**Instructions:**

This legal punchlist and checklist are applicable to the initial closings of 232 new construction, substantial rehabilitation, and blended rate transactions. (This punchlist and checklist are not drafted for insurance upon completion transactions.) They are intended to be tools to assist field counsel in their review of these types of transactions. Field counsel is responsible for confirming that each review item has been completed (for instance, in reviewing the Intercreditor Agreement, field counsel must *confirm* that the names of the parties have been inserted; field counsel is not responsible for inserting the names of parties). They are ordered in a way that may make closings by mail easier. The documents are grouped according to who might submit the documents (Lender’s Counsel, Borrower’s Counsel, Title Company).

1. In the column to the immediate left of each review item, indicate whether that review item has been satisfied. Y = yes, N = no, - = not applicable. HUD counsel should request Lender’s Counsel to include a computer generated redline against the applicable form to show how the form has been changed.
2. Ensure that the Section of the Act is referenced correctly in all documents. Use “Section 232” for a new construction, substantial rehab or blended rate loan.
3. Note that review items may need to be adjusted for state specific differences and the specific nuances of your transaction.

**One Part Review** - If neither AR Financing nor a Master Lease is involved, all documents are to be submitted after the firm commitment has been issued, unless otherwise instructed by HUD.

**Two Part Review -** In the instances provided below, HUD will continue to do a two part review of the closing package.

1. **AR Financing** - If the project involves AR financing, the following items must be submitted to HUD for legal review prior to issuance of the firm commitment. Submit items 1, 3, 4, 5, 6 (including cash flow chart), 7, 8, and 9. All other documents are to be submitted once the commitment has been issued.
2. **Master Leases -** If a master lease is required, the following items must be submitted for HUD legal review prior to issuance of the firm commitment letter, 1, 3, 4, 5, 10, 11, 12, and 50.

**Loans closed under Section 241(a).** This punchlist may be used as a starting point for the review of 241(a) loans, but the review items will need to be modified based on the specifics of the 241(a) loan and additional documents may need to be collected.

**If this closing involves an AR Line or Master Lease involving another project that has already closed:** At closing, Lender’s Counsel should submit copies of each document amending the AR line or the master lease documents for each project with a cover sheet identifying the project with which the Washington docket staff should associate the document.  Indicate the project name and number.

For instance, say we’re closing Project C which will join a master lease that already exists between Project A and Project B.  At closing, Lender’s Counsel will submit a complete closing package for Project C.  Legal keeps one copy, and sends the other copy to Records Management per the transmittal sheet.

In a separate file folder (or separately rubber-banded, or clipped, but somehow distinct from the closing file for Project C), Lender’s Counsel will submit two (2) copies of the joinder to master lease, joinder to guaranty, and joinder to subordination agreement, each with a cover sheet that says PROJECT A and it’s FHA number.  HUD counsel will take one copy of each of those documents and add it to the legal file for Project A (mailing it to the office that closed Project A, if different), and HUD counsel will send the rest of that file folder off to Records Management per the transmittal sheet.

In a third separate file folder (or separately rubber-banded, or clipped, but somehow distinct from the closing file for Project C), Lender’s Counsel will submit two (2) copies of the joinder to master lease, joinder to guaranty, and joinder to subordination agreement; each with a cover sheet that says PROJECT B and it’s FHA number.  HUD counsel will take one copy of each of those documents and add it to the legal file for Project B (mailing it to the office that closed Project B, if different), and HUD counsel will send the rest of that file folder off to Records Management per the transmittal sheet.

For transactions involving amendments to the AR loan documents, Lender’s Counsel would submit two copies of the Note, Credit and Security/Loan Agreement, Guaranty, DACA/DAISA for similar handling.

Type project specific information here to use as a quick reference when reviewing the draft documents:

|  |  |
| --- | --- |
| Project Name:  Project Location:  Project Number:  Section of the Act:  New Construction  Sub Rehab  Blended Rate  Licensed Beds/Units:    Mortgage Amount: $  Interest Rate:  P & I: $  Maturity Date:    R4R Monthly: $  R4R Initial Deposit: $​ | Borrower:  Operator:  Master Tenant:  Lender:  AR Lender:    Inspection Fee: $  MIP:  $    Required escrows (type, amount, term): |

