

**Addendum to
Operating Lease**
Section 232

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

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

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

This Addendum to Operating Lease (this “**Addendum**”) is attached to and made a part of that certain [Operator Lease] dated _____, 20__, entered into by Lessor and Lessee (the “**Operator Lease**”), and amends and/or supplements the Operator Lease. For so long as HUD is the holder or insurer of any indebtedness secured by the Healthcare Facility (as defined below), the provisions of this Addendum shall apply to the Operator Lease. In the event of any conflict between the terms of this Addendum and the Operator Lease, the terms of this Addendum shall govern and control.

Covenants. Lessor and Lessee covenant and agree as follows:

I. DEFINITIONS.

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

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

“**Approved Use**” has the meaning set forth in the Operator’s Regulatory Agreement.

“**Bed Authority**” means the licensed number of beds for a Healthcare Facility as authorized under the Healthcare Requirements.

“**Borrower’s Regulatory Agreement**” means that certain Healthcare Regulatory Agreement – Borrower relating to the Project and entered into by Lessor for the benefit of HUD.

“**Borrower’s Security Instrument**” means that certain Healthcare [Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed or Other Designation as appropriate in Jurisdiction], Assignment of Leases, Rents and Revenue and Security Agreement, from Lessor in favor of Lender with respect to the Project securing the Loan, and any amendments and supplements thereto.

“**CON**” means collectively all Certificates of Need and Certificate of Need reports under Healthcare Requirements authorizing and permitting the use of the Healthcare Facility for its Approved Use.

“**FF&E**” means furnishings, fixtures and equipment of all kind used in connection with the Healthcare Facility including additions, substitutions and replacements thereto.

“**Healthcare Facility**” means that certain healthcare facility authorized to receive insured mortgage financing pursuant to Section 232 of the National Housing Act, as amended, that is the subject of the Operator Lease.

“**Healthcare Requirements**” means, relating to the Healthcare Facility, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Healthcare Facility or any part thereof as a healthcare facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with healthcare authorities pertaining to the Healthcare Facility.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Intercreditor Agreement**” is defined in Section 12.

“**Lender**” means _____, a _____ organized and existing under the laws of _____, and any future holder of the Borrower’s Security Instrument.

“**Lessee**” means _____, a _____ organized and existing under the laws of _____, together with any successors, heirs and assigns (jointly and severally). Lessee may sometimes be referred to as a “tenant” under the terms of the Operator Lease.

“**Lessor**” means _____, a _____ organized and existing under the laws of _____, together with any successors, heirs and assigns (jointly and severally). “Lessor” may sometimes be referred to as a “landlord” under the terms of the Operator Lease.

“**Licenses**” has the meaning set forth in Section _____ of this Addendum.

“**Loan**” means the HUD-insured loan in the original principal amount of \$_____, made by Lender to Lessor, secured by the Healthcare Facility, as such Loan may be amended, increased or decreased.

“**Loan Documents**” means the Note, the Borrower’s Security Instrument, the Borrower’s Regulatory Agreement, [the Master Tenant’s Regulatory Agreement,] the Operator’s Regulatory Agreement, the Operator’s Security Agreement, [the Master Tenant’s Security Agreement, the Cross Guaranties,] any subordination agreements, and any and all other documents now or in the future required by and/or assigned to HUD and/or Lender in connection with the Loan(s), whether executed by or on behalf of Lessor, [Master Tenant,] or Operator, as

the same may be amended from time to time, provided that the [Master Lease and] Operator Lease, and any amendments thereto, shall not be considered Loan Documents.

“**Master Lease**” and “**Master Tenant**” have the meanings set forth in the Borrower’s Security Instrument.

“**Operator’s Regulatory Agreement**” means that certain Healthcare Regulatory Agreement – Operator relating to the Project and entered into by Lessee for the benefit of HUD.

“**Operator’s Security Agreement**” means that certain Operator Security Agreement relating to the Project, and made by Lessee.

“**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 Addendum rather than add or delete provisions from such document. Handbooks, guides, notices and mortgagee letters are available on HUD’s official website: <http://hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site.

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

II. HUD REQUIREMENTS

2. COMPLIANCE WITH PROGRAM OBLIGATIONS.

(a) Lessor and Lessee shall comply with, and agree that the Operator Lease and this Addendum shall conform to, the Loan Documents and all applicable Program Obligations. Lessee further agrees that the Operator Lease shall be part of the collateral pledged to Lender and HUD as security for the Loan. Accordingly, Lessee shall not take any action which would violate the Loan Documents or Program Obligations.

