Borrower shall not enter into the new financing agreement without the prior approval of HUD.
- (c) For all existing personalty leases Borrower shall insert a Personalty Lease Successor Clause into the lease when the leases are eligible for renewal. If the Borrower is unable to include the Personalty Lease Successor Clause in the renewed lease, then Borrower shall not enter into the renewed lease without the prior approval of HUD.
- (d) For existing real property leases having an expiration of more than one (1) year from the date of this Agreement, Borrower shall insert a Realty Lease Successor Clause when the leases are eligible for renewal. If the Borrower is unable to include the Realty Lease Successor Clause in the lease, then Borrower shall not enter into the renewed lease without the prior approval of HUD.

22. ANNUAL VERIFICATION OF COMPLIANCE WITH REGULATORY AGREEMENT

- (a) Annually, Borrower shall have its independent auditor provide a report in connection with the annual audit as to the Borrower's compliance with this Agreement. The auditor shall provide a listing of any items of noncompliance along with an explanation, if applicable.
- (b) The Borrower shall include as a part of the schedules to the audited financial statements (or in a separate report, which the auditor shall also examine):
 - (i) The amount required in the MRF as of the balance sheet date; and
 - (ii) The actual balance of the MRF as of the balance sheet date.

23. COMPARISON OF FINANCIAL FORECAST TO ACTUAL RESULTS FOR THE FORECAST PERIODS. If financial and/or utilization projections were provided with the Borrower's application for mortgage insurance, no later than 120 days following the end of each fiscal year of the Borrower for which a projection was prepared,, the Borrower shall provide HUD with an analysis of its performance in comparison with the projection submitted with the application for mortgage insurance. Any material deviations, as determined by HUD, from the projection shall be explained in an accompanying statement from the management and Board of the Borrower.

24. CHANGES IN REIMBURSEMENT. In the event there is a change in any payor reimbursement or contract (including the loss thereof) that could cause (1) decrease in total operating revenue equal to or greater than three percent (3%) of the total operating revenue or (2) net income less than zero, Borrower commits to report to HUD its assessment of the impact of the change within thirty (30) days following the enactment of such changes. Borrower shall take appropriate actions to mitigate such changes, including expense curtailments and revenue increases. Borrower shall submit its plan of action, as approved by the Board, to HUD within sixty (60) days of the report to HUD, referred to above. HUD, as part of its normal oversight, will monitor Borrower's financial performance and may request a plan or report pursuant to Section 19 . The purpose of these actions would be to assure that Borrower will continue to serve the health needs of its community and meet its obligations under the terms of the Loan Documents and Program Obligations.

IV. PROJECT MANAGEMENT

25. AFTER-ACQUIRED PROPERTY. All After-Acquired Property shall be added to the Mortgaged Property, unless HUD agrees, in writing, that certain After-Acquired Property may be excused from this requirement, or if such After-Acquired Property is used to secure Additional Debt (as allowed in Section 20). Borrower shall promptly execute, record, and deliver the necessary documents required by HUD and Lender to encumber said property as additional security for the Note.

26. 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 26 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 Improvements 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.

27. PURCHASE OF GOODS OR SERVICES. To the extent that Borrower obtains, or causes to be obtained, goods, materials, supplies, or services ("**Goods or Services**"), it shall do so 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 or Services received. The purchase price of Goods or Services shall be based on quality, durability, and scope of work.

28. IDENTITY OF INTEREST AND CONFLICT OF INTEREST. Borrower shall have a policy on conflicts of interest and identity of interest, which must be compliant with State and Federal requirements. The Borrower shall disclose to HUD any identities of interest and conflicts of interest that are identified under the Borrower's policy.