|  |  |
| --- | --- |
| ***ADMINISTRATIVE DOCUMENTS*** | |
| 1 | [**Contact Sheet**](http://portal.hud.gov/huddoc/90024_orcf.doc)   |  |  | | --- | --- | |  | HUD Attorney will provide a copy of his/her comments on the Part I documents, if there are any Part I documents, to the ORCF underwriter and Lender’s Counsel. | |  | HUD Attorney will provide a copy of his/her comments on the complete closing package to the ORCF closing coordinator and Lender’s Counsel. |   *Comments:* |
| 2 | **HUD Firm Commitment, Amendments and Assignments**   |  |  | | --- | --- | |  | Review for project-specific requirements, including special conditions and required escrow deposits. | |  | Notify ORCF of any possible errors based on a comparison of the firm commitment (and amendments) to the draft closing documents. | |  | Assignment of Commitment consistent with ORCF approval. | |  | Confirm that the firm commitment has not expired or has been properly extended to the date of closing. |   NOTE: Throughout this punchlist, all references to the commitment include any and all amendments thereto.  *Comments:* |
| 3 | **Approvals, Waivers and Early Correspondence with HUD**   |  |  | | --- | --- | |  | Review ORCF approvals and waivers (such as a handbook waiver of the single asset entity requirement). | |  | Ensure approvals and waivers are signed by a person with delegated authority. Any waivers of HUD Handbook 4232.1, Section II, Chapter 7, Section 7.3 must have the advice of the Housing Environmental Clearance Officer before they are signed. | |  | Review correspondence that occurred before HUD Attorney was assigned, including HUD approval of certain litigation or early start/commencement of construction or proposed structures (master lease structures, AR financing structures, etc.). |   *Comments:* |
| 4 | **Lender’s Narrative**   |  |  | | --- | --- | |  | Not applicable – no part I review required; OR | |  | Review for project-specific details. | |  | Notify ORCF of possible errors, inconsistencies or items that warrant further clarification based on a comparison of the Lender’s Narrative to the draft closing documents. |   *Comments:* |
| 5 | [**Portfolio Acceptance Letter**](http://hudsharepoint.hud.gov/sites/IHCF/DEVL/Por/Forms/AllItems.aspx)   |  |  | | --- | --- | |  | Not applicable – not a medium or large portfolio; OR: | |  | Review flow charts or diagrams that may be useful in understanding the structure of the deal. | |  | Discuss with HUD lead counsel for the portfolio/previously-assigned HUD Attorney and/or ORCF staff any special considerations related to the portfolio, including but not limited to, any master leases, cross-guaranties, deposit control agreements, and/or AR financing, and consider requesting redlines against documents previously approved at previous closings for the portfolio. |   *Comments:* |
| ***ACCOUNTS AND ACCOUNTS RECEIVABLE DOCUMENTS*** | |
| 6 | **Accounts Receivable Financing Documents**   |  |  |  |  | | --- | --- | --- | --- | |  | Not applicable – no AR financing; OR: | | | |  | Cash flow chart to be attached to the Operator Security Agreement (HUD-92323-ORCF). | | | |  | AR Loan Agreement - In the event of a conflict between the terms of Intercreditor Agreement and the AR loan documents, the terms of the Intercreditor Agreement shall govern and control. | | | |  | | | If the AR Loan Documents are structured so that each Operator’s access to the line of credit is limited, then the extent of the AR Lender’s cross-collateralization may also need to be limited | |  | | | The borrowing base should not exceed 85% and the governmental receivables should not be aged greater than 120 days | |  | | | While only FHA-insured projects approved by ORCF may be included as Borrowers on the AR line, the AR Lender may also secure the AR Loan with non-project collateral or non-HUD projects and guarantees. FHA-insured projects cannot secure non-HUD AR lines. | |  | | | With ORCF consent, the AR lender may cross-default the HUD AR line to the occurrence of an Event of Default on a non-HUD AR line. | |  | | | [If the AR Lender is not required to use the OMB approved form of Intercreditor Agreement, the definition of Obligations secured must be appropriately limited in the AR Loan Documents | |  | | | If the depository bank is the AR Lender and the AR loan documents require the Operator to maintain its accounts at that bank, and if the depository bank terminates the DACA for reasons other than breach thereof, the Operator must be able to move its accounts to another bank notwithstanding restrictions in the AR loan documents | |  | AR loan note(s) | | | |  | Security agreement(s) running in favor of the AR Lender | | | |  | | | The AR Lender’s first priority lien in the AR Lender Priority Collateral may not secure term loan facilities, equipment loan facilities, or any indebtedness, liability or obligations arising under a guarantee except for guaranteed obligations to the extent the obligations guaranteed consist solely of approved AR Loan Obligations. | |  | Guaranties, pledges and/or other side agreements | | | |  | | | Guarantors must waive any subrogation, contribution, reimbursement or similar rights until the FHA-insured loan has been paid in full | |  | | | Any guarantee or equity pledge must require previous participation clearance and the prior written approval of HUD prior to any transfer of ownership interests or the exercise of control | |  | | | Guarantees must be acceptable to ORCF | |  | UCC Financing Statements and control agreements (DACAs) in favor of the AR Lender | | | |  | | | In the event an existing AR line is being replaced or restructured, the forms of releases, UCC termination statements, or similar documents acceptable to the HUD Attorney must be submitted in advance of closing, and the plan for addressing such termination must be acceptable to ORCF and the HUD Attorney | |  | | All documents evidencing the relationship between the Borrower Representative (in its capacity as such) and the Operators | | |  | | | Must establish that the Borrower Representative is making draws as agent for the Operators and is not borrowing funds in its own capacity and then re-lending such funds to the Operators | |  | | | If the Borrower Representative is not one of the Operators, the parties must run, and their counsel must review, the same types of searches (UCC/litigation/tax lien, etc.) as are required for Operators (see [OGC’s 232 New Document Implementation Site](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx) for further explanation of this requirement) |   NOTE: If the OMB-approved Intercreditor Agreement is used, an in-depth review of the AR docs is not necessary.  NOTE: For new construction deals only, the AR financing review may be delayed until construction has reached 70% completion if the AR financing is not coming in at initial closing.  NOTE: The HUD Borrower entity cannot pledge collateral to secure an AR loan to the Borrower-Operator(s).  *Comments:* |
| 7 | [**Intercreditor Agreement (HUD-92322-ORCF)**](http://portal.hud.gov/huddoc/92322_orcf.docx)   |  |  | | --- | --- | |  | Not applicable – no AR financing; OR: | |  | One intercreditor agreement should be completed for each HUD-insured project, even if multiple projects are on the same AR line. | |  | If a project is owner-operated, the borrower on the HUD-insured loan may also be the borrower on the AR line of credit. Make appropriate changes to the form if this is the case. | |  | Insert names of parties. Use bracketed language, or similar, if lender is acting as agent for other lenders | |  | Recital 1: insert name of lease/agreement and parties to lease/agreement | |  | Section 1: insert property jurisdiction | |  | Section 1.5: insert name of document and make appropriate selections regarding operators of other facilities and Borrower Representative | |  | Section 1.7: list any approved additions to the definition of AR Loan Obligations | |  | Section 1.8: insert appropriate defined term | |  | Section 1.9: insert Bank’s jurisdiction and property jurisdiction | |  | Section 1.13: insert type of facility, address of facility and facility name | |  | Section 1.19: insert maximum AR loan amount | |  | Section 2.7(g): insert any pre-approved modifications to the AR loan, or delete this section if inapplicable. See HUD Handbook 4323.1, Section II, Chapter 15, Section 15.4.B for examples. Delete inapplicable subsections below 2.7(g); complete those which are applicable | |  | Section 3.3: include bracketed language when there is a master lease | |  | Section 3.4: ensure the lease cost payment method is acceptable to HUD, with monthly debt service being paid directly to the FHA Lender, or with the FHA Lender able to debit the monthly debt service amount out of a designated account. See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.5 for guidance | |  | Section 4.7: if the AR loan is [syndicated or participated](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.answers.com%2FQ%2FWhat_is_difference_between_syndication_loan_and_participation_loan&ei=zBX-U4StE8qQyATnx4GYDg&usg=AFQjCNHovY17T7_d4FwMBigoetoMOMUEpA&sig2=csmnRD7UMltJOcSX5Kn1jw), HUD Attorney may request additional language here to satisfy the requirements of Section 20(b)(vi) of the Operator Security Agreement (HUD-92323-ORCF) (see [OGC’s 232 New Document Implementation Site](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx) for sample language) | |  | Section 4.9: insert either the property jurisdiction or the operator’s organizational jurisdiction | |  | Section 4.10: insert either the property jurisdiction or the operator’s organizational jurisdiction | |  | Add appropriate signature blocks. If a Master Lease is involved, the Master Tenant will generally be a signatory. Occasionally, other parties (such as a Borrower Representative) may be required to sign as well. | |  | Schedule 1: list all AR loan documents | |  | Schedule 2: list all HUD loan documents | |  | Schedule 3: list the other facilities, if any | |  | Exhibit A should not be completed at the time of closing. |   *Comments:* |
| 8 | **Deposit Account Control Agreement (DACA)**   |  |  | | --- | --- | |  | Ensure there are no references to multi-currency accounts or accounts held outside the U.S. | |  | Consult ORCF if the agreement requires a minimum account balance | |  | Unless otherwise approved by HUD, the FHA Lender DACA will be a future notification type that can be triggered only on default | |  | Parties: depository bank, FHA Lender, Operator, and possibly the AR Lender. HUD must not be a party | |  | Include a provision notifying the depository bank that the FHA Lender has a security interest in the account and all items to be deposited therein | |  | Include a representation that the account is not subject to any other DACAs except those approved as part of the HUD transaction, and none will be permitted | |  | If there are first lien and second lien DACAs, they must refer to one another | |  | Identify the account number covered by the DACA, ensuring it matches the cash flow chart, and matches the number of the account into which funds are swept per the DAISA | |  | Include a provision that the depository bank will comply with FHA Lender’s instructions as to the disposition of funds without further consent of the account holder | |  | The DACA must be fully executed by all parties | |  | If both AR Lender and FHA Lender are parties to the same DACA, it must clearly set forth when the depository bank is obligated to follow FHA Lender’s instructions (as opposed to those of the AR Lender) which must be consistent with the “change in control” or termination of DACA provisions in the Intercreditor Agreement | |  | If there are separate First Lien and Second Lien DACAs, the First Lien DACA must terminate or provide for a change in control over to the Second Lien DACA consistent with the “change in control” or termination of DACA provisions in the Intercreditor Agreement | |  | Clearly set forth the manner for sending a Control Notice and identify when it is deemed received. Must include expeditious means (such as personal delivery) | |  | Specified time period for depository bank to comply with notice of exclusive control (no more than 3 business days) | |  | Depository bank must agree that once a Control Notice goes into effect, it will disregard further instructions from the account holder, block the account holder’s access to the account (except to make deposits) and rely solely on instructions from the party giving the Control Notice | |  | If depository bank is also the AR Lender, rights of set-off, etc. must be limited to Obligations as defined in the Intercreditor Agreement, and such rights must be subject to the Intercreditor Agreement | |  | Depository bank’s rights of set-off, etc. must be limited to its customary and usual fees in its capacity as depository bank related to the DACA account, and returned items. This can include fees and returned items related to the DAISA account, too. | |  | Operator should not be able to terminate the DACA, except by a joint instruction with the Secured Party(ies) | |  | Depository bank must only be allowed to voluntarily terminate the DACA upon at least 30 days’ notice to FHA Lender | |  | Either secured party can terminate their interest under the DACA by notice. The provisions on when the AR Lender must terminate are controlled by the Intercreditor and need not be repeated in the DACA. If they are repeated in the DACA, they must be consistent with the Intercreditor Agreement. A termination by AR Lender must not terminate the FHA Lender’s interest under the DACA nor result in disposition of funds out of the account | |  | If the DACA is terminated by the account holder or depository bank, the DACA should direct the bank to direct the funds in the account on termination to an account designated by the Secured Party(ies) | |  | In the DACA to which the FHA Lender is a party, the depository bank must agree to provide FHA Lender (upon a single request) access to daily activity in the account and copies of periodic statements delivered to the account holder | |  | If the depository bank is the AR Lender and the AR loan documents require the Operator to maintain its accounts at that bank, and if the depository bank terminates the DACA for reasons other than breach thereof, the Operator must be able to move its accounts to another bank notwithstanding restrictions in the AR loan documents | |  | The DACA must provide that in case of conflict with the bank’s deposit agreement, the DACA controls | |  | The DACA must not control over the Intercreditor Agreement | |  | Bank fees should be limited to usual, customary and reasonable fees in the normal course of business of the bank | |  | Indemnification obligations should be limited to the operator, and (if required by the bank) a guarantor. See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.8.A.6 for additional guidance | |  | Include standard provisions regarding governing law, execution of counterparts, etc., but not permit provisions which would not permit venue in a federal district court | |  | Must permit assignment of the DACA by the FHA Lender, consistent with HUD assignment of claims procedures. Must not be unduly burdensome or require HUD to execute an assumption |   NOTE: A DACA is required for all transactions, but for new construction deals only, the DACA review and implementation may be delayed until construction has reached 70% completion if the DACA is not set up at initial closing.  NOTE: If a party other than the Operator is named on or has an interest in the account, that party must execute such joinders, security agreements, DACAs or other documents to bind that party’s interest.  NOTE: If a Tenant Rent Account is used for the lease cost payment method, it may be appropriate to use an immediate control DACA in favor of FHA Lender on the Tenant Rent Account. Likewise, if a Master Lease is involved and lease payments are being made into a Master Tenant Account, it may be appropriate to use an immediate control DACA in favor of FHA Lender on such Master Tenant account.  See HUD Handbook 4232.1, Section II, Chapter 16 for guidance.  *Comments:* |