(b) In the event of any conflict between the terms and provisions of the Operator Lease, the Loan Documents or any Program Obligations, the Loan Documents and Program Obligations shall control in all respects. No provision of the Operator Lease shall modify any obligation of Lessor or Lessee under the Loan Documents. HUD’s acceptance of the Operator Lease in connection with the closing of the Loan shall in no way constitute HUD’s consent to arrangements which are inconsistent with Program Obligations.

(c) Lessee shall cooperate with Lessor in providing, upon request by Lender or HUD, any and all documents, information, financial reports, and other items as may be required by Lender or HUD. As applicable, Lessee shall execute any subordination agreements, memoranda of leases or subleases, and/or estoppel certificates in form and substance required by Lender or HUD. Lessee shall cooperate with Lessor and any lenders processing additional loans to Lessor.

3. SUBORDINATION TO THE LOAN DOCUMENTS.

(a) The Operator Lease is and shall be subject and subordinate to: the Borrower's Security Instrument and the Loan Documents; all renewals, modifications, consolidations, replacements and extensions thereof; all substitutions thereof; all future mortgages upon the Healthcare Facility and/or other security interests in or to the Healthcare Facility and any other items which are herein leased to Lessee or which, pursuant to the terms hereof, become a part of the Healthcare Facility or are otherwise deemed to become the property of Lessor or to remain upon the Healthcare Facility at the end of the term; and each advance made or hereafter made under any of the foregoing. This Section shall be self-operative and no further instrument of subordination shall be required. Without limiting the foregoing, Lessee shall execute and deliver promptly any and all certificates, agreements and other instruments that Lessor, Lender or HUD may reasonably request in order to confirm such subordination. Unless Lender agrees otherwise, if Lender or another person or entity shall succeed to the interest of Lessor by reason of foreclosure or other proceedings brought by Lender in lieu of or pursuant to foreclosure, or by any other manner (Lender or such other person or entity herein referred to as "**Successor**"), then the Operator Lease and this Addendum shall terminate, or, at the option of Successor, the Operator Lease and this Addendum shall continue in full force and effect, in which case Lessee shall attorn to Successor and recognize Successor as its landlord and as "Lessor" under the terms of the Operator Lease and this Addendum.

(b) All agreements for the provision of services to the Healthcare Facility or the granting of easements, rights of way, licenses or other permissions for the use or placement of cable television, telecommunications, or other utilities are, and shall always be, subordinate to (i) the rights of Lessor, (ii) the Borrower's Security Instrument, the Loan Documents and all other security agreements or security interests now or hereafter encumbering the Healthcare Facility and/or the Project, and (iii) Program Obligations. Lessee shall obtain written approval from HUD prior to entering into any such services agreements, easements, rights of way, licenses or other permissions.

4. OWNERSHIP OF FF&E AND TRANSFER OF PERSONAL PROPERTY.

(a) During the term of the Operator Lease, Lessee shall not remove any FF&E from the Healthcare Facility, except in the ordinary course of business.

(b) At the termination of the Operator Lease, Lessor will have the right to purchase any or all of Lessee's personal property located at the Healthcare Facility at book value. To the extent that any of such personal property is subject to an equipment lease, Lessor shall have the right to cause Lessee to pay in full all obligations under such equipment leases, or to assume some or all of such equipment leases at Lessor's sole cost and expense and at no additional

liability to Lessee. Lessee shall sign or deliver to Lessor any instrument that may be reasonably necessary to transfer any such leased property to Lessor.

5. PAYMENTS.

(a) Rents and other amounts payable by Lessee under the Operator Lease (including rents, additional rents and all other sums payable under the Operator Lease) shall be sufficient to properly maintain the Healthcare Facility, and to enable Lessor to meet its debt service obligations and any related expenses (including, without limitation, any required deposits to reserves) in connection with the Loan and the Healthcare Facility, and shall be adjusted, as appropriate, on an annual basis to maintain the veracity of this Section.

(b) Unless Lender and Lessor agree otherwise, Lessee shall be responsible for funding all escrows for taxes, reserves for replacements, mortgage insurance premiums and/or other insurance premiums as may be required by Lender and/or HUD.

(c) Lessee shall deliver to Lessor copies of all notices, demands, claims, bills and receipts in relation to all impounds and insurance premiums promptly upon receipt thereof by Lessee.

6. OPERATOR'S REGULATORY AGREEMENT AND OPERATOR'S SECURITY AGREEMENT. Prior to HUD's endorsement of the Note, Lessee shall execute the Operator's Regulatory Agreement and the Operator's Security Agreement, and all other documents required by Lender or HUD to evidence Lender's security interest in the collateral of Lessee. Lessee shall comply with all obligations under the Operator's Regulatory Agreement and the Operator's Security Agreement. Any default by Lessee under the Operator's Regulatory Agreement or Lessee's Security Agreement shall be deemed to be a default under the Operator Lease and this Addendum.