29. PERMITS AND APPROVALS.

- (a) Borrower shall at all times maintain in full force and effect, all appropriate certificates of need, bed authority, provider agreements, licenses, permits and approvals reasonably necessary to operate the Hospital or to fund the operation of the Project (collectively, the "**Permits and Approvals**"). Borrower shall ensure that the Hospital and the Project are at all times operated in accordance with the requirements of the Permits and Approvals.
- (b) The security interest referred to in Section 30 below shall constitute, to the extent permitted by law, a first lien upon all of the rights, titles and interests of Borrower, 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 other Loan Documents, the Borrower shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the Hospital. For the intents and purposes herein, Borrower hereby irrevocably nominates and appoints Lender and HUD, their respective successors and assigns, each in its own capacity, as Borrower's attorney-in-fact coupled with an interest to do all things that any such attorney-in-fact deems to be necessary or appropriate in order to facilitate the continued operation of the Hospital and the Project, 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 Borrower, its successors or assigns, any and all documents, as may be required by any Governmental Authority exercising jurisdiction over the Project.

- (c) Borrower shall not alter, terminate or relinquish or suffer or permit the alteration, termination or relinquishment of any Permits and Approvals without the prior written approval of HUD. In the event that any such alteration, termination or relinquishment is proposed, upon learning of such proposed alteration, termination or relinquishment, Borrower shall advise HUD and Lender promptly.
- (d) Except as otherwise provided below or in Program Obligations, Borrower shall deliver within two (2) Business Days after Borrower's receipt thereof, to HUD and Lender copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by Borrower from any Governmental Authority that includes any statement, finding or assertion that (i) Borrower, [or the Project] is or may be in violation of (or default under) any of the Permits and Approvals or any governmental requirements applicable thereto, (ii) any of the Permits and Approvals are to be terminated, limited in any way, or not renewed, (iii) any civil money penalty relating to the Project is being imposed with respect to the Hospital, or (iv) Borrower, [or the Project] is subject to any governmental investigation or inquiry involving fraud. Borrower shall deliver to HUD and Lender, simultaneously with delivery thereof to any Governmental Authority, any and all responses given by or on behalf of Borrower to any of the foregoing and shall provide to HUD and Lender, promptly upon request, such other information regarding any of the foregoing as HUD or Lender may request. 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, the 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.

30. PERSONALTY; SECURITY INTERESTS. Borrower shall suitably equip, or cause to be equipped, initially and on an ongoing basis, the Project for use as a hospital and such other uses as permitted by Program Obligations. Upon completion of the Project, Borrower shall submit sufficient documentation to HUD stating that all equipment included in the final equipment list is on the Land and located within the Improvements included in the Borrower's Security Instrument. Except as otherwise approved in writing by HUD, Borrower shall grant to Lender and HUD a first lien security interest in all Personalty of Borrower related to the Project as additional security for the obligations of Borrower under the Note, the Borrower's Security Instrument and this Agreement. Such security interest shall be evidenced by such security agreements as Lender and/or HUD may require and, in connection therewith, Borrower shall execute or cause to be executed and delivered such deposit account control agreements ("DACA") as may be required by Lender and/or HUD. Borrower shall ensure that if any new Deposit Accounts are opened by Borrower after initial endorsement or after initial/final endorsement, as applicable, of the Note, Borrower shall execute or cause to be executed and delivered to Lender and HUD additional DACAs on the new Deposit Accounts. Borrower hereby authorizes each of Lender and HUD to file such

UCC financing statements, amendments, and continuation statements as either of them may deem to be necessary or appropriate in connection with the foregoing security interests. Borrower shall not be permitted to grant any other liens on any of the Mortgaged Property without the prior written approval of Lender and HUD.

31. ACCEPTABILITY OF MANAGEMENT OF THE HOSPITAL. Borrower shall provide for management of the Hospital and the Project in a manner acceptable to HUD.

- (a) **Contract Management.** The Borrower shall not execute a management agreement or any other contract for management of the Hospital without HUD's prior written approval. (Contract Management of the Hospital, which requires HUD's prior written approval, refers to management of the Hospital, not management of components within the Hospital, such as the Hospital cafeteria or Hospital pharmacy.) Any management agreement or contract for management of the Hospital shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by HUD addressed to the Borrower and management agent.
- (b) **Principals.** HUD shall also have the authority to require that any principals of the Borrower, including but not limited to board members of the corporate entity and its obligated subsidiaries, be removed, substituted, or terminated for cause upon written request by HUD to the Borrower, subject to local and state requirements.
- (c) **Key Employees.** Furthermore, HUD shall have the authority to require that any key management employees of the Borrower and its obligated subsidiaries (as defined and determined solely by HUD) be terminated for cause upon written request by HUD addressed to the Borrower.
- (d) **Procedures upon receipt of request under paragraphs (a) through (c) of this section.** Upon receipt of such requests in (a) through (c), the Borrower shall immediately terminate the management agreement, principals, or employees within the shortest applicable period HUD determines appropriate and shall make arrangements satisfactory to HUD for continuing proper management of the Hospital.