| 9 | **Deposit Account Instructions and Services Agreement (DAISA)**   |  |  | | --- | --- | |  | Not applicable – no government receivables; OR: | |  | Consult ORCF if the agreement requires a minimum account balance | |  | In the DAISA to which the FHA Lender is a party, the depository bank must agree to provide FHA Lender (upon a single request) access to daily activity in the account and copies of periodic statements delivered to the account holder | In the DACA to which the FHA Lender is a party, the depository bank must agree to provide FHA Lender (upon a single request) access to daily activity in the account and copies of periodic statements delivered to the account holder | |  | If the depository bank is the AR Lender and the AR loan documents require the Operator to maintain its accounts at that bank, and if the depository bank terminates the DAISA for reasons other than breach thereof, the Operator must be able to move its accounts to another bank notwithstanding restrictions in the AR loan documents | If the depository bank is the AR Lender and the AR loan documents require the Operator to maintain its accounts at that bank, and if the depository bank terminates the DACA for reasons other than breach thereof, the Operator must be able to move its accounts to another bank notwithstanding restrictions in the AR loan documents | |  | The DAISA must provide that in case of conflict with the bank’s deposit agreement, the DAISA controls | The DACA must provide that in case of conflict with the bank’s deposit agreement, the DACA controls | |  | The DAISA must not control over the Intercreditor Agreement | The DACA must not control over the Intercreditor Agreement | |  | Bank fees should be limited to usual, customary and reasonable fees in the normal course of business of the bank | Bank fees should be limited to usual, customary and reasonable fees in the normal course of business of the bank | |  | Indemnification obligations should be limited to the operator, and (if required by the bank) a guarantor. See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.8.A.6 for additional guidance | Indemnification obligations should be limited to the operator, and (if required by the bank) a guarantor. See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.8.A.6 for additional guidance | |  | Include standard provisions regarding governing law, execution of counterparts, etc., but not permit provisions which would not permit venue in a federal district court | Include standard provisions regarding governing law, execution of counterparts, etc., but not permit provisions which would not permit venue in a federal district court | |  | Must permit assignment of the DAISA by the FHA Lender, consistent with HUD assignment of claims procedures. Must not be unduly burdensome or require HUD to execute an assumption | Must permit assignment of the DACA by the FHA Lender, consistent with HUD assignment of claims procedures. Must not be unduly burdensome or require HUD to execute an assumption | |  | Parties include the depository bank, operator, FHA Lender, and, if applicable, the AR Lender. HUD must not be a party |  | |  | Include a provision notifying the depository bank that the FHA Lender has a security interest in the deposit account and all items to be deposited therein |  | |  | Include a representation that the DAISA account is not affected by any DACAs and that none will be permitted on the DAISA account |  | |  | Clearly identify the account subject to the DAISA, which must match the cash flow chart |  | |  | Include an instruction from the account holder to the depository bank to initiate a funds transfer (a daily sweep) of available funds into another specified account (typically the DACA account, or the AR Lender account) |  | |  | Include an instruction from the account holder to the depository bank not to permit the account holder to make withdrawals from the account |  | |  | Must not include UCC control language, provisions allowing lenders to give control notices, or any lender right to direct disbursements or give instructions |  | |  | The sweep instructions should be revocable, and the DAISA should not say that the account holder’s right to terminate the account is only with the lender’s consent. Upon termination by the account holder, the funds on account should be disposed of in accordance with the current sweep instruction |  | |  | Encourage provisions delaying implementation of changed instructions up to three days. Exculpatory clauses restricting depository bank’s liability for failing to give notice of changed instructions are permitted |  | |  | Depository bank must limit rights of set-off, etc. to items such as reasonable and customary fees, returned items, and posting errors. AR Lender, if it is the depository bank, must waive its right to set-off its loan against the DAISA account to the extent required by law or healthcare insurance program rules |  | |  | Depository bank may terminate the DAISA only upon at least 30 days’ notice to FHA Lender, except in event of breach in which a shorter time period may be allowed |  | |  | If lenders are required to notify depository bank when their security interest ends, such notification shall not have the effect of terminating the DAISA |  | |  | When AR Lender is the depository bank, the DAISA should refer to the AR Lender in its capacity as depository bank where appropriate |  |   NOTE: If a DAISA is required, for new construction deals only, the DAISA review and implementation may be delayed until construction has reached 70% completion if the DAISA is not set up at initial closing.  NOTE: If a party other than the Operator is named on or has an interest in the account, that party must execute such joinders, security agreements, DAISAs or other documents to bind that party’s interest.  *Comments:* |
| ***MASTER LEASE AND OPERATING LEASE DOCUMENTS*** | |
| 10 | [**Master Tenant Estoppel Certificate (HUD-92339-ORCF)**](http://portal.hud.gov/huddoc/92339_orcf.doc)**, Master Lease and** [**Master Lease Addendum (HUD-92211-ORCF)**](http://portal.hud.gov/huddoc/92211_orcf.docx)**, or joinder to existing master lease**   |  |  |  |  |  | | --- | --- | --- | --- | --- | |  | | Not applicable – not subject to a master lease; OR: | | | |  | | Lender’s name and address | | | |  | | Date of master lease | | | |  | | Names of the Borrower and Master Tenant | | | |  | | Project Number | | | |  | | First Paragraph - Lender’s name | | | |  | | Sections A.1 and B.1: identify the master lease by date | | | |  | | Master Lease and all addenda and amendments are attached | | | |  | | **Master Lease** | | | |  | | Parties correctly identified | | | |  | | Term of the master lease is at least as long as the mortgage having the longest remaining term (See HUD Handbook 4232.1, Section II, Chapter 13, Section 13.5 for alternatives when this is not possible) | | | |  | | Legal description matches survey and title | | | |  | | Date of master lease | | | |  | | **Master Lease Addendum** | | | |  | | Section 1: Definitions | | | |  | | | Healthcare Facilities: insert reference to proper schedule | | |  | | | Lender: Lender’s name | | |  | | | Security Instrument: define all types | | |  | | Section 6: Include optional language, if applicable | | | |  | | Section 19: Governing law matches the governing law of the master lease | | | |  | | Schedule 1: | | | |  | | | | Name of Landlord | |  | | | | Name of Healthcare Facility | |  | | | | Address of Healthcare Facility including county and state | |  | | | | Operator’s Name | |  | | | | Type of Healthcare Facility | |  | | | | Number of licensed units/beds per facility type (use the final anticipated number when beds or units are being added) | |  | | Schedule 2: | | | |  | | | | Name of Healthcare Facility | |  | | | | Name of Landlord | |  | | | | Loan Amount | |  | | | | Rent Attributable to Healthcare Facility | |  | **Joinder** | | | | |  | Identifies original landlords | | | | |  | Adds legal description matching survey and title | | | | |  | Base rent allocation per facility and total rent | | | | |  | References repairs at new facility, as applicable | | | | |  | Approved use of new facility | | | | |  | Consent to joinder and amendment signed by all landlords and master tenant | | | | |  | Includes FHA project names and numbers of existing and incoming projects | | | |   NOTE: Sample joinders are available [on OGC’s 232 New Document Implementation Site.](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx)  NOTE: A copy of the underlying master lease must also be collected for the file.  *Comments:* |
| 11 | [**Cross-Default Guaranty of Subtenants (HUD-92331-ORCF)**](http://portal.hud.gov/huddoc/92331_orcf.doc)**,**  **or joinder to existing Cross-Default Guaranty of Subtenants**   |  |  |  |  | | --- | --- | --- | --- | |  | | Not applicable – not subject to a master lease; OR: | | |  | | Intro paragraph: Name of master tenant (“Sublandlord”) | | |  | | First recital: identify use of facilities (i.e., skilled nursing, assisted living, etc.) | | |  | | Section 15: insert state law governing the master lease. | | |  | | Schedules: | | |  | | | Name of operator (“Guarantor”) | |  | | | Name of facility | |  | | | State in which facility is located | |  | | | Name of borrower (“Landlord”) | |  | | | Notice addresses and project number | |  | **Joinder** | | | |  | Parties and projects correctly identified | | | |  | Consent to joinder signed by all parties | | | |  | Includes FHA project names and numbers of existing and incoming projects | | |   NOTE: Sample joinders are available on [OGC’s 232 New Document Implementation Site](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx).  NOTE: A copy of the underlying Cross-Default Guaranty of Subtenants must also be collected for the file.  *Comments:* |
| 12 | **[Operator Lease Estoppel Certificate (HUD-91117-ORCF), Operator Lease and](http://portal.hud.gov/huddoc/91117_orcf.doc)** [**[Addendum to Operating Lease (HUD-91116-ORCF)](http://portal.hud.gov/huddoc/91117_orcf.doc)**](http://portal.hud.gov/huddoc/91116_orcf.docx)   |  |  |  |  | | --- | --- | --- | --- | |  | Not applicable – no operating lease; OR: | | | |  | Change borrower to master tenant if the operator is leasing the property from the master tenant. | | | |  | Lender’s name and address | | | |  | The HUD address should be  Secretary of Housing and Urban Development  Office of Residential Care Facilities  451 7th Street SW  Washington, D.C. 20410 | | | |  | Subject line: | | | |  | | Name and date of operating lease | | |  | | Borrower’s name and organizational jurisdiction | | |  | | Operator’s name, entity type and organizational jurisdiction | | |  | | Type of project, project address, project name, and project number | | |  | First paragraph: Lender’s name, entity type and organizational jurisdiction | | | |  | Sections 1(a) and 2(a): identify the operator lease | | | |  | Exhibit A: list exceptions or state “None” | | | |  | Exhibit B: Operating Lease and all addenda and amendments attached | | | |  | **Operating Lease** | | |  | Minimum lease term of 5 years, though ORCF reserves the right to require a longer lease term (HUD Handbook 4232.1, Section II, Chapter 8, Section 8.6) | | |  | Description of the responsibilities of the Borrower and Operator, including payment of real estate taxes; maintenance of the building(s); capital improvements; replacement of equipment; property insurance; and fidelity bond coverage (HUD Handbook 4232.1, Section II, Chapter 8, Section 8.6) | | |  | If there is a master lease, under each sublease, the operator must be obligated to pay to the master tenant a minimum of base rent plus reserves and escrows owed to the Borrower on the FHA-insured loan (HUD Handbook 4232.1, Section II, Chapter 13, Section 13.3.B) | | |  | **Addendum to Operating Lease** | | |  | Name and date of operator lease | | |  | Definition of Borrower’s Security Instrument: use the proper name of the Security Instrument | | |  | Definition of Lender: Lender’s name, entity type and organizational jurisdiction | | |  | Definition of Lessee: Operator’s name, entity type and organizational jurisdiction | | |  | Definition of Lessor: Borrower’s or master tenant’s (as appropriate) name, entity type and organizational jurisdiction | | |  | Definition of Loan: insert loan amount | | |  | Definition of Loan Documents: make appropriate selections | | |  | ORCF will check the dollar amount of rent to ensure it meets HUD’s requirements. There is no need to change the form to reference a particular annual lease payment | |   NOTE: Ensure the borrower retains sufficient rights to construct the improvements on the leased property in spite of quiet enjoyment warranties in the lease.  *Comments:* |
| ***ORGANIZATIONAL DOCUMENTS*** | |
| 13 | **Borrower’s Organizational Documents**   |  |  |  | | --- | --- | --- | |  | Name of entity: | | |  | Certificate signed by the secretary (or other appropriate officer or designee of Borrower), and dated the day of closing, that the organizational documents attached to the certificate are true and correct copies and have not been amended, modified, rescinded, or revoked and remain in full force and effect. | | |  | Filed formation documents, including any and all amendments, certified by the Secretary of State within 30 days of closing, or such longer period of time as approved by HUD Attorney. | | |  | | Verify exact legal name of borrower is consistent throughout the closing documents. | |  | | Term of entity must be either perpetual or at least as long as the term of the loan | |  | The Borrower’s organizational documents (either formation or governing documents) must include the following provisions, which may automatically terminate when the loan is no longer insured or held by HUD (*Changes in language that do not change the substance are permitted*): Notwithstanding any clause or provision in [identify both the formation document(s) and the governing document(s)] to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan to [Borrower] (the “HUD Loan”), the following provisions shall prevail: DEFINITIONS. The following terms as used herein shall have the following meanings:“HUD Loan Documents” shall mean (i) the Regulatory Agreement (as defined below), (ii) the note executed by [Borrower] in connection with the HUD Loan and (iii) the security instrument and any other security agreements executed by [Borrower] in connection with the HUD Loan.“Regulatory Agreement” shall mean that certain Healthcare Regulatory Agreement – Borrower by and between HUD and [Borrower], and, if applicable, that certain Healthcare Regulatory Agreement – Operator by and between HUD and [Borrower], in connection with the HUD Loan.“Project” shall mean that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility] located in \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and commonly known as \_\_\_\_\_\_\_\_\_\_.CONFLICTS WITH THE HUD LOAN DOCUMENTS. If any of the provisions of [Borrower’s] [name of organizing document], [this Agreement] or any other organizational document conflicts with the provisions of any of the HUD Loan Documents, the provisions of the HUD Loan Documents shall control.RESTRICTIONS ON AMENDMENTS. No provision required by HUD to be inserted in [this Agreement] or any other organizational document of [Borrower] may be amended without the prior written approval of HUD. No provision of [this Agreement] or any other organizational document of [Borrower] that results in any of the following will have any force or effect without the prior written approval of HUD:Any amendment that shortens the term of [Borrower’s] existence;Any amendment that triggers application of HUD’s previous participation certification requirements (as set forth in Form HUD-2530, Previous Participation Certification, and/or 24 C.F.R. § 200.210, et seq.);Any amendment that in any way affects the HUD Loan Documents;Any amendment that would authorize any member, partner, owner, officer, manager, director, and/or any other person, other than one previously approved by HUD, to bind [Borrower] for all matters concerning the Project that require the consent or approval of HUD;Any change that is subject to HUD’s Transfer of Physical Assets requirements described in Program Obligations, as that term is defined in the HUD Loan Documents; orAny change in any guarantor of any obligation to HUD (including those obligations arising from violations of the Regulatory Agreement). [FOR TAX CREDIT TRANSACTIONS ONLY, INCLUDE:  g. Any changes to any organizational document of [Borrower] that affects the [tax credit investor commitment] without the written consent of both [FHA-insured Lender] and HUD. HUD LOAN AUTHORIZATION. [Borrower] is authorized to execute (i) the HUD Loan Documents in order to secure the HUD Loan and (ii) such other documents as may be required by HUD in connection with the HUD Loan.INCOMING MEMBERS, PARTNERS AND OWNERS. Any incoming member, partner and/or owner of [Borrower] must as a condition of receiving an interest in [Borrower] agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD Loan to the same extent and on the same terms as the other respective members, partners and/or owners.DISSOLUTION AND CONVERSION. [Borrower] shall not be voluntarily dissolved or converted into another