AFTER RECORDING MAIL TO:

Name________________

Address________________

City / State ________________

First American Title Insurance Company

FIRST AMERICAN TITLE CO.

89756-3

(this space for title company use only)

Document Title(s): (or transactions contained therein)

1. Regulatory Agreement Nursing Homes
2.
3.
4.

Reference Number(s) of Documents assigned or released:

☐ Additional numbers on page ______ of document

Grantor(s): (Last name first, then first name and initials)

1. WAATU, Inc.
2.
3.
4.
5. ☐ Additional names on page ______ of document

Grantee(s): (Last name first, then first name and initials)

1. Federal Housing Commissioner
2.
3.
4.
5. ☐ Additional names on page ______ of document

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)

Portion SESE of S-24, T35N, R1E

☐ Complete legal description is on page ______ of document

Assessor's Property Tax Parcel / Account Number(s):

P31871, P111715 and P111716

NOTE: *The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.*

Regulatory Agreement Nursing Homes

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Project Number **127-22045**		Mortgagee **CWCapital LLC**	
Amount of Mortgage Note **$7,881,300.00**		Date **as of April 24, 2007**	
Mortgage Recorded (State) **Washington**	County **Skagit**		Date 26 **April ~~24~~, 2007**
~~Book~~ 200704260027		~~Page~~	

This Agreement entered into ~~this~~ **as of the 24th** day of **April, 2007**~~, 19~~ ,between **WAATU, INC. a Washington corporation** whose address is **911 21st Street, Anacortes, Washington 98221** (jointly and severally, hereinafter referred to as Lessee) and the undersigned Federal Housing Commissioner, (hereinafter called Commissioner).

In consideration of the consent of the Commissioner to the leasing of the aforesaid project by **HYATTCENTERS-ANACORTES, LLC, a Washington limited liability company**, Mortgagor, and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Commissioner pursuant thereto, Lessees agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

(1) The lease shall be subject and subordinate to the mortgage securing the note or other obligation endorsed for insurance by the commissioner;

(2) Lessee shall make payments under lease when due;

(3) Payments by the lessee to the lessor shall be sufficient to pay all mortgage payments including payments to reserves for taxes, insurance, etc., payments ***required under the Regulatory Agreement between the Mortgagor and the Commissioner***, and to take care of necessary maintenance. If at the end of any calendar year, or any fiscal year if the project operates on the basis of a fiscal year, payments under the lease have not been sufficient to take care of the above items, the lessor and lessee upon request in writing from the Commissioner shall renegotiate the amounts due under the lease so that such amounts shall be sufficient to take care of such items; the Commissioner shall be furnished by the lessee, within thirty days after being called upon to do so, with a financial report in form satisfactory to the Commissioner covering the operations of the mortgaged property and of the project;

(4) The lessee shall not sublease the project or any part thereof without the consent of the Commissioner;

(5) The lessee shall at all times maintain in full force and effect a license from the State or other licensing authority to operate the project as a **44 bed (22 unit)** nursing home **and 84 bed (84 unit) boarding home facility**, but the owner shall not be required to maintain such a license;

(a) Lessee shall maintain the requisite level of professional liability insurance determined by the Commissioner. Annually, the Lessee shall *submit to* HUD a certification of compliance with HUD's professional liability insurance requirements.

(6) Lessee shall maintain in good repair and condition any parts of the project for the maintenance of which lessee is responsible under the terms of the lease;

(7) Lessee shall not remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(8) Lessee shall not use the project for any purpose except the operation of a nursing home **and boarding home facility**;

(9) If a default is declared by the Commissioner under the provisions of Paragraph ~~10~~ **11** of the Regulatory Agreement entered into by the lessor-mortgagor and the Commissioner ~~on the ____ day of ____, 19~~ **as of even date herewith**, a copy of notice of default having been given to the lessee, the lessee will thereafter make all future payments under the lease to the Commissioner;

(10) The lease may be cancelled upon thirty days written notice by the Commissioner given to the lessor and the lessee for a violation of any of the above provisions unless the violation is corrected to the satisfaction of the Commissioner within said thirty day period.

(11) The Commissioner must approve any change in or transfer of ownership of the lessee entity, and any change in or transfer of the management operation, or control of the project.

(12) The lessee shall not reduce or expand, allow to be reduced or expanded, or cause the expansion or reduction of the bed capacity of the project without the consent of the Commissioner. **In the event that any such reduction or expansion is proposed, upon learning of that event the Lessee will advise the Commissioner promptly.** Any change in the bed capacity **without the consent of the Commissioner** shall violate this Regulatory Agreement.

(13) The lessee shall not enter into any management contract involving the project, unless such shall contain a provision that, in the event of default under the Regulatory Agreement as recited in paragraph 9 (above) of this Agreement, the management agreement shall be subject to termination without penalty upon written request of the Commissioner. Upon such request the lessee shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

(14) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Lessee shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his/her duly authorized agents. **Without limiting the foregoing, Lessee shall also comply with the record keeping and financial reporting provisions in paragraphs 9(d) and 9(f) of the Regulatory Agreement form HUD-92466 between the Mortgagor and HUD with respect to the Project.**

(15) There shall be full compliance with the provisions of (1) any State or local laws prohibiting discrimination in housing on the basis of race, color, creed or national origin; and (2) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Commissioners to take any corrective action he may deem necessary including, but not limited to, the refusal to consent to a further renewal of the lease between the mortgagor-lessor and the lessee, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the lessee is identified; and further, if the lessee is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, the Commissioner shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee; and (2) with respect to any other type of business association, or organization with which the officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee may be identified.