32. COMMERCIAL LEASES. Commercial space leases of the Mortgaged Property must be approved by HUD in writing and must include a provision that permits HUD, any lender-in-possession, or any successor organization, at such party's option, to succeed to the interest of Borrower.

33. INDEMNIFICATION OF BOARD MEMBERS, DIRECTORS AND OFFICERS
Borrower may indemnify the Board members to the extent permitted or required by State law. This may be reflected in the articles of incorporation and/or bylaws. If Borrower

elects to indemnify the Board members, the vehicle for indemnification shall be insurance.

34. RESERVED.

35. DEBTS OF AFFILIATES. Borrower shall not be directly or indirectly responsible for the debt or liabilities of any of its Affiliates without prior written approval of HUD.

V. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD.

36. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD. In addition to the actions listed in this Section 36, Borrower shall seek written approval of all actions listed in this Agreement, unless specifically provided otherwise.

- (a) Conveying, assigning, transferring, pledging, hypothecating, encumbering, or otherwise disposing of the Mortgaged Property or any interest therein, or permitting the conveyance, assignment, or transfer of any interest or control in Borrower (if the effect of such conveyance, assignment or transfer results in a change in control over the finances or operations of the Project) 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 the 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; or (iv) as otherwise allowed by Section 18 and Program Obligations.)
- (b) Entering 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 Section 20, the Loan Documents and Program Obligations.
- (c) Paying out any funds or distributing assets in violation of this Agreement, the Loan Documents, or Program Obligations.
- (d) Except for Distribution of Assets allowed pursuant to this Agreement, paying any compensation, including wages or salaries, in excess of fair and reasonable compensation or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, or member, of Borrower, or to any nominee thereof, except that, at any time, Borrower may pay fair and reasonable compensation for their services as an employee to employees who are officers, directors, stockholders, trustees, beneficiaries, partners, or members of Borrower.
- (e) Entering into or change any lease, contract, agreement, or arrangement for management of the Hospital, except as permitted under Program Obligations.

- (f) Conveying, assigning or transferring any right to receive Revenue of the Mortgaged Property.
- (g) Remodeling, adding to, subtracting from, constructing, reconstructing or demolishing any part of the Project, except as required by HUD under Section 26(c) except that Borrower may, without approval of HUD, (i) dispose of or cause to be disposed of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value (provided, that Borrower shall have no obligation to replace any such Fixtures or Personalty that are not needed for operation of the Project) and (ii) make minor alterations that do not adversely affect the Mortgaged Property in accordance with Program Obligations.
- (h) Permitting the use of the Project for any purpose except as a Hospital and such ancillary services customary in a hospital facility, or permit commercial use greater than that approved by HUD.
- (i) Amending the organizational documents of Borrower in such a way that modifies the provisions of the organizational documents required by HUD, Lender, and/or Program Obligations, including, but not limited to: (i) any amendment that modifies the requirements regarding the filing of a HUD previous participation certification when required by Program Obligations; (ii) any amendment that in any way affects the Loan Documents; (iii) any amendment that would change the identity of the persons and/or entities authorized to bind Borrower previously approved by HUD or pre-approve a successor general partner, manager or member to bind the partnership or company for any matters concerning the Project which require HUD's consent or approval; (iv) a change in any general partner, manager or managing member or pre-approved successor general partner, manager or managing member of the partnership or company or any change in a guarantor of any obligation to HUD resulting in a change of control as further described in Program Obligations; and (v) any proposed changes to the mandatory HUD language included in the organizational documents. Copies of all fully executed amendments to the organizational documents must be provided to HUD and Lender within ten (10) days of the effective date of the amendment. If the amendments to the organizational documents are filed, copies of the filed documents must be provided to HUD and Lender within ten (10) days of receipt by Borrower. Notwithstanding, Borrower may adopt bylaws at any regular meeting of the Borrower or at any special meeting called for that purpose, so long as they are not inconsistent with its formation documents or this Agreement.
- (j) Paying or reimbursing any party from the Mortgaged Property with the use of Project funds except for Goods and Services that are actually rendered or delivered to the Project and are reasonably necessary for its operation and in accordance with Section 27.
- (k) Receiving any fee or payment of any kind from any employee of the Hospital or Borrower, or other provider of Goods or Services for the Project in exchange for the