form of entity without the prior written approval of HUD. Upon any dissolution of [Borrower], no right or title to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any individual or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.LIABILITY OF KEY PRINCIPALS. The key principals of [Borrower] identified in Section 38 of the Regulatory Agreement are liable in their individual capacities to HUD as set forth in the Regulatory Agreement.OFFICIAL REPRESENTATIVE. [Borrower] has authorized [name of authorized individual] as its official representative for all matters concerning the Project that require the consent or approval of HUD. The signature of this representative shall bind [Borrower] in all such matters. [Borrower] may from time to time authorize a new official representative to perform this function, but within three (3) business days of doing so, will provide HUD with written notification of the name, address and telephone number of such new official representative. When an individual other than the individual identified above as the official representative has full or partial authority to manage the Project, [Borrower] shall promptly provide HUD with the name of that individual and the nature of that individual’s management authority.BUSINESS OF [BORROWER]. The business and purpose of [Borrower] shall consist solely of (a) acquiring, owning, operating and maintaining the Project, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which [Borrower] is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing. [Borrower] shall not engage in any other business or activity. The Project shall be the sole asset of [Borrower], and [Borrower] shall not own any other real estate other than that associated with the Project.INDEMNIFICATION. Any obligation of [Borrower] to provide indemnification herein or in any other organizational documents of [Borrower] shall be limited to (i) coverage afforded under any liability insurance carried by [Borrower], and (ii) available “surplus cash” of [Borrower] as defined in the Regulatory Agreement. Until funds from a permitted source for payment of indemnification are available for payment, the Mortgagor entity shall not (a) pay funds to any members, partners, owners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, managers, partners, officers and directors. NOTE: For owner-operated projects, add the HUD-required language for the operator’s organizational documents to the extent it supplements what is required above. | | |  | Evidence that the transaction (loan, leases, loan amount) is authorized, and that the Borrower has the authority to execute the loan documents, if not provided explicitly in the governing documents: a resolution, consent of the partners, consent of the members, or other evidence of proper authorization as local law and custom dictate. | | |  | Certificate of incumbency (which may be included in the certificate described above) dated the day of closing, showing the office and term of the Borrower’s officers and key principals and a specimen signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents. | | |  | Evidence of Borrower’s qualification to do business in the state where the project is located, if Borrower is not organized in that state. | | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing. | |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  NOTE: HUD Handbook 4232.1, Section II, Chapter 6, Section 6.1.C lists acceptable types of ownership entities.  NOTE: See HUD Handbook 4232.1, Section II, Chapter 6, Section 6.3.C for guidance on non-profit sponsors and profit-motivated borrowers.  *Comments:* |
| 14 | **Organizational Documents for Each Entity in Borrower’s Signature Block**   |  |  | | --- | --- | |  | Not applicable – no entities in signature block; OR: | |  | Name of entity: | |  | Certification that documents are current, complete and have not been amended or repealed. | |  | Verify exact legal name of each entity within the borrower’s signature block is consistent throughout the closing documents. | |  | Authorizing Resolution indicates that the entity has the authority to cause the borrower to enter into the contemplated transaction, and designates an authorized signatory. | |  | Certificate of incumbency (may be included in certificate described above) dated the day of closing, showing office and term of the entity’s officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  *Comments:* |
| 15 | **Master Tenant’s Organizational Documents**   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease; OR: | |  | Name of entity: | |  | Certification that documents are current, complete and have not been amended or repealed. | |  | Verify exact legal name of master tenant is consistent throughout the closing documents. | |  | Entity term is greater than or equal to the term of the master lease | |  | Authorizing Resolution indicates that the master tenant has the authority to enter into the contemplated transaction, and designates an authorized signatory. | |  | Certificate of incumbency (may be included in certificate described above) dated the day of closing, showing office and term of the entity’s officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents. | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing | |  | Qualified to do business in property jurisdiction if the master tenant’s organizational jurisdiction is different |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  *Comments:* |
| 16 | **Organizational Documents for Each Entity in Master Tenant’s Signature Block**   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease, or no entities in signature block; OR: | |  | Name of entity: | |  | Certification that documents are current, complete and have not been amended or repealed. | |  | Verify exact legal name of each entity within the master tenant’s signature block is consistent throughout the closing documents. | |  | Authorizing Resolution indicates that the entity has the authority to cause the master tenant to enter into the contemplated transaction, and designates an authorized signatory. | |  | Certificate of incumbency (may be included in certificate described above) dated the day of closing, showing office and term of the entity’s officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents. | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  *Comments:* |
| 17 | **Operator’s Organizational Documents**   |  |  | | --- | --- | |  | Not applicable – project is owner-operated; OR: | |  | Name of entity: | |  | Certification that documents are current, complete and have not been amended or repealed. | |  | Verify exact legal name of operator is consistent throughout the closing documents. | |  | Entity term is greater than or equal to the term of the Borrower-Operator Agreement | |  | The organizational documents include the following HUD-required provisions:  Notwithstanding any clause or provision in [this Agreement] to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan secured by [name of facility] (the “HUD Loan”), the following provisions shall prevail: The following terms as used herein shall have the following meanings:“HUD Loan Documents” shall mean (i) the Healthcare Regulatory Agreement - Operator, (ii) the Operator Security Agreement executed by [Operator] in connection with the HUD Loan and (iii) the Assignment of Rents and Leases executed by [Operator] in connection with the HUD Loan.“Healthcare Facility” shall mean that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility] located in \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and commonly known as \_\_\_\_\_\_\_\_\_\_. The business and purpose of [Operator] shall consist solely of (a) operating and maintaining the Healthcare Facility, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which [Operator] is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing. [Operator] shall not engage in any other business or activity.  [Operator] shall comply with all applicable Program Obligations, as that term is defined in the HUD Loan Documents, including those related to distributions. | |  | Authorizing Resolution indicates that the operator has the authority to enter into the contemplated transaction, and designates an authorized signatory. | |  | Certificate of incumbency (may be included in certificate described above) dated the day of closing, showing office and term of the entity’s officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents. | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing | |  | Qualified to do business in property jurisdiction if the operator’s organizational jurisdiction is different |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  NOTE: HUD Handbook 4232.1, Section II, Chapter 8, Section 8.2 may be helpful in identifying operators and distinguishing them from management agents.  *Comments:* |
| 18 | **Organizational Documents for Each Entity in Operator’s Signature Block**   |  |  | | --- | --- | |  | Not applicable – project is owner-operated or no entities in signature block; OR: | |  | Name of entity: | |  | Certification that documents are current, complete and have not been amended or repealed. | |  | Verify exact legal name of each entity within the operator’s signature block is consistent throughout the closing documents. | |  | Authorizing Resolution indicates that the entity has the authority to cause the operator to enter into the contemplated transaction, and designates an authorized signatory. | |  | Certificate of incumbency (may be included in certificate described above) dated the day of closing, showing office and term of the entity’s officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents. | |  | Certificate of Continued Existence/Good Standing dated within 30 days of closing |   NOTE: For trusts, submit the Trust Agreement and the Certification or Affidavit of Trust.  *Comments:* |
| ***MISCELLANEOUS DOCUMENTS*** | |
| 19 | [**Residual Receipts Note (Non-Profit Borrowers) (HUD-91710-ORCF)**](http://portal.hud.gov/huddoc/91710_orcf.doc)**,**  **or** [**Surplus Cash Note (HUD-92223-ORCF)**](http://portal.hud.gov/huddoc/92223_orcf.docx)  **All other secondary financing documents or encumbrance documents (Use Agreements, Regulatory Agreements, etc.)**   |  |  |  | | --- | --- | --- | |  | Not applicable – no secondary financing; OR | | |  | Project name and number | | |  | Borrower’s name, entity type and organizational jurisdiction | | |  | Payee’s name, entity type and organizational jurisdiction | | |  | Loan amount in words and numbers | | |  | Interest rate in words and numbers | | |  | Section 1: | | |  | | Maturity date of secondary loan | |  | | Details related to HUD-insured loan | |  | Section 9: For residual receipts notes, describe what the loan funds will be used for | | |  | Below the maker’s signature, include the certification signed by maker and payee | | |  | The FHA-Insured Lender must consent to the placing of any subordinate liens | |   NOTE: When tax-exempt bond financing is involved, bond counsel must submit a legal opinion and HUD counsel must review the bond documents to ensure compliance with certain HUD requirements. See HUD Handbook 4232.1, Section II, Chapter 3, Section 3.14.B.1. Use or rent restrictions must meet the requirements found in HUD Handbook 4232.1, Section II, Chapter 3, Section 3.14.F.2.  NOTE: The Residual Receipts Note and Surplus Cash Note must not be altered in any manner. See HUD Handbook 4232.1, Section II, Chapter 3, Section 3.15.B.2.  NOTE: For projects involving tax credits, HUD Handbook 4232.1, Section II, Chapter 9, Section 9.10.A.2, and Chapter 12, Sections 12.2.A.6-7, and 12.3.B.4 include requirements/required and prohibited language for the tax credit documents.  NOTE: See HUD Handbook 4232.1, Section II, Chapter 3, Section 3.15 for additional guidance.  *Comments:* |
| 20 | **License(s) or Other Evidence of Compliance with 24 CFR 232.2**   |  |  | | --- | --- | |  | The license accurately identifies the name and location of the subject project. | |  | All licensees (including co-licensees) have been approved by HUD and comply with all applicable requirements for an Operator (such as signing a regulatory agreement, etc.). | |  | The license type, number of beds and/or units, and level of care are consistent with the firm commitment. | |  | License has not expired. If license is to expire within one (1) month of closing, request sufficient evidence of renewal. If the license does not include an expiration date, request evidence that the most recent renewal fees have been paid. | |  | Type/level of care specified in the license is consistent with definitions in and requirements of § 232 statute. See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.5 regarding independent living units/unlicensed units | |  | Collect other licenses (e.g., Administrator’s License, retirement home license), if applicable. Skilled Nursing Facilities require a licensed Nursing Home Administrator (HUD Handbook 4232.1, Section II, Chapter 8, Section 8.8.J) |   NOTE: HUD Handbook 4232.1, Section II, Chapter 9, Section 9.8.N requires that evidence be provided at initial closing showing the application process for the facility license has begun, and upon completion of the project, as proposed, a license will be issued. The evidence must be confirmation from the appropriate governing authority. If the regulatory entity that issues the license(s) does not allow application for license(s) at the time of ***Firm Application submission***, HUD will accept a letter from the entity applying for the license(s), which covers the following:  an explanation of the application process (with documented verification from licensing entity), identification of the entity that is anticipated to hold the license(s), and the number of beds that will be covered by the license(s). See [Firm Application Checklist Section 232 – New Construction Initial Submission](http://portal.hud.gov/hudportal/documents/huddoc?id=ORCF_Chklst_nci.doc), Section 8-2  *Comments:* |
| 21 | **Management Agreement**   |  |  | | --- | --- | |  | Not applicable – no management agent; OR: | |  | The Management Agreement must include the following provisions, which may automatically terminate when the loan is no longer insured or held by HUD:(1)  The Management Agreement shall terminate without penalty upon failure to comply with the provisions of Management Certification to HUD, or for other good cause, including without limitation for violations of the Healthcare Regualtory Agreement - Borrower, Healthcare Regulatory Agreement - Operator, and/or Healthcare Regulatory Agreement – Master Tenant, if any, thirty days after HUD has mailed to Borrower, or Operator, as applicable, a written notice of its desire to terminate the Management Agreement;(2) in the event that HUD determines that any of the Permits and Approvals reasonably necessary to operate the Healthcare Facility is 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, the Management Agreement shall terminate immediately without penalty upon HUD’s issuance of a notice of termination to Borrower, or Operator, as applicable, and such management agent; and(3) the Management Agreement may not be assigned without the prior written approval of HUD. (4) if the Management Agreement is terminated the Agent will immediately, not later than ten (10) calendar days from the effective date of the termination, give to the Borrower (or Operator, if applicable) all of the real and personal property in the Agent’s possession or control, including without limitation any of the Project’s cash, trust accounts, investments, books and/or records. (5) 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 the requirements of Section 19 of the Healthcare Regulatory Agreement – Borrower, and be available for examination by HUD or its authorized representatives after reasonable prior notice during customary business hours at the Project or other mutually agreeable location or, at HUD’s request, the Management Agent shall provide legible copies of such documents to HUD or its authorized representatives within a reasonable time after HUD or its authorized representative makes the request.(6) this and all other or subsequent management agreements must be approved by HUD and be consistent with Program Obligations.  In the event of a conflict between [this Agreement] and Program Obligations, Program Obligations shall control.(7) any hold-harmless provisions or agreements between the Management Agent and the Borrower or Operator are void and of no effect.(8) in no event shall the Management Agent have rights to or claims on funds owed to the Operator.All capitalized terms in this Section [\_\_] are defined in the Healthcare Regulatory Agreement – Borrower between [the Borrower] and the U.S. Department of Housing and Urban Development.[Include the term of the Management Agreement. Notify ORCF if less than five years remain in the term. HUD Handbook 4232.1, Section II, Chapter 8, Section 8.7.A.4] |   *Comments:* |