7. MANAGEMENT REQUIREMENTS. Lessee shall not enter into any management contract or agreement involving the Healthcare Facility unless such management contract or agreement complies with Program Obligations and contains provisions that, in the event of default under the Borrower's Regulatory Agreement and/or the Operator's Regulatory Agreement, the management contract or agreement shall be subject to termination upon not more than thirty (30) days notice (a "**Notice of Termination**"), without penalty, upon written request of HUD. Upon such Notice of Termination, Lessee shall immediately arrange to terminate the management contract or agreement within a period of not more than thirty (30) days and shall make arrangements satisfactory to HUD for ensuring that the Healthcare Facility is managed in accordance with Program Obligations.

8. LICENSES; BED AUTHORITY. Lessee shall ensure that the Healthcare Facility meets all state and/or other licensure requirements and standards at all times. Lessor and Lessee shall not undertake or acquiesce to the modification of any license or Bed Authority of the Healthcare Facility without the prior written approval of HUD.

9. PROVIDER AGREEMENTS. Lessee shall be responsible for obtaining and maintaining all necessary provider agreements with Medicaid, Medicare and other government third-party payors. Upon request, Lessee shall promptly furnish to Lender and/or HUD copies of any applicable provider agreements and all amendments thereto.

10. INSURANCE; CASUALTY; CONDEMNATION. Lessee shall procure and maintain, or cause to be procured and maintained, all insurance coverage required under the Loan Documents and/or Program Obligations. All proceeds from an insurance or condemnation claim or award, or other compensation paid by reason of a conveyance in lieu of the exercise of such rights, with respect to the Healthcare Facility or the Project shall be applied in accordance with the terms of the Loan Documents and Program Obligations. Any decision to repair, reconstruct, restore or replace the Healthcare Facility following a casualty or condemnation action shall be subject to the terms of the Loan Documents and Program Obligations. On an annual basis, Lessee shall provide to Lender a certification that it is in compliance with HUD's professional liability insurance requirements.

11. ASSIGNMENT OF THE OPERATOR LEASE AND SUBLETTING OF THE HEALTHCARE FACILITY.

(a) The Operator Lease shall not be assigned and the Healthcare Facility shall not be subleased by Lessee, in whole or in part (including any transfer of title or right to possession and control of the Healthcare Facility, or of any right to collect fees or rents), without the prior written approval of HUD. The prior written approval of HUD shall additionally be required for (i) any change in or transfer of the management, operation, or control of the Healthcare Facility, or (ii) any change in the ownership of Lessee that requires approval from HUD under Program Obligations. Any proposed assignee of Lessee shall be required to execute a Healthcare Regulatory Agreement – Operator (Form HUD-92466A-ORCF) and an Operator Security Agreement (Form HUD-92323-ORCF), each in a form and substance satisfactory to HUD, as a prerequisite for any such approval. Any assignment or subletting of the Healthcare Facility without the approval described in this Section shall be deemed null and void. Notwithstanding the foregoing, all restrictions in this Section pertaining to subletting shall not apply to the leasing of individual units or beds to residents of the Healthcare Facility.

(b) Lessee acknowledges that Lessor is assigning the Operator Lease to Lender to further secure Lessor's obligations to Lender under the Loan Documents. All parties acknowledge that Lender is authorized to exercise all of the rights and remedies available to Lessor in connection with the assignment of the Operator Lease as Lender may determine is reasonably necessary to cure a default by Lessor under any of the Loan Documents.

12. ACCOUNTS RECEIVABLE FINANCING. Lessee shall not pledge nor permit to be pledged, any Accounts Receivable to a third party lender without the prior written approval of Lender and HUD. In the event that Lender and HUD grant such approval, (i) all holders of such lien shall enter into an Intercreditor Agreement with Lender (Form HUD-92322-ORCF), and any riders and/or amendments thereto (the "**Intercreditor Agreement**"), on such terms and conditions as may be required by HUD, and (ii) Lessee shall agree to comply with the requirements imposed by Lender and HUD in connection therewith.

13. TERMINATION OF THE OPERATOR LEASE. The Operator Lease shall not be terminated prior to its expiration date without the prior written approval of HUD. Lessor and Lessee acknowledge and agree that if requested to do so by HUD, Lessor shall terminate the Operator Lease within such time as specified by HUD, without penalty to Lessor, under the following circumstances: (i) for any violation of the Operator Lease that is not cured within any applicable notice and cure period provided in the Operator Lease, (ii) for any violation of the Operator's Regulatory Agreement pursuant to its terms; (iii) for any violation of Program Obligations that is not cured within thirty (30) days after receipt by Lessee of written notice of such violation, or (iv) if HUD, as a result of the occurrence of any of the events described in the foregoing items (i), (ii) or (iii), is required to advance funds for the operation of the Healthcare Facility.