right to provide such Goods or Services, unless such fee is paid to the project and the total cost paid for such services meets the requirements of Section 27.

- (l) Except as provided in Section 32, entering into, or agreeing to the assignment of, any lease for all or part of the Mortgaged Property.
- (m) Reserved.
- (n) Entering into a contract for a merger, reorganization and/or consolidation.
- (o) Establishing, developing, organizing, becoming the sole member of or acquiring an interest in any corporation, subsidiary, or affiliate organization.
- (p) Entering into an interest rate swap or any derivative related to the Note.

VI. ENFORCEMENT.

37. 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 of 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 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 Lender’s and/or HUD’s interest in the Mortgaged Property or rights under the Loan Documents.

38. NOTICE OF VIOLATION AND EVENT OF DEFAULT.

- (a) At any time during the existence of a Violation, HUD may give written notice of such Violation to Borrower (the “**Violation Notice**”), addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written Notice to HUD and Lender, be designated by Borrower as its legal business address. Borrower shall have thirty (30) days to cure, or cause to be cured, any Violation described in the Violation Notice, provided that HUD shall extend such thirty (30) 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 and 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 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 delivery of such Violation Notice and applicable cure period, the Violation is not corrected to the satisfaction of HUD, HUD may declare an **Event of Default** under this Agreement without further Notice. Alternatively, if necessary in HUD's determination to protect the health and safety of the patients or the financial or operational viability of the Hospital, HUD may declare an Event of Default at any time during the existence of a Violation without providing prior written notice of the Violation.
- (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 if such termination, suspension, or other restriction would have a materially adverse effect on the Project, 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 of the Permits and Approvals that would have a materially adverse effect on the Project, or if HUD determines at any time that, as a result of a Violation, the value of the Mortgaged Property is at substantial and imminent risk of material adverse diminution, then HUD may immediately (without thirty (30) days' notice) declare an Event of Default of this Agreement and may immediately proceed to take actions to pursue its remedies.
- (c) Upon any declaration of an Event of Default, HUD may:
- (i) If HUD holds the Note, declare the whole of the 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 the Borrower's Security Instrument pursuant to Program Obligations;
 - (ii) If the 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 the Borrower's Security Instrument, and the holder after receiving such Notice and demand, shall declare the whole of the Indebtedness due and payable and thereupon proceed with foreclosure of the Borrower's Security Instrument and/or the exercise of other remedies available to Lender under the Loan Documents or at law or equity, or assign the Note and the Borrower's Security Instrument to HUD as provided in Program Obligations. Upon assignment of the Note and the 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 the Borrower's Security Instrument pursuant to Program Obligations;

- (iii) Collect all revenue and charges in connection with the Project or the operation of the Hospital, to the extent permitted by applicable law, and use such collections to pay obligations of Borrower under this Agreement and under the Note and the 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 the terms of this 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.

39. 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.

40. RESERVED.

VII. MISCELLANEOUS.

41. 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 C.F.R. Part 35; 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. 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 patients 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) HUD and Lender shall be entitled to invoke any remedies available by law or equity to redress any breach or to compel compliance by Borrower with these requirements, including any remedies available hereunder.

42. 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 Lender, holder, coinsurer, or reinsurer of the Borrower's Security Instrument, or obligated to reinsure the Note or the Borrower's Security Instrument.

43. 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.