| 22 | **[Escrow Agreement for Operating Deficits (HUD-92476B-ORCF)](http://portal.hud.gov/huddoc/92476b_orcf.docx)**   |  |  | | --- | --- | |  | Not applicable – not required by the firm commitment; OR: | |  | Name and address of Lender | |  | Name and address of Borrower | |  | Name and address of Depository Institution (or strike if inapplicable) | |  | Project number and location | |  | Select past, present or future tense, and use of loan proceeds (construct, rehab, purchase, refinance) | |  | Recital A: insert the proper Section of the Act | |  | Section 1: insert escrow amount from the firm commitment and strike the last sentence | |  | Section 2: indicate whether the escrow will be funded with cash or a letter of credit | |  | Section 4: insert terms of escrow from the firm commitment | |  | Exhibit A: Attach the form of the letter of credit, but HUD Attorney does not review or provide comments on the letter of credit |   *Comments:* |
| 23 | **[Escrow Agreement for Working Capital (HUD-92412-ORCF)](http://portal.hud.gov/huddoc/92412_orcf.docx)**   |  |  | | --- | --- | |  | Not applicable – not required by the firm commitment or the loan is insured under Section 241(a); OR: | |  | Name and address of Lender | |  | Name and address of Borrower | |  | Name and address of Depository Institution (or strike if inapplicable) | |  | Project number and location | |  | Select past, present or future tense, and use of loan proceeds (construct, rehab, purchase, refinance) | |  | Recital A: insert the proper Section of the Act | |  | Section 1: insert escrow amount from the firm commitment | |  | Section 2: indicate whether the escrow will be funded with cash or a letter of credit | |  | Section 4: insert terms of escrow from the firm commitment | |  | Exhibit A: Attach the form of the letter of credit, but HUD Attorney does not review or provide comments on the letter of credit |   NOTE: See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.6.K for guidance.  *Comments:* |
| 24 | **[Minor Movable Equipment Escrow Agreement (HUD-9443-ORCF)](http://portal.hud.gov/huddoc/9443_orcf.doc)**   |  |  | | --- | --- | |  | Not applicable – not required by the firm commitment; OR: | |  | Name and address of Lender | |  | Name and address of Borrower | |  | Name and address of Depository Institution (or strike if inapplicable) | |  | Project number and location | |  | Select past, present or future tense, and use of loan proceeds (construct, rehab, purchase, refinance) | |  | Recital A: insert the proper Section of the Act | |  | Section 1: insert escrow amount from the firm commitment | |  | Section 2: indicate whether the escrow will be funded with cash or a letter of credit | |  | Exhibit A: Attach the form of the letter of credit, but HUD Attorney does not review or provide comments on the letter of credit |   NOTE: See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.6.M for guidance.  NOTE: Some projects may also be required to have a Front Money Escrow, an Off-Site Construction Escrow, a Demolition Escrow, or a Debt Service Reserve or Escrow. The review of these documents is substantially similar to the review of the escrows listed in this punchlist, and they should be added to this punchlist. See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.5 for guidance.  *Comments:* |
| 25 | **Survey,** [**Survey Instructions and Borrower’s Certification (HUD-91111-ORCF)**](http://portal.hud.gov/huddoc/91111_orcf.docx)   |  |  |  |  | | --- | --- | --- | --- | |  | Legal description consistent with title policy | | | |  | Dated or updated within 120 days of closing, unless a pre-existing survey is permitted by the terms of the form HUD-91111-ORCF. | | | |  | If a pre-existing survey is permitted, collect a copy of the pre-existing survey and the Borrower’s Certification form HUD-91111-ORCF, which Certification should be completed as follows: | | | |  | | Project name and number | | |  | | Lender’s name and address | | |  | | Intro paragraph: Name, entity type and organizational jurisdiction of Borrower | | |  | | Project location | | |  | | Section 1: Section of the Act | | |  | | Section 2: Preparer and date of pre-existing survey | | |  | | Section 4: Flood map number and date | | |  | | Exhibit A completed, if applicable | | |  | | Dated day of closing | | |  | If a current survey is required: | | | |  | | Prepared in accordance with the technical instructions from HUD-91111-ORCF. | | |  | | Indicates: | | |  | | | Project name | |  | | | Name of jurisdiction in which the project is located | |  | | | Area of the site in both acres and square feet | |  | | | Whether adjacent streets are public or private | |  | | | Legal description | |  | | | Ownership of adjacent parcels | |  | | Show the entire insured parcel | | |  | | Include “the U.S. Department of Housing and Urban Development (HUD)” in the space marked “(names of others as negotiated with the client)” in the standard certification. | |   NOTE: See HUD Handbook 4232.1, Section II, Chapter 7, Section 7.5.K.1-2 for guidance related to high pressure gas or liquid petroleum transportation pipelines; overhead high voltage transmission lines; and support structures for high voltage transmission lines, radio antennae, satellite towers, cellular towers, etc.  *Comments:* |
| 26 | **[Lender’s Certificate (HUD-92434-ORCF)](http://portal.hud.gov/huddoc/92434_orcf.docx)**   |  |  | | --- | --- | |  | Project name, number | |  | Names of borrower and Lender in the first box and in the first paragraph | |  | Title and date of security instrument, and loan amount | |  | Section I(2): insert the MIP amount and the date of the firm commitment. [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) (attached to the firm commitment) shows the MIP as a percentage of the loan amount on line E.b | |  | Section II(4): insert the date of the Building Loan Agreement | |  | Section III(7): insert the exhibit number or letter | |  | Section IV(8): complete the information related to the Working Capital Escrow | |  | Section IV(9): check the applicable subsections and complete the requested information using information from the firm commitment | |  | Section IV (10)-(12): complete as applicable. Consult ORCF if a personal undertaking is offered | |  | Section IV(13)(b): complete information regarding searches | |  | Section IV(14): insert the outside date for the first PCNA. Advise ORCF if the parties have proposed a date other than the projected construction completion date + 60 days | |  | Section V(19): check the applicable subsections and complete the requested information using information from the firm commitment. If applicable, attach addenda/exhibits pursuant to Section V(19)(b), (e) and/or (g) | |  | Section V(24): list any identities of interest, or state “none” | |  | Section V(29): insert the exhibit number or letter and attach a memorandum setting forth changes to HUD’s form documents | |  | Section V(33): insert the date of the flood insurance receipt, or strike if inapplicable | |  | Collect the agreement providing for advancement of grant/loan proceeds referenced in Section IV(9)(b)(ii) |   NOTE: If tax-exempt bond financing is involved, ensure compliance with the HUD requirements found in HUD Handbook 4232.1, Section II, Chapter 3, Section 3.14.E.  NOTE: See HUD Handbook 4232.1, Section II, Chapter 9, Section 9.8.L.5 for changes to the form when fees are to be paid after initial closing.  NOTE: ORCF (rather than OGC) has ultimate responsibility for ensuring the accuracy of the numbers in this form.  *Comments:* |
| 27 | **Special Conditions of the Firm Commitment**   |  |  | | --- | --- | |  | Certification re: adverse changes since firm commitment was issued (typically appears as standard condition #30) | |  |  | |  |  |   NOTE: Requirements related to Sinking Funds, Initial Operating Deficit Escrows, Short-Term Debt Service Reserve Escrows, Assurances of Funds to Meet Initial Operating Deficits and Debt Service Reserves, and Long-Term Debt Service Reserve Accounts are found in HUD Handbook 4232.1, Section II, Chapter 2, Section 2.5.  NOTE: See HUD Handbook 4232.1, Section II, Chapter 7, Sections 7.3.H and 7.4.B for guidance on escrows for monitoring wells and engineering controls and removal of site contamination.  NOTE: See HUD Handbook 4232.1, Section II, Chapter 7, Sections 7.5.C.13-14 for requirements related to sites in floodplains.  *Comments:* |
| 28 | [**Agreement and Certification (HUD-93305-ORCF)**](http://portal.hud.gov/huddoc/93305_orcf.doc)   |  |  | | --- | --- | |  | Borrower’s name and address | |  | Lender’s name and address | |  | Contractor’s name and address | |  | Project number and location | |  | Check the first box (related to constructing or substantially rehabilitating), and insert the loan amount and a proper reference to the Section of the Act | |  | Section 4: list any identities of interest, or state “none” | |  | Section 9: insert the amount of the architect’s design fee from the Estimated Replacement Cost tab of the [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) attached to the firm commitment | |  | Section 11: insert the contractor’s fee (profit) and general overhead amounts from the Estimated Replacement Cost tab of the [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) attached to the firm commitment |   *Comments:* |
| ***OPINION LETTERS AND SEARCHES*** | |
| 29 | [**Guide for Opinion of Borrower’s Counsel (HUD-91725-ORCF)**](http://portal.hud.gov/huddoc/91725_orcf.docx) **and** [**Exhibit A to Opinion of Borrower’s Counsel – Certification (HUD-91725-CERT-ORCF)**](http://portal.hud.gov/huddoc/91725cert_orcf.doc)   |  |  |  | | --- | --- | --- | |  | Use firm letterhead. |  | |  | Use address of HUD office closing the insured loan. |  | |  | Insert project specific information throughout opinion letter; make appropriate selections throughout opinion letter. |  | |  | If the opinion letter is split into multiple opinion letters, ensure that together, they equate to the full opinion letter required by the Guide for Opinion of Borrower’s Counsel (HUD-91725-ORCF). | |  | If opinion discloses a potential conflict of interest, request a joint disclosure letter and advise ORCF. | |  | Borrower’s Certification | |  | All exhibits attached | |  | Any litigation disclosed in the opinion must be approved by ORCF. |   NOTE: UCC Searches and Docket Searches should not be collected by HUD.  NOTE: In the event the license is not available at initial closing, item 5 on page 3 of the Guide for Opinion of Borrower’s Counsel should include a description of the evidence of compliance with 24 CFR 232.2.  *Comments:* |
| 30 | [**Guide for Opinion of Master Tenant’s Counsel (HUD-92335-ORCF)**](http://portal.hud.gov/huddoc/92335_orcf.docx)   |  |  |  | | --- | --- | --- | |  | Not applicable – not subject to a master lease; OR: |  | |  | Use firm letterhead |  | |  | Use address of HUD office closing the insured loan |  | |  | Insert project specific information throughout opinion letter; ensure appropriate selections are made throughout opinion letter |  | |  | Item E may need to refer to three UCC financing statements if the fixture filing must be made in both the property jurisdiction and the organizational jurisdiction. |  | |  | In Assumption JJ, the bracketed clause should be used if the Master Tenant is a party to the DACA |  | |  | If the opinion letter is split into multiple opinion letters, ensure that together, they equate to the full opinion letter required by the Guide for Opinion of Master Tenant’s Counsel (HUD-92335-ORCF) |  | |  | Master Tenant’s Certification |  | |  | Any litigation disclosed in the opinion must be approved by ORCF |  |   NOTE: UCC Searches and Docket Searches should not be collected by HUD.  *Comments:* |
| 31 | [**Guide for Opinion of Operator’s Counsel, and Certification (HUD-92325-ORCF)**](http://portal.hud.gov/huddoc/92325_orcf.docx)   |  |  | | --- | --- | |  | For owner-operated projects, this opinion is required in addition to the Opinion of Borrower’s Counsel (HUD-91725-ORCF). | |  | Use firm letterhead | |  | Use address of HUD office closing the insured loan | |  | Insert project specific information throughout opinion letter; ensure appropriate selections are made throughout opinion letter | |  | Item N may need to refer to three UCC financing statements if the fixture filing must be made in both the property jurisdiction and the organizational jurisdiction. | |  | If the opinion letter is split into multiple opinion letters, ensure that together, they equate to the full opinion letter required by the Guide for Opinion of Operator’s Counsel (HUD-92325-ORCF) | |  | Operator’s Certification | |  | Any litigation disclosed in the opinion must be approved by ORCF |   NOTE: UCC Searches and Docket Searches should not be collected by HUD.  NOTE: In the event the license is not available at initial closing, item K on page 4 of the Guide for Opinion of Operator’s Counsel (the “Guide”) should include a description of the documents submitted to evidence compliance with 24 CFR 232.2. Opinion 2 may be modified as follows: “The Operator has all the necessary power and authority of a corporation/limited liability company/limited partnership, and possesses  all necessary governmental certificates, permits . . . to lease and operate the Project (to the extent such certificates, permits, licenses, qualifications and approvals can be obtained prior to commencement of construction).” At final closing, Operator’s Counsel should provide an opinion letter describing the license which was obtained after initial closing, stating such license has been reviewed, and providing opinion 2 from the Guide without modification. At final closing, items deferred (license, particular opinions from the Guide) from initial closing will be collected.  NOTE: In the event the DACA and/or DAISA are not in place at initial closing (as permitted for new construction transactions), items D and E on page 3 of the Guide for Opinion of Operator’s Counsel (the “Guide”) should be stricken. In assumption JJ on page 6 of the Guide, strike everything beginning with the word “including.” Strike the paragraph below opinion 10, and replace clause (c) in qualification (ii) on page 9 of the Guide with “intentionally deleted”. At final closing, Operator’s Counsel should provide an opinion letter describing the DACA and DAISA, stating they have been reviewed, and providing the opinion stricken from the opinion given at initial closing, subject to the assumptions and qualifications available in the Guide. At final closing, items deferred (DACAs, DAISAs, particular opinions from the Guide) from initial closing will be collected.  *Comments:* |
| ***CONSTRUCTION-RELATED DOCUMENTS*** | |
| 32 | **Building Permits**   |  |  | | --- | --- | |  | Project is properly identified | |  | Covers the work funded by the insured loan | |  | Proof of payment (receipt or certification) |   *Comments:* |