(16) **A copy of the Commissioner-approved lease shall be attached to the unrecorded copies of this Regulatory Agreement, and a memorandum thereof shall be recorded in the appropriate recording office. The Lessee will not amend or assign the lease without the advance written approval of the Commissioner.**

(17) **Without limiting the generality of any other provision of this Regulatory Agreement, Lessee disclaims any right or entitlement in, and shall not attempt to relocate, any nursing home or boarding home facility beds from the project to any other location during the term of the lease and/or the HUD-insured note and mortgage.**

(18) **A notice or memorandum of the lease has been or may be recorded in the real estate records of Skagit County, Washington. Lessee agrees that said lease is subject and subordinate to the HUD-insured mortgage secured by the mortgaged property.**

(19) **A legal description of the mortgaged property is attached hereto as Exhibit A.**

(20) For so long as any mortgage on the mortgaged property is insured or held by the Federal Housing Administration, any and all future assignees of Lessee as lessees of the mortgaged property must execute a Regulatory Agreement with the Commissioner identical in form and substance to this Agreement.

(21) **For so long as any mortgage on the mortgaged property is insured or held by the Federal**

Housing Administration, the Lessee and any and all future lessees of the mortgaged property shall comply with the provisions in paragraphs 9(d), (e) and (f) of the form HUD 92466 Regulatory Agreement between the Mortgagor and HUD with respect to the project in the following manner: within ninety (90) days following the end of each fiscal year of the Lessee, the Lessee shall furnish to HUD (i) a complete copy of the Cost Report submitted to the State of Washington with respect to the project, modified to include the warning provided for in 18 U.S.C. Section 1010, and (ii) an annual financial report, prepared in compliance with applicable Federal and state guidelines, including but not limited to applicable Medicare and/or Medicaid requirements, and containing a detailed profit and loss statement, balance sheet, cash flow statement, schedule of fixed assets, statement of changes in stockholders' equity, notes to financial statements and the warning provided for in 18 U.S.C. Section 1010.

(22) **In the event that the Lessee's lease is terminated or transferred for any reason, Lessee shall take all necessary actions, and cooperate fully to the extent reasonably necessary, to maintain the project as a fully licensed nursing home and boarding home facility following such termination or transfer.**

(23) In the event the mortgaged property is transferred by the Mortgagor as result of a default under the HUD-insured mortgage, Lessee shall take all steps and cooperate in any manner with the successor owner of the mortgaged property as may be necessary to maintain the project as a fully-licensed nursing home and boarding home facility following such transfer.

(24) **If any provision hereof is found to be invalid, this Agreement shall be invalid only with respect to the offending provision.**

Instructions to Closing Attorney

Regulatory Agreement – form HUD-92466-NHL
Nursing Homes – Section 232

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

Note that there is space left on the back of the printed form for proper execution of the instrument.

The execution by the Commissioner and by the Lessee must be in accordance with the requirements of the jurisdiction where the project is located and must permit the instrument to be recorded.

The Agreement is to be executed in the name of the Commissioner. It will be signed for the Commissioner by the Field Office Manager or authorized agent who endorses the Note for insurance.

Recording must be at the expense of the mortgagor-owner or lessee.

Sufficient space is left on the back for the insertion of any necessary additional provisions. Any changes in the Agreement and any substantial additions shall receive the prior approval of the Assistant Secretary for Housing.

A copy of the Commissioner-approved lease shall be attached to this Regulatory Agreement. If the lease has already been filed or recorded, re-recording will be unnecessary, and a copy of the recorded lease (with recording data) will be attached following recording of the form HUD-82466-NHL.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

WAATU, INC.,
a Washington corporation

By: James K Roe
James. K. Roe, President

STATE OF WASHINGTON)
) ss:
COUNTY OF SKAGIT)

On this 25th day of April, 2007, before me, James K Roe, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared James K. Roe, known to me to be the President of WAATU, Inc. and the person who executed and acknowledged execution and delivery of the aforesaid instrument for and on behalf of such corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Warren A Lee
Notary Public in and for said County and State

My commission expires 12-20-2009.

WARREN A. LEE
COMMISSION EXPIRES
NOTARY
PUBLIC
12-20-2009
STATE OF WASHINGTON

SECRETARY OF HOUSING AND URBAN DEVELOPMENT Acting by and through the FEDERAL HOUSING COMMISSIONER

By: Kathy Budny

Name: Kathy Budny

Title: Acting Director, Portland MF Program Center

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

On this 24th day of April, 2007, before me, Toni Morse, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Kathy Budny, known to me to be the duly appointed Authorized Agent and the person who executed and acknowledged execution and delivery of the aforesaid instrument for and on behalf of the Secretary of Housing and Urban Development, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

OFFICIAL SEAL
TONI MORSE
NOTARY PUBLIC - OREGON
COMMISSION NO. 382301
MY COMMISSION EXPIRES JUNE 29, 2008

Toni Morse

Notary Public in and for said County and State

My commission expires June 29, 2008.

THIS INSTRUMENT WAS PREPARED BY:

Charles C. Bissinger, Jr.
Vorys, Sater, Seymour and Pease LLP
Suite 2000, Atrium Two
221 E. Fourth Street
Cincinnati, Ohio 45202

200704260009
Skagit County Auditor
4/26/2007 Page 6 of 7 8:52AM

Exhibit A

LEGAL DESCRIPTION:

Lots 1, 2 and 3, City of Anacortes Short Plat No. 91-005, approved October 24, 1991, Recorded November 4, 1991, in Book 10 of Short Plats, pages 24 and 25, under Auditor's File No. 9111040088, and being a portion of the Southeast ¼ of the Southeast ¼ of Section 24, Township 35 North, Range 1 East, W.M., all in Skagit County, Washington.