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

45. RULES OF CONSTRUCTION. The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an "**Exhibit**" or a "**Section**" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement or to a Section of this Agreement. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement. Use of the singular in this

Agreement includes the plural and use of the plural includes the singular. As used in this Agreement, the term, “including” means “including, but not limited to.”

46. PRESENT ASSIGNMENT. To the extent permitted by applicable law, Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to Revenue, charges, fees, carrying charges, Project accounts, 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 Leases, Rents, and Revenue and other provisions 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 Revenue, charges, fees, carrying charges, Project accounts, and other revenues and receipts, but upon an Event of Default under this Agreement or under the Borrower’s Security Instrument, such revocable license is automatically terminated.

47. NOTICE.

- (a) All notices, demands and other communications (“**Notice**”) under or concerning this Agreement shall be in writing. A courtesy copy of any Notice given by Borrower or HUD shall be sent simultaneously to Lender. Each Notice shall be addressed to the intended recipients at their respective addresses set forth below, 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 or second Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next or second Business Day delivery, respectively, or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Agreement the term “**Business Day**” means any day other than a Saturday or a Sunday, a federal holiday or holiday in the State or other day on which the federal government or the State government is not open for business. When not specifically designated as a Business Day, the term “**day**” shall refer to a calendar day.
- (b) Any party to this Agreement and Lender 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 47. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section 47, 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 47 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.

BORROWER:

HUD:

LENDER:

48. THIRD PARTY BENEFICIARY. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender, as more fully set forth in 24 C.F.R. Part 207, Subpart B.

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 instrument. 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:

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Authorized Agent
Office of Hospital Facilities

[ADD ADDITIONAL LINES IF NEEDED]

NOTICE: THIS AGREEMENT 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).

EXHIBIT A

[LEGAL DESCRIPTION OF THE LAND]

EXHIBIT B

AFFILIATES

[IF APPLICABLE] A list of Affiliates that pledge assets to the Lender and, at HUD's discretion, are identified as Affiliates per Sections 13, 17, 18, and 19 of this Agreement.

EXHIBIT C

EXCLUDED PROPERTY

[IF APPLICABLE] A complete list of all property (real property and Personalty) held by the Borrower which will be excluded from the Regulatory Agreement and the Security Instrument.

EXHIBIT D

DEFINITIONS

“**Accounts Receivable**” means all right, title, and interest of Borrower in and to the following, in each case arising from the operation of the Hospital located on the Mortgaged Property in the ordinary course of business: (a) all rights to payments of a monetary obligation, whether or not earned by performance, including, but not limited to, accounts receivable, health-care insurance receivables, Medicaid and Medicare receivables, Veterans Administration receivables, or other governmental receivables, private patient receivables, and HMO receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of the property described in clauses (a), (b), and (c). Notwithstanding, the forgoing “Accounts Receivable” shall not include accounts arising from the sale of Borrower’s equipment, inventory, or other goods, other than accounts arising from the sale of Borrower’s inventory in the ordinary course of Borrower’s business.

“**Affiliate**” is defined in 24 C.F.R. 242.1 or any successor regulation. The Affiliates include, but are not limited to, those Affiliates listed in Exhibit B

“**After-Acquired Property**” is defined as property (both real property and Personalty) purchased or acquired by the Borrower after initial endorsement, or after initial/final endorsement, as applicable, of the Note.

“**Audit**” is defined as the audit referenced in Section 13 Financial Reports.

“**Board**” is defined as the Governing Board, Board of Directors, or Board of Trustees (whichever is applicable) of the Borrower.

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

“**Borrower’s Security Instrument**” means the Hospital [*Mortgage, Deed of Trust, Deed to Secure Debt, or other designation as appropriate in Jurisdiction*], Assignment of Leases, Rents and Revenue and Security Agreement, and shall be deemed to be the mortgage as defined by Program Obligations. It shall also include the UCC’s covering the Personalty which provides additional security.

“**Construction Contract**” is defined as (i) lump sum form providing for payment of a specified amount; (ii) construction management contract with a guaranteed maximum price; (iii) a design-build contract; or (iv) such other form of contract acceptable to HUD.