| 33 | [**Construction contract (HUD-92442-ORCF)**](http://portal.hud.gov/huddoc/92442_orcf.docx)   |  |  |  | | --- | --- | --- | |  | Insert project name and number, and indicate whether the contract is cost-plus or lump sum based on the firm commitment | | |  | Date the contract and identify the contractor and borrower/owner by name | | |  | Article 2(A): | | |  | | 2: enter the year of the current edition of the [AIA A201](http://www.benchmarkgrp.com/img/userfiles/file/ConstructionForms/AIADocumentA201.pdf) | |  | | 4, 5, 6, 7, 8 and 11: insert the exhibit numbers and identifying information. Delete the inapplicable option(s) in 8. Type “N/A” if 4 or 11 are inapplicable. The dates of the plans and specs are in the firm commitment | |  | | 9: insert the identifying information from the Wage Determination (current as of the date of closing) provided by Labor Relations | |  | Article 2(B): insert the name(s) of the architect(s). Architects sharing an identity of interest with the owner cannot administer the construction contract | | |  | Article 3(A): calculate and insert completion date based on the Estimated Replacement Cost tab of the [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) attached to the firm commitment. Advise ORCF if the parties propose a commencement date later than 10 days after closing | | |  | Article 3(E): [(Mortgage interest rate ÷ .25) x (mortgage amount in thousands) = liquidated damages per diem](http://hudsharepoint.hud.gov/sites/IHCF/DEVL/tn/Closing/Liquidated_Damages_Calculator.xlsx). This figure is now available in the notes below the Maximum Insurable Loan Calculation (page 2) of the [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) | | |  | Article 3(F): strike if inapplicable | | |  | Article 4, Option 1: | | |  | | Not applicable – contract is lump sum and this option is deleted; OR: | |  | | (A)(2): insert the contractor’s fee (profit) from the Estimated Replacement Cost tab of the [HUD-92264a-ORCF](http://portal.hud.gov/huddoc/92264a_orcf.xlsx) attached to the firm commitment. Complete the second blank with the amount from line 53 of the [Contractor’s and/or Mortgagor’s Cost Breakdown (HUD-2328)](http://portal.hud.gov/huddoc/2328.pdf) signed by HUD | |  | | (A)(3), (4): Complete, if applicable, with information from the [Contractor’s and/or Mortgagor’s Cost Breakdown (HUD-2328)](http://portal.hud.gov/huddoc/2328.pdf) signed by HUD | |  | | (B)(1), (2): complete with information from the firm commitment | |  | | (D): include if applicable | |  | | (E): complete in accordance with instructions following the blank | |  | Article 4, Option 2: | | |  | | Not applicable – contract is cost plus and this option is deleted; OR: | |  | | (A): insert amount from line 53 of the [Contractor’s and/or Mortgagor’s Cost Breakdown (HUD-2328)](http://portal.hud.gov/huddoc/2328.pdf) signed by HUD | |  | | (A)(1), (A)(2), and (B): strike or complete as appropriate | |  | Article 5(A): include bracketed language if there is a Retainage Reduction Rider attached. Such rider is attached at the request of the builder, and specifies when HUD will consider a retainage reduction and the amount/percentage by which HUD would reduce the retainage | | |  | Article 5(D): include as appropriate | | |  | Article 8: specify the type of completion assurance and the amount | | |  | Article 11(D): insert the lender’s name and include bracketed language as appropriate | | |  | Article 13: select the appropriate option and delete the inappropriate one | | |  | Article 14: list any identities of interest, or state “none” | | |  | Article 15: identify the point of contact for the owner and contractor | | |  | Attach (as appropriate) [General Conditions of the Contract for Construction AIA Document A201](http://www.benchmarkgrp.com/img/userfiles/file/ConstructionForms/AIADocumentA201.pdf), [Supplementary Conditions for Contract for Construction (HUD-92554-ORCF)](http://portal.hud.gov/huddoc/92554_orcf.doc), special conditions from the firm commitment, indices of the Drawings and Specifications, the [Contractor’s and/or Mortgagor’s Cost Breakdown (HUD-2328)](http://portal.hud.gov/huddoc/2328.pdf), [Construction Contract Incentive Payment (HUD-92443)](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_20689.pdf), the [prevailing wage determination](http://www.wdol.gov/dba.aspx#0), approved change orders, and Retainage Reduction Rider | |   NOTE: HUD Handbook 4232.1, Section II, Chapter 2, Section 2.6.P requires that any Deferred Builder’s Profit be disclosed in the Construction Contract and on the Contractor’s and/or Mortgagor’s Cost Breakdown.  NOTE: The requirements of HUD Handbook 4232.1, Section II, Chapter 3, Section 3.3.B.2 are met by attaching the Contractor’s and/or Mortgagor’s Cost Breakdown.  NOTE: If used, the Construction Contract Incentive Payment (HUD-92443) will need to be modified to reflect the correct form number of the Construction Contract and to refer to Article 4: Contract Sum.  *Comments:* |
| 34 | **Completion Assurance**   |  |  | | --- | --- | |  | [**Payment Bond (HUD-92452A-ORCF)**](http://portal.hud.gov/huddoc/92452a_orcf.doc) | |  | Not applicable – a Completion Assurance Agreement or Personal Undertaking will be used instead; OR: | |  | Name and address of Contractor, Owner and Lender | |  | Name of Surety and principal place of business | |  | Project name, number and location | |  | Date and amount of construction contract | |  | Date of payment bond is not before the date of the construction contract, and amount of payment bond is not less than amount of the construction contract | |  | Indicate whether there are riders to the bond, if permitted by ORCF. When Ginnie Mae securities are involved, Ginnie Mae is permitted as an additional obligee | |  | Paragraph 2: insert the amount of the payment bond in words and numbers. This figure should match what is shown in the introductory text, and should not be less than the amount of the construction contract | |  | [**Performance Bond – Dual Obligee (HUD-92452-ORCF)**](http://portal.hud.gov/huddoc/92452_orcf.doc) | |  | Not applicable – a Completion Assurance Agreement or Personal Undertaking will be used instead; OR: | |  | Name and address of Contractor, Owner and Lender | |  | Name of Surety and principal place of business | |  | Project name, number and location | |  | Date and amount of construction contract | |  | Date of payment bond is not before the date of the construction contract, and amount of payment bond is not less than amount of the construction contract. | |  | Indicate whether there are riders to the bond, if permitted by ORCF. When Ginnie Mae securities are involved, Ginnie Mae is permitted as an additional obligee | |  | Paragraph 3: insert the amount of the payment bond in words and numbers. This figure should match what is shown in the introductory text, and should not be less than the amount of the construction contract | |  | **Power of Attorney** | |  | A signed and sealed power of attorney must be attached to the Payment Bond and the Performance Bond – Dual Obligee | |  | Dated the date of the bonds | |  | Names the attorney-in-fact (the signatory for the surety on the bonds) as the authorized representative for the surety | |  | **Fax or Email Confirming Power of Attorney** | |  | Addressed to the HUD closing office | |  | Identifies both the Payment Bond and the Performance Bond – Dual Obligee, including the bond amount and the names of the surety, the contractor and the obligee(s)) | |  | On surety letterhead | |  | Names the attorney-in-fact and the surety, includes the date of the bonds, and includes a phone number for the surety |   NOTE: Check [Treasury Circular 570](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm) for the exact name of the surety, the surety’s principal place of business, evidence the surety can provide a bond in the project state, and evidence the surety can issue a bond in the proposed amount.   |  |  |  | | --- | --- | --- | |  | | [**Completion Assurance Agreement (HUD-92450-ORCF)**](http://portal.hud.gov/huddoc/92450_orcf.doc) | |  | Not applicable – a Payment Bond and a Performance Bond – Dual Obligee, or a Personal Undertaking will be used instead; OR: | | |  | | Date | |  | | Names and addresses for contractor, borrower, Lender, and depository institution, if applicable. Strike clause about depository institution if inapplicable | |  | | Recital A: date of construction contract and HUD project number | |  | | Section 1: amount equal to 15% of contract when the project has no elevator or is 3 stories or less; or 25% of construction contract when the project has an elevator or is 4 stories or more, and indicate whether this amount is funded with cash or letter(s) of credit | |  | | Exhibit A: Attach the form of the letter of credit, but HUD Attorney does not review or provide comments on the letter of credit | |  | | [**Personal Undertaking (FHA-2459)**](http://www.hud.gov/offices/adm/hudclips/forms/files/fha2459.pdf) | |  | | Not applicable – a Payment Bond and a Performance Bond – Dual Obligee, or a Completion Assurance Agreement will be used instead; OR: | |  | | Consult ORCF if a Personal Undertaking is offered | |  | | [**Offsite Bond – Dual Obligee (HUD-92479-ORCF)**](http://portal.hud.gov/huddoc/92479_orcf.doc) | |  | | Name and address of offsite contractor, borrower and Lender | |  | | Name of Surety and principal place of business | |  | | Project name, number and location | |  | | Date and amount of offsite construction contract | |  | | Date of payment bond is not before the date of the offsite construction contract, and amount of payment bond is not less than amount of the offsite construction contract. | |  | | Indicate whether there are riders to the bond, if permitted by ORCF | |  | | Paragraph 3: insert scheduled completion date | |  | | Paragraph 4: insert the amount of the payment bond in words and numbers. This figure should match what is shown in the introductory text, and should not be less than the amount of the construction contract |   *Comments:* |
| 35 | [**Owner-Architect** **Agreement (AIA B108)**](http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab093942.pdf) **and** [**HUD Amendment (HUD-92408-ORCF)**](http://portal.hud.gov/huddoc/92408_orcf.doc)   |  |  | | --- | --- | |  | Our borrower is named as the owner, or the Agreement has been assigned to our borrower | |  | The architect is licensed to build the project in the project state | |  | The “arbitration” and “other” checkboxes, in addition to section 8.3, must be physically stricken from the agreement | |  | The ORCF underwriter is responsible for reviewing the AIA B108 to ensure it is correct and complete | |  | **HUD Amendment** | |  | Insert the project number | |  | Paragraph 12: list any identities of interest, or state “none” | |  | Paragraph 13: insert the name of the third party payor, if any | |  | The owner and architect must both sign the amendment, and the certification |   *Comments:* |
| 36 | [**Building Loan Agreement (HUD-92441-ORCF)**](http://portal.hud.gov/huddoc/92441_orcf.doc) **and** [**Building Loan Agreement Supplemental (HUD-92441a-ORCF)**](http://portal.hud.gov/huddoc/92441a_orcf.doc)   |  |  | | --- | --- | |  | Project name and number | |  | Borrower’s name, type of entity, organizational jurisdiction and place of business (city, county, and state) | |  | Lender’s name, type of entity, organizational jurisdiction and place of business (city, county, and state) | |  | First recital: insert loan amount in words and numbers | |  | Section 1: insert loan amount and interest rate in words and numbers, along with the date of the insured Note and the maturity date of the insured Note. Use the proper title of the Security Instrument | |  | Section 2: notify ORCF if the completion date is other than the projected completion date plus 60 days, and insert date(s) of drawings and specifications. Enter the year of the current edition of the [AIA A201](http://www.benchmarkgrp.com/img/userfiles/file/ConstructionForms/AIADocumentA201.pdf) | |  | Section 4(a): Include bracketed language regarding Retainage Reduction Rider, if applicable. Such rider is attached at the request of the builder, and specifies when HUD will consider a retainage reduction and the amount/percentage by which HUD would reduce the retainage | |  | Section 4(c): insert amount of project completion funds from the firm commitment, and the date of the disbursement agreement | |  | Exhibit A: attach the same legal description attached to the Security Instrument | |  | Exhibit B: attach a copy of the Contractor’s and/or Mortgagor’s Cost Breakdown (HUD-2328) signed by all parties, including HUD | |  | Exhibit C: attach the disbursement agreement. See MAP Guide Section 8.10 for guidance until the ORCF handbook is published, then see Production Chapter 12 for guidance | |  | **Building Loan Agreement Supplemental** | |  | Not applicable – Borrower is not acting as its own general contractor; OR: | |  | Insert the project number and name | |  | Section 25(c): Insert the number of days within which construction will begin. Advise ORCF if the parties propose a commencement date later than 10 days after closing |   *Comments:* |
| ***RECORDED (OR PARTIALLY RECORDED) DOCUMENTS***  ***-documents are listed in the suggested recording order-*** | |
| 37 | **Ground Lease with** [**Lease Addendum (HUD-92070-ORCF)**](http://portal.hud.gov/huddoc/92070_orcf.doc)   |  |  |  | | --- | --- | --- | |  | Not applicable – land owned in fee simple; OR: | | |  | Estoppel certificate for existing ground leases, dated within 30 days of closing | | |  | Ground lease consistent with Lender’s narrative, and sufficient to establish site control | | |  | Term may be at any stage of a 99 lease, so long as the lease is renewable, or have at least 10 years remaining after the maturity date of the loan | | |  | See HUD Handbook 4232.1, Section II, Chapter 5, Section 5.4.C.1 for acceptable ground rent payment amounts and increases | | |  | Parties correctly identified | | |  | Ground lessee has right to use the property for the approved use of the project. | | |  | Ground lessor has limited rights to prevent ground lessee from altering the property | | |  | Ground lessee has the right to petition rezoning, if necessary | | |  | If ground lessor requires that construction begin or be completed by a certain date, add that any extensions granted by HUD shall be deemed to have been approved by ground lessor, too | | |  | A default under the HUD-insured loan is not a default under the ground lease | | |  | Each party is obligated to provide an estoppel certificate upon request | | |  | Legal description is consistent with title and survey | | |  | Addendum: | | |  | | Confirm that the optional purchase price is in Section B of addenda. | |  | | Insert notice addresses | |  | If the ground lease is not recorded, a memorandum of ground lease must be recorded. The following items should be reviewed in the memorandum of ground lease: | | |  | | Names of parties to lease | |  | | Legal description consistent with title policy and survey | |  | | Properly formatted for recording. HUD expresses no preference about where the original goes after recording. |   *Comments:* |
| 38 | **Any Necessary Easements or Party Wall Agreements**   |  |  | | --- | --- | |  | Review for legal sufficiency | |  |  |   *Comments:* |
| 39 | [**Security Instrument (HUD-94000-ORCF)**](http://portal.hud.gov/huddoc/94000_orcf.docx)   |  |  | | --- | --- | |  | Properly formatted for recording, with original to be returned to the Lender/Lender’s Counsel. | |  | Document properly titled based on state specific requirements | |  | Project name and number on first page | |  | First paragraph: complete project specific information, and delete language about Trustee if inapplicable under state law | |  | Second paragraph: Alternative A, B, or C is selected and all others are deleted. Project specific information completed. | |  | Definition of Approved Use: insert the type of facility, and both the number of licensed beds/units, and the number of beds/units in use or available for use. | |  | Definition of Borrower-Operator Agreement: use Master Tenant if there is a master lease | |  | Definition of Loan Documents: include terms related to master lease if there is a master lease. Always include the Operator’s Regulatory Agreement. | |  | Definition of Master Lease: use if there is a master lease, insert name of master lease | |  | Definition of Master Tenant: use if there is a master lease, insert name, entity type and organizational jurisdiction of master tenant | |  | Definition of Master Tenant’s Regulatory Agreement: use if there is a master lease | |  | Definition of Mortgaged Property: in subsection (19), delete bed authority and/or certificates of need when the jurisdiction does not permit such a lien | |  | Definition of Operator Lease: select master tenant if there is a master lease | |  | Section 6: list the individuals/entities listed in Section 38 of the Borrower’s Regulatory Agreement and the firm commitment, twice | |  | Section 9(b): include the last sentence when there is a master lease | |  | Section 31: insert notice addresses. | |  | Section 43: insert provisions pertaining to foreclosure and/or sale as appropriate under state law in a state-specific addendum | |  | Section 48: insert provisions as needed to comply with state environmental law in state-specific addendum | |  | Section 48(k): provide any separate indemnification agreements required by state law to the Lender | |  | Section 50: add any state specific requirements for future advances, credit line or open end mortgages, or otherwise, as required. | |  | Section 51: indicate which exhibits are attached | |  | Add signature blocks | |  | Exhibit A: Legal description consistent with title policy and survey | |  | Exhibit B: State specific addendum, if any, attached |   *Comments:* |