14. MASTER LEASE. In accordance with Program Obligations, HUD may require Lessor to enter into a master lease if the Project is affiliated by common ownership with the borrowers and/or operators of other projects financed or proposed to be financed under Section 232 of the National Housing Act. Such master lease shall (i) be approved by HUD and Lender, (ii) only cover HUD-insured projects, and (iii) comply with all applicable Program Obligations.

15. INDEMNIFICATION. Notwithstanding any provisions contained in the Operator Lease, HUD shall have no obligation to indemnify a party to the Operator Lease under the terms of the Operator Lease or this Addendum. In addition, any payment obligations of HUD pursuant to the Operator Lease shall be limited to actual amounts received by HUD, and otherwise not prohibited by applicable law or regulation, including without limitation, the Anti-Deficiency Act, 31 U.S.C. § 1341, *et seq.*

16. MODIFICATION; TERMINATION. Neither the provisions of this Addendum nor the provisions of the Operator Lease may be amended without the prior written approval of HUD and Lender. The Operator Lease may not be terminated without the prior written approval of HUD and Lender, and shall only be terminated if such termination complies with the terms of any HUD-required subordination agreements.

17. NOTICES TO LENDER AND HUD OF DEFAULT. Lessee and Lessor shall copy Lender and HUD on all notices of default under the Operator Lease. Such copies shall be provided at the same time and in the same manner as provided by Lessee or Lessor to the other party. Lender shall have the right, but not the obligation, to cure any default by Lessor under the Operator Lease. For the purpose of effecting such cure, Lessee grants Lender and Lessor such period of time as may be reasonable to enable Lender and/or Lessor to cure (or cause to be cured) any default, in addition to the time given to Lessor to cure the default. In the event of any act or omission of Lessor which would give Lessee the right, immediately or after lapse of a period of time, to cancel or terminate the Operator Lease, or to claim a partial or total eviction, Lessee shall not exercise such right (i) until it has given written notice of such act or omission to Lender and HUD, and (ii) unless such act or omission shall be one which is not capable of being remedied by Lender or Lessor within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Loan Documents in

connection therewith, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Lessor would be entitled under the Operator Lease or otherwise, after similar notice, to effect such remedy).

18. SPECIAL PURPOSE ENTITY. Lessee, its successors and assigns, is, shall be, and shall continue to be a Special Purpose Entity (as defined by Program Obligations).

19. CROSS-DEFAULT GUARANTY OF LESSEE. If the Healthcare Facility is or becomes subject to a Master Lease, Lessee shall execute a Cross-Default Guaranty of Operators (Form HUD-92331-ORCF) (individually and collectively, the “**Cross Default Guaranties**”) in favor of Lessor, in a form and substance required by HUD, by which Lessee shall guarantee the performance of the obligations of each its affiliates under all applicable subleases of healthcare facilities. Lessor hereby assigns such Cross Default Guaranties to Lender.

20. Transfer of Operations. Upon the expiration or earlier termination of the Operator Lease for any reason whatsoever, the Operator Lease shall become and be construed as an absolute assignment for purposes of vesting in Lessor (or Lessor’s designees) all of Lessee’s right, title, and interest in and to the following, to the extent assignable by law: (a) the Licenses, any Medicare or Medicaid provider agreements and any CON, (b) all documents, charts, personnel records, patient records, and other documents relating to the Healthcare Facility or operations at the Healthcare Facility, (c) all existing agreements with residents of the Healthcare Facility, and any guarantors of such agreements, and any and all patient trust fund accounts and (d) all other assignable intangible property not enumerated above that is now or in the future used in connection with the operation of the Healthcare Facility. Lessee shall sign and deliver to Lessor any documents that may be reasonably necessary to transfer the foregoing to Lessor.

21. Lessee Cooperation. Lessee agrees to cooperate with Lessor in providing, and upon request by Lessor, Lender, or HUD, Lessee shall provide or cause to be provided, such documents, information, financial reports, and other items as may be required by Lender or HUD. When applicable, Lessee agrees to execute subordination agreements in form and substance required by Lender or HUD. Lessee further agrees to cooperate with Lessor and with its lender(s) who are processing and will be making Loans to Lessor.

22. COUNTERPART SIGNATURES. This Addendum may be executed in counterpart.

23. GOVERNING LAW. This Addendum and all rights and obligations under this Addendum, including matters of construction, validity and performance, shall be governed by the laws of the state in which the Healthcare Facility is located, without giving effect to conflicts of laws principles.

24. HUD is not a party to this Addendum and has no obligations hereunder; however, it is a third party beneficiary for the sole purpose of enforcing its rights hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first herein above written.

LESSOR:

By: _____

Name: _____

Title: _____

LESSEE:

By: _____

Name: _____

Title: _____