“**Cost Savings**” is defined as excess monies identified during the final cost certification process in connection with the Note that are a result of the actual cost of a specified item being less than the projected cost expected at time of initial endorsement.

“**Deposit Account**” has the meaning given that term in Article 9 of the Uniform Commercial Code adopted in the State.

“**Distribution of Assets**” 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.

“**Equipment Replacement Reserve Fund**” means a trust account, or an account held by the Lender, for and on behalf of a profit-motivated borrower only, for the purchase of equipment, as further described in Program Obligations.

“**Financing Successor Clause**” is defined as a clause that states, (in substance), upon a default under the Note, HUD, any lender in possession, or successor organization has the right to assume the obligations of Borrower and use the financed assets for Hospital-related activities and such party agrees to be bound by all of the terms and conditions of the financing agreement.

“**Firm Commitment**” 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 the National Housing Act.

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

“**Hospital**” is defined in 24 C.F.R. 242.1, or any successor regulation.

“**HUD**” means the U.S. 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.

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

“**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.

“**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 in the Regulatory Agreement, 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.

“**Limited Rehabilitation**” is defined in 24 C.F.R. 242.1, or any successor regulation.

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

“**Mortgage Reserve Fund**” or “**MRF**” means a trust account, or an account held by the Lender, for and on behalf of the Borrower, to which the Borrower contributes and from which withdrawals must be approved by HUD. The purpose of the fund, includes, but is not limited to, providing HUD a means to assist the Hospital to avoid mortgage defaults and to preserve the value of the Mortgaged Property and the Hospital’s business.

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

“**Most Recent Audited Financial Statements**” is defined as the audited financial statement required under this Agreement.

“**MRF Agreement**” is defined as the Mortgage Reserve Fund Agreement entered into between Borrower and HUD.

“**MRF Trust Fund Agreement**” is defined as the agreement entered into between Borrower, the Trustee and HUD establishing the MRF and associated with the Project.

“**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 47.

“**Parent**” is defined as an organization or entity that controls or has a controlling interest in the Borrower or is a sole member of the Borrower.

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

“**Personalty Lease Successor Clause**” is defined as a clause that states, (in substance), upon a default under the Note, HUD or any lender in possession of the organization shall have the right to assume the obligations of Borrower and use the leased asset for Hospital-related activities and such party agrees to be bound by all of the terms and conditions of the leasing agreement.

“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, 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://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips or a successor location to that site.

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

“Property Jurisdiction” is any jurisdiction in which the Land is located.

“Realty Lease Successor Clause” is defined as a clause that states (in substance) that upon a default under the Note, HUD, any lender in possession, or any successor organization would have a right to occupy the leased premises for Hospital-related activities and such party agrees to be bound by all of the terms and conditions of the lease.

“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 and any of the Loan Documents.

“Reasonable Time Period” is defined as the lesser of thirty (30) Business Days prior to or immediately upon confirmation that the Borrower will purchase or acquire additional property.

“Revenue,” “Rent,” “Profits,” and “Income” whether used in the singular or plural shall include: all revenues, charges, fees, rents, and any other lease payments arising from the operation of the Project, including but not limited to, if and for so long as applicable, Medicare, Medicaid, capitation fees, and other third-party reimbursement payments, commercial leases, workers’ compensation, cafeteria sales, parking fees, Accounts Receivable, and all payments and income arising from the operation of the Hospital and/or the provision of services to patients thereof.

“Surplus Cash” is defined in 24 C.F.R. 242.1, or any successor regulation.

“Surplus Cash Note” is defined as a note that requires or permits principal repayments only when there is cash available after satisfying certain conditions.

“**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.

“**UCC**” means the Uniform Commercial Code as adopted in the State.

“**U.S. GAAP**” is defined as the generally accepted accounting principles (or standards) for use in the United States as promulgated by the Financial Accounting Standards Board. It shall also include standards set by the Governmental Accounting Standards Board for governmental organizations when appropriate.

“**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 Revenues. 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 that because of such failure, may subject the Project to 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 Agreement, or any of the Loan Documents respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Revenues to which Lender or its assigns have the right of possession under the terms of the Loan Documents.