| 40 | [**Healthcare Regulatory Agreement – Borrower (HUD-92466-ORCF)**](http://portal.hud.gov/huddoc/92466_orcf.docx)   |  |  |  | | --- | --- | --- | |  | Properly formatted for recording, with original to be returned to HUD | | |  | Project name, number, location | | |  | Lender’s name | | |  | Amount and date of note | | |  | Section of the Act | | |  | Indicate whether borrower is profit motivated or non-profit | | |  | If the borrower is non-profit, indicate whether it is allowed to take distributions | | |  | Intro paragraph: date, name, entity type, organizational jurisdiction and address of borrower | | |  | Definition of Approved Use: insert the type of facility, and both the number of licensed beds/units, and the number of beds/units in use or available for use. | | |  | Definition of Borrower-Operator Agreement: choose either Master Tenant or Borrower, as appropriate | | |  | Definition of Borrower’s Security Instrument: use proper name for Security Instrument | | |  | Definition of Firm Commitment: insert date of HUD firm commitment | | |  | Definition of Master Lease: use if there is a master lease, insert name of master lease | | |  | Definition of Master Tenant: use if there is a master lease, insert name, entity type and organizational jurisdiction of master tenant | | |  | Definition of Master Tenant’s Regulatory Agreement: use if there is a master lease | | |  | Definition of Operator: insert name, entity type and organizational jurisdiction of operator | | |  | Definition of Operator Lease: choose either Master Tenant or Borrower, as appropriate | | |  | Section 13(b): | | |  | | Initial deposit to reserve for replacements: $ | |  | | Monthly deposit to reserve for replacements: $ | |  | | Outside date for first reserve for replacements analysis. Advise ORCF if the parties have proposed a date other than the projected construction completion date + 60 days | |  | | Outside date for first PCNA. Advise ORCF if the parties have proposed a date other than the projected construction completion date + 60 days | |  | | If a minimum balance is required (by the commitment) in the reserve for replacements, include bracketed language | |  | Section 14: add deal specific provisions related to a long-term debt service reserve, if required (See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.5 for guidance) | | |  | Section 26(a): make appropriate selections | | |  | Section 26(b): add bracketed language if there is a master lease | | |  | Section 26(c): add bracketed language if there is a master lease | | |  | Section 26(e): select bracketed language depending on whether there is a master lease | | |  | Section 31: include bracketed language if there is a master lease | | |  | Section 36(a): include bracketed language if there is a master lease | | |  | Section 36(e): make appropriate selections if the project involves a master lease. If there is no master lease, replace this section with “intentionally omitted.” | | |  | Section 38: type names of entities/individuals identified in the HUD firm commitment in line 2, then insert signature blocks at the end of Section 38 or provide signature blocks in counterpart. See HUD Handbook 4232.1, Section II, Chapter 6, Section 6.1.E.3 for guidance and prohibitions | | |  | Section 45: insert notice addresses. Use the following address for HUD:  Secretary of Housing and Urban Development  Office of Residential Care Facilities  451 7th Street SW  Washington, D.C. 20410 | | |  | Add signature blocks | | |  | Ensure the correct form of notary is used for HUD’s signature and that an authorized representative with sufficient delegated authority will sign on behalf of HUD. | | |  | Legal description consistent with title policy and survey. | |   NOTE: When there is a master lease and the term does not extend as long as the mortgage with the longest remaining term, include a rider to each Borrower’s regulatory agreement requiring that in the event the master lease will terminate prior to the maturity date of the FHA-insured mortgage, the Borrower shall enter into a new master lease with another party acceptable to HUD covering all subject properties prior to the expiration of the existing master lease. HUD Handbook 4232.1, Section II, Chapter 13, Section 13.5.  *Comments:* |
| 41 | **Borrower UCC-1 Financing Statements**   |  |  | | --- | --- | |  | Properly formatted for filing and/or recording, with original to be returned to Lender/Lender’s Counsel | |  | Name and address of borrower | |  | Organizational jurisdiction of borrower | |  | Borrower’s organizational ID, if any | |  | Name and address of Lender | |  | HUD listed as additional secured party using the following address:  Secretary of Housing and Urban Development  Office of Residential Care Facilities  451 7th Street SW  Washington, D.C. 20410 | |  | FHA Number noted | |  | Legal description consistent with title policy and survey | |  | Attach collateral description | |  | File with the organizational and property jurisdictions, if different |   *Comments:* |
| 42 | **Memorandum of Master Lease**   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease; OR: | |  | Names of parties to lease | |  | Legal description consistent with title policy and survey | |  | Properly formatted for recording. HUD expresses no preference about where the original goes after recording. |   *Comments:* |
| 43 | [**Healthcare Regulatory Agreement – Master Tenant (HUD-92337-ORCF)**](http://portal.hud.gov/huddoc/92337_orcf.docx)   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease; OR: | |  | Properly formatted for recording, with original to be returned to HUD | |  | Project name, number, location | |  | Lender’s name | |  | Amount and date of note | |  | Section of the Act | |  | Intro paragraph: date, name, entity type, organizational jurisdiction and address of master tenant | |  | Definition of Borrower: borrower’s name | |  | Definition of Borrower’s Regulatory Agreement: date of borrower’s regulatory agreement | |  | Definition of Borrower’s Security Instrument: use proper name for Security Instrument | |  | Definition of Master Lease: insert name of master lease | |  | Definition of Operator: insert operator’s name and name of operator lease | |  | Section 2(a): insert the type of facility, and both the number of licensed beds/units, and the number of beds/units in use and available for use (use the final anticipated number when beds or units are being added) | |  | Section 19: add notice addresses. Use ORCF’s address in HQ for HUD. | |  | Add signature blocks | |  | Ensure the correct form of notary is used for HUD’s signature | |  | Legal description consistent with title policy and survey |   *Comments:* |
| 44 | [**Master Tenant Security Agreement (HUD-92340-ORCF)**](http://portal.hud.gov/huddoc/92340_orcf.doc)   |  |  |  | | --- | --- | --- | |  | Not applicable – not subject to a master lease; OR: | | |  | Properly formatted for recording, with original to be returned to Lender/Lender’s Counsel | | |  | Project name and number | | |  | Intro paragraph: | | |  | | Name, type of entity and organizational jurisdiction of master tenant | |  | | Location (as determined in accordance with the UCC) and notice address of master tenant | |  | | Name, type of entity and organizational jurisdiction of Lender | |  | | Notice address for Lender | |  | Recital A: | | |  | | Name of borrower | |  | | Amount of loan | |  | | Name of healthcare facility | |  | Recital B: | | |  | | Name and date of master lease | |  | | Name of operator | |  | | Name and date of sublease to operator | |  | Recital E: use proper name of Security Instrument | | |  | Recital F: include last sentence if master tenant and borrower share an identity of interest. Otherwise, delete. | | |  | Section 9(e): use bracketed language if there are Permitted Liens | | |  | Section 13: insert the property jurisdiction | | |  | Section 16: remove brackets around Medicaid, if applicable | | |  | Section 24: include this section if the Operator is unrelated to the Borrower and this section is otherwise applicable, otherwise replace with “intentionally deleted” | | |  | Exhibit A: legal description matches title and survey | | |  | Exhibit C: completed entirely | | |  | Ensure that Exhibit C does **not** get recorded, but that it is included in the documents accepted by HUD at closing. | | |  | Attach the Rider to Master Tenant Agreement (which is part of the HUD form) if Section 24 is applicable. | |   *Comments:* |
| 45 | **Master Tenant UCC-1 Financing Statements**   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease; OR: | |  | Properly formatted for filing and/or recording, with original to be returned to Lender/Lender’s Counsel | |  | Name and address of master tenant | |  | Organizational jurisdiction of master tenant | |  | Master tenant’s organizational ID, if any | |  | Name and address of Lender | |  | HUD listed as additional secured party using the following address:  Secretary of Housing and Urban Development  Office of Residential Care Facilities  451 7th Street SW  Washington, D.C. 20410 | |  | FHA Number noted | |  | Legal description consistent with title policy and survey. | |  | Attach Exhibit B from Master Tenant’s Security Agreement (HUD-92340-ORCF) as collateral description. | |  | Record in the county in which the property is located, and file with the organizational and property jurisdictions, if different. |   *Comments:* |
| 46 | **Memorandum of Operator Lease**   |  |  | | --- | --- | |  | Not applicable – no operating lease; OR: | |  | Names of parties to lease | |  | Legal description consistent with title and survey | |  | Properly formatted for recording. HUD expresses no preference about where the original goes after recording. |   *Comments:* |
| 47 | [**Healthcare Regulatory Agreement – Operator (HUD-92466A-ORCF)**](http://portal.hud.gov/huddoc/92466a_orcf.docx)   |  |  | | --- | --- | |  | For owner-operated projects, the owner/borrower must sign this regulatory agreement in its capacity as operator of the project. The owner/borrower must also sign the Healthcare Regulatory Agreement – Borrower (HUD-92466-ORCF). | |  | Properly formatted for recording, with original to be returned to HUD | |  | Project name, number, location | |  | Lender’s name | |  | Amount and date of note | |  | Section of the Act | |  | Intro paragraph: date, name, entity type, organizational jurisdiction and address of operator | |  | Second paragraph: insert bracketed language for projects that are not owner-operated | |  | Definition of Borrower: borrower’s name, entity type and organizational jurisdiction | |  | Definition of Borrower-Operator Agreement: choose either Master Tenant or Borrower, as appropriate | |  | Definition of Borrower’s Regulatory Agreement: date of borrower’s regulatory agreement | |  | Definition of Borrower’s Security Instrument: use proper name for Security Instrument | |  | Definition of Master Lease: use if there is a master lease, insert name of master lease | |  | Definition of Master Tenant: use if there is a master lease, insert name of master tenant, entity type and organizational jursidiction | |  | Definition of Master Tenant’s Regulatory Agreement: use if there is a master lease | |  | Definition of Operator Lease: choose either Master Tenant or Borrower, as appropriate | |  | Section 2: make appropriate selections based on whether there is a master lease | |  | Section 3(a): insert the type of facility, and both the number of licensed beds/units, and the number of beds/units in use and available for use. Include Master Tenant in line 5 if there is a master lease | |  | Section 8(a): make the correct selection based on whether the Borrower and Operator share an identity of interest | |  | Section 8(d): select Borrower or Master Tenant depending on whether there is a master lease | |  | Section 8(e): select Borrower or Master Tenant as appropriate | |  | Section 10: add Master Tenant’s Regulatory Agreement if there is a master lease | |  | Section 12: this section does not apply to owner-operated projects, but it should not be deleted | |  | Section 12(b): make appropriate selections based on whether there is a master lease | |  | Section 21: include bracketed language as appropriate. | |  | Section 22: if HUD pre-approves certain modifications, this pre-approval must be documented in the Intercreditor Agreement. That satisfies the need for HUD consent and this Section 22 need not be modified. | |  | Section 23: add notice addresses. Use ORCF’s address in HQ for HUD. | |  | Section 24: make appropriate selections if the project involves a master lease. If there is no master lease, replace this section with “intentionally omitted.” | |  | Add signature blocks | |  | Ensure the correct form of notary is used for HUD’s signature | |  | Legal description consistent with title policy and survey. |   *Comments:* |
| 48 | [**Operator Security Agreement (HUD-92323-ORCF)**](http://portal.hud.gov/huddoc/92323_orcf.docx)   |  |  |  |  | | --- | --- | --- | --- | |  | For owner-operated projects, the owner/borrower must sign this security agreement in its capacity as operator of the project. The owner/borrower must also sign the Security Instrument (HUD-94000-ORCF). | | | |  | Project name and number | | | |  | Intro paragraph: | | | |  | | | Operator’s name, type of entity, organizational jurisdiction, and location (as determined in accordance with the UCC) | |  | | | Lender’s name, type of entity, organizational jurisdiction, and notice address | |  | Recital A: | | | |  | | | Borrower’s name | |  | | | Loan amount | |  | | | Name of facility | |  | Recital B: | | | |  | | | Make appropriate selection based on whether there is a master lease | |  | | | Identify lease(s) | |  | Recital C: include or delete bracketed language depending on whether there is a master lease | | | |  | Recital D: | | | |  | | | Use proper name of Security Instrument | |  | | | Include or delete 5 instances of bracketed language depending on whether there is a master lease | |  | Recital E: include last sentence if operator and borrower share an identity of interest. Otherwise, delete. | | | |  | Section 1(b): | | | |  | | | In the third line, include “and/or Master Tenant” if there is a master lease | |  | | | Include the second set of bracketed language if the property is not owner-operated | |  | | | Include the third set of bracketed language if there is a master lease | |  | Section 1(c): add “and/or Master Tenant” three times if there is a master lease | | | |  | Section 8(d): include bracketed language if there is a master lease. | | | |  | Section 17: add notice addresses | | | |  | Section 25: include if the Operator is unrelated to the Borrower and the section is otherwise applicable. Otherwise, remove this section. | | | |  | Exhibit A: legal description matches title and survey | | | |  | Exhibit C: completed entirely | | | |  | Exhibit C-1: Cash flow chart: | | | |  | | | Must depict flow of funds from through payment of project/lease costs and debt service payments on the HUD-insured loan. | |  | | | Show all accounts through which project funds flow, or which are related to the project (such as investment accounts) | |  | | | Identify the account into which government receivables are initially deposited. Generally HUD does not permit government receivables from different projects to be initially deposited into a commingled account. | |  | | | Identify the account into which non-government receivables are initially deposited. The use of commingled accounts is subject to HUD’s written approval and must be identified on the cash flow chart, which must show all facilities whose funds are proposed to flow through such account. | |  | | | Show the depository bank, the account number, and name of each party named on each account. Explain how any other parties relate to our operator. | |  | | | The cash flow chart must depict any proposal to use a Borrower Representative, and any Borrower Representative accounts. | |  | | | If the account into which government receivables are paid is not in the name of our operator, explain how this structure is permitted by applicable government healthcare programs. | |  | | | Show which accounts will be subject to DACAs or DAISAs, the parties to each, and the nature of each (i.e., an immediate control DACA vs. future notification). | |  | | | If AR financing is involved, show the flow of AR loan disbursements and repayments. Depict whether or not funds will go through any AR Lender account (e.g. for daily paydowns) and the account into which AR loan draws (and any remittances of excess funds not necessary for paydown) will be deposited. | |  | | | Show how lease costs/FHA loan debt service will be paid, and show any tenant or master tenant rent accounts that are proposed. A “tenant rent account” is an account established solely for the purpose of funding lease costs, through AR loan draws or otherwise. If there is AR financing, ensure the lease cost payment method is acceptable to HUD, with monthly debt service being paid directly to the FHA Lender, or with the FHA Lender able to debit the monthly debt service amount out of a designated account. See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.5 for guidance | |  | | | If there is AR financing for multiple projects, the cash flow chart should depict the above as to all projects within the AR line. | |  | | | If there is AR financing, the cash flow chart must specify the type of AR financing (a stand-by line of credit for occasional cash flow shortfalls, or a line of credit to be used on a continuous basis for most operating expenses). See HUD Handbook 4232.1, Section II, Chapter 16, Section 16.4.D for explanation. | |  | | | If a master lease is involved, the chart must depict the Master Tenant’s position in the cash flow process (including any Master Tenant accounts and any deposit account agreements proposed to govern such accounts). If AR financing is not involved and HUD approves a structure under which funds do not flow through Master Tenant, Master Tenant’s and Borrower’s agreement to such method of payment should be documented. | |  | Attachment 1: Assignment of Leases and Rents: | | | |  | | | Prepare a separate document that is properly formatted for recording, with the original to be returned to Lender/Lender’s Counsel | |  | | | Include the provisions from Attachment 1, along with state-specific provisions (available on [OGC’s 232 New Document Implementation Site](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx)) | |  | | | Complete the project-specific information in the intro paragraph and the first recital | |  | | | Add any other necessary definitions | |  | | | Add signature blocks, notary pages, and legal description | |  | | Rider to Operator Security Agreement: attach to the Operator Security Agreement if applicable | | |  | | |  |   NOTE: The Operator Security Agreement itself is not recorded, but the attached Assignment of Rents and Leases is to be recorded separately.  *Comments:* |
| 49 | **Operator UCC-1 Financing Statements**   |  |  | | --- | --- | |  | Properly formatted for filing and/or recording, with original to be returned to Lender/Lender’s Counsel | |  | Name and address of operator | |  | Organizational jurisdiction of operator | |  | Operator’s organizational ID, if any | |  | Name and address of Lender | |  | HUD listed as additional secured party using the following address:  Secretary of Housing and Urban Development  Office of Residential Care Facilities  451 7th Street SW  Washington, D.C. 20410 | |  | FHA Number noted | |  | Legal description consistent with title policy and survey. | |  | Attach Exhibit B from Operator Security Agreement (HUD-92323-ORCF) as collateral description. | |  | Record in the county in which the property is located, and file with the organizational and property jurisdictions, if different. |   *Comments:* |
| 50 | [**Master Lease Subordination Agreement/SNDA (HUD-92333-ORCF)**](http://portal.hud.gov/huddoc/92333_orcf.docx)**,**  **or joinder to existing Master Lease Subordination Agreement/SNDA**   |  |  | | --- | --- | |  | Not applicable – not subject to a master lease; OR: | |  | Use one Master Lease Subordination Agreement/SNDA for each master lease, not one for each project. | |  | Note that HUD no longer issues comfort letters because comfort is provided in the regulatory agreement | |  | Properly formatted for recording, with the original to be returned to Lender/Lender’s Counsel | |  | Intro paragraph: date and identify the master tenant and lender | |  | First Recital: use the proper name of the Security Instrument | |  | Second Recital: identify the master lease | |  | Replace Sections 4 and 7 with “intentionally omitted” when the operator and borrower share an identity of interest. | |  | Section 9: insert notice addresses. | |  | Section 10(b): insert state governing the master lease. | |  | Add appropriate signature blocks. | |  | Complete schedules 1 and 2, and include FHA Numbers for each project listed on schedule 1. | |  | **Joinder** | |  | Parties and projects correctly identified | |  | Consent to joinder signed by all parties | |  | Includes FHA project names and numbers of existing and incoming projects |   NOTE: Sample joinders are available on [OGC’s 232 New Document Implementation Site](http://hudsharepoint.hud.gov/sites/OGC/OGC/healthcaredocsfaqs2/default.aspx).  NOTE: A copy of the underlying Master Lease Subordination Agreement/SNDA must also be collected for the file.  *Comments:* |
| 51 | [**Subordination, Non-Disturbance and Attornment Agreement of Operating Lease (SNDA) (HUD-91110-ORCF)**](http://portal.hud.gov/huddoc/91110_orcf.docx)   |  |  |  | | --- | --- | --- | |  | Not applicable – no operating lease; OR: | | |  | This form is not for use in situations involving a master lease. | | |  | Properly formatted for recording, with the original to be returned to Lender/Lender’s Counsel | | |  | Select the proper title for the document depending on whether the owner and operator share an identity of interest and HUD has approved non-disturbance provisions. Operators who share an identity of interest with the borrower are not allowed non-disturbance provisions. | | |  | Intro paragraph: | | |  | | Insert name, entity type and organizational jurisdiction of borrower (“Lessor”) | |  | | Insert name, entity type and organizational jurisdiction of operator (“Lessee”) | |  | | Insert name, entity type and organizational jurisdiction of Lender | |  | First recital: | | |  | | Use proper title for Security Instrument | |  | | Insert location of project | |  | Second recital: insert date of Operator Lease | | |  | Third recital: insert date of Operator’s Security Agreement | | |  | If the owner and operator share an identity of interest, replace Section 3(b) with “intentionally omitted.” | | |  | Section 8: insert notice address for Lender | | |  | Add signature blocks | | |  | Legal description consistent with title and survey | |   *Comments:* |
| 52 | [**Subordination Agreement – Financing (HUD-92420-ORCF)**](http://portal.hud.gov/huddoc/92420_orcf.docx)   |  |  | | --- | --- | |  | Not applicable – no secured secondary financing; OR: | |  | To be used when there is secured subordinate financing. | |  | Properly formatted for recording, with the original to be returned to Lender/Lender’s Counsel | |  | Project name and number | |  | Name, entity type and organizational jurisdiction of HUD-insured Lender, subordinate Lender and Borrower | |  | First recital: select use, insert name and location of project | |  | Second recital: insert subordinate loan amount | |  | Section 3(b): insert terms of subordinate loan, HUD project number, and delete permissible distributions if Borrower is profit-motivated | |  | Section 12: insert notice addresses | |  | Exhibit A: attach legal description | |  | The FHA-Insured Lender must consent to the placing of any subordinate liens |   NOTE: See HUD Handbook 4232.1, Section II, Chapter 3, Section 3.15 for additional guidance.  *Comments:* |
| 53 | **Commercial Space Leases**   |  |  | | --- | --- | |  | Not applicable – no commercial space leases; OR: | |  | Estoppel certificate with copy of lease | |  | Confirm lease terms are consistent with commercial space lease policy (See HUD Handbook 4232.1, Section II, Chapter 2, Section 2.6.E) | |  | Subordination Agreement or Subordination, Non-Disturbance and Attornment Agreement properly formatted for recording, with original to be returned to Lender/Lender’s Counsel. (Note: Non-disturbance language should not be provided to identity of interest lessee.) |   *Comments:* |
| 54 | **Title Report:**   |  |  | | --- | --- | |  | Reflects current state of title. (No other review necessary.) |     **Pro forma Title Policy:**   |  |  | | --- | --- | |  | Jacket: ALTA 2006 or acceptable state approved alternative. | |  | **Schedule A** | |  | Amount of insurance equal to loan amount. | |  | Name of Insured: [Name of Lender] and U.S. Department of Housing and Urban Development, their successors and assigns, as their interests may appear. | |  | Title vested in: Borrower | |  | Estate or interest: Fee Simple or Leasehold, and beneficial easements if applicable | |  | Insured instruments should include Security Instrument and Healthcare Regulatory Agreement - Borrower, as incorporated in the Security Instrument | |  | Legal description as specified in Survey and Security Instrument (must include appurtenant easements, where appropriate) | |  | **Schedule B-I** | |  | Exceptions do not compromise insured security instrument’s first lien position | |  | All listed documents clearly marked to correspond to title policy and provided to HUD Legal | |  | References to taxes/assessments specify that taxes are not yet due and payable | |  | No monetary encumbrances (other than taxes and assessments not yet due and payable) | |  | No restrictions with reversionary clause or right of reentry | |  | Title conditions, covenants and restrictions that violate Federal Statutes or Regulations, or the Regulatory Agreement must be deleted | |  | All encroachments noted and resolved to the satisfaction of ORCF | |  | All indemnification or hold harmless provisions binding on Borrower identified and discussed with ORCF | |  | Use restrictions cleared by underwriter as having no effect on project value or operation | |  | Review for beneficial easements (e.g., utility and access; if necessary for project operation, request ALTA 19.1-06 Contiguity Endorsement, see Other Endorsements below) | |  | **Schedule B-II** | |  | All listed documents provided for review | |  | Review for beneficial easements (e.g., utility and access easements) necessary for project operation, move to B-I and request ALTA 19.1-06 Contiguity Endorsement (see Other Endorsements below) | |  | UCC fixture filings for Borrower, Operator, and Master Tenant (as appropriate) recorded in appropriate recording office. | |  | Operating Lease or Memorandum of Operating Lease and Subordination Agreement (if applicable). | |  | Master Lease or Memorandum of Master Lease and Subordination Agreement (if applicable). | |  | Healthcare Regulatory Agreement – Operator | |  | Healthcare Regulatory Agreement – Master Tenant (if applicable) | |  | Assignment of Leases and Rents - Operator | |  | Master Tenant Security Agreement | |  | All other subordinate interests noted. | |  | **Required Endorsements** | |  | [ALTA 9-06](http://www.stewart.com/microsites/61/docs/alta/ALTA%209-06.pdf) (Comprehensive) | |  | [ALTA 9.6-06](file:///C:\Users\h17533\Downloads\-RP252000-relatedresources-ALTA9.6-06.pdf) (Private Rights) | |  | [ALTA 8.1-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4357.pdf) or state equivalent (Environmental) | |  | [ALTA 22-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4334.pdf) or equivalent (Location of improvements) | |  | [ALTA 17-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4327.pdf) or equivalent (Access & Entry) | |  | Paragraph 13 of conditions (Arbitration clause) deleted | |  | [ALTA 25-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4458.pdf) or equivalent (Survey) | |  | [ALTA 3.1-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4314.pdf) or equivalent (Zoning) (may not be required depending upon the zoning laws of the local jurisdiction) | |  | **Either** [ALTA 18-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4330.pdf) or equivalent (Single Tax Parcel) – *Should use when the project site consists of a single parcel without an easement listed as part of the insured property in Schedule A;* ***OR*** | |  | [ALTA 18.1-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4329.pdf) (Multiple Tax Parcel) – *Should use when the project site consists of multiple parcels and/or an easement that is part of the insured property and is referenced in Schedule A.* | |  | **Other Endorsements (as appropriate)** | |  | Endorsement(s) for encroachments listed in Schedule B-I, as appropriate. | |  | [ALTA 28-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4462.pdf) (Easement – Damage or Enforced Removal) *May be used for encroachments of the building onto an easement on the land or for floating, non-plottable, or blanket easements.* | |  | [ALTA 28.1-06](http://www.stewart.com/microsites/61/docs/alta/ALTA%2028.1-06.pdf) (Encroachments – Boundaries and Easements) *May be used for encroachments of “improvements” onto adjoining land or onto an easement; may also be used for floating, non-plottable, or blanket easements.* | |  | [ALTA 19.1-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4332.pdf) (Contiguity – Single Parcel) *Insures against loss if Land in Schedule A is not contiguous to an easement or parcel that is not insured by the Title Policy. Note – Beneficial easements should be included as part of the Land described in Schedule A.* | |  | [ALTA 19-06](http://www.oldrepublictitle.com/orstarslink/resources/forms/ORT4331.pdf) (Contiguity – Multiple Parcels), *use when real estate in Schedule A consists of multiple, adjoining parcels or easements. The Endorsement should make reference to all adjoining parcels (i.e. Tract A contiguous to Tract B, Tract B contiguous to Tract C, Tract B and C contiguous with Easement 1, etc.)* | |  | [ALTA 13.1-06](http://www.alta.org/forms/download.cfm?formID=406&type=word) and CLTA 107.5 or equivalent (Ground Leases) *for use with leaseholds.* | |  | [ALTA 39-06](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CDYQFjAA&url=http%3A%2F%2Falta.org%2Fforms%2Fdownload.cfm%3FformID%3D451%26type%3Dword&ei=9HJwUZ_7KNG14APn_4HwBA&usg=AFQjCNH-ZmZEhIvdmBgynwU9SVWIaZTjKw&sig2=I8OuyvuewM4VIxCeMG3aug&bvm=bv.45373924,d.dmg) (Electronic signature endorsement) *may be used when original ink signatures will not be provided by the Title Company.* |   NOTE: Documents are described in this Punchlist in a suggested recording order.  NOTE: HUD Handbook 4232.1, Section II, Chapter 7, Section 7.5.K.5 requires that the title pro forma reflect evidence of a special zoning rider in the insurance coverage if the property has a legal non-conforming use/structure and the current zoning regulations would not allow the property to be rebuilt to the current density.  *Comments:* |
| 55 | [**Healthcare Facility Note (HUD-94001-ORCF)**](http://portal.hud.gov/huddoc/94001_orcf.docx)   |  |  |  | | --- | --- | --- | |  | Project name and number | | |  | Loan amount | | |  | Date of note | | |  | First paragraph: | | |  | | Name, entity type, and organizational jurisdiction of Lender | |  | | Loan amount in words and numbers | |  | Second paragraph: select either paragraph A or paragraph B, as appropriate, and insert interest rate(s) in words and numbers | | |  | Section 2: insert address for payment | | |  | Section 3: select the appropriate paragraph (deleting inappropriate paragraphs), and insert project specific information from firm commitment | | |  | Section 4: use the proper title of the Security Instrument | | |  | Section 7: include a late charge permitted by Program Obligations | | |  | Section 8(a): list the individuals/entities listed in Section 38 of the Borrower’s Regulatory Agreement and the HUD firm commitment, twice | | |  | Section 9: make the appropriate selections and strike the inapplicable paragraphs | | |  | Section 9(c): insert a number of days | | |  | Section 9(g): insert a time | | |  | Section 21: include if permitted under the laws of the property jurisdiction, and include any other appropriate provisions for the jurisdiction | | |  | Below Section 21, indicate whether there is a rider with modifications and reference the rider # | | |  | Add signature block | | |  | Endorsement panel: | | |  | | Insert state in which the property is located | |  | | Select Deed of Trust or Mortgage | |  | | Insert Borrower’s and Lender’s names and FHA project number | |  | | Use the proper Section of the Act | |  | | Insert the date of the firm commitment | |  | | Remove the brackets and instructional language surrounding the words “to the extent of advances approved by HUD.” | |  | | Check that the note has been endorsed by HUD on the first line by a person with delegated authority and that the date is correct |   NOTE: If tax-exempt bond financing is involved, ensure compliance with the HUD requirements found in HUD Handbook 4232.1, Section II, Chapter 3, Section 3.14.F.1.  *Comments:* |

**NOTE: Additional documents, listed on the checklist, must be collected at closing. These additional documents are not subject to legal review. They include, among others, the Application for Insurance of Advance of Mortgage Proceeds (HUD-92403-ORCF), Design Professional’s Certification of Liability Insurance (HUD-91123-ORCF), Mortgagor’s and Architect’s Certificate of Payment (HUD-92403.1), MIP check, inspection check, exam fee check, Design Architect’s Certification (HUD-91124-ORCF), and Estimated Progress Schedule.**