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2011072255

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- 1. **Title of Document:** REGULATORY AGREEMENT
- 2. **Date of Document:** AUGUST 1, 2011
- 3. **Grantor(s):** ST. JOSEPH TOWER, L.L.C.
- 4. **Grantee(s):** SECRETARY OF HOUSING AND URBAN DEVELOPMENT
Acting by and Through the Federal Housing Commissioner
- 5. **Statutory Mailing Addresses:** **Mailing Address of Grantor:**

St. Joseph Tower, L.L.C.
2205 South 10th Street
Omaha, NE 68108

Mailing Address of Grantee:

Secretary of Housing and Urban Development
U.S. Department of Housing & Urban Development
Office of Healthcare Programs
451 7th Street SW, Room 6264
Washington, DC 20410
- 6. **Legal Description:** See Exhibit A of the document for legal description
- 7. **Reference(s) to Book and Page(s):** N/A

Note: The terms "grantor" and "grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

THIS INSTRUMENT PREPARED BY: Lashly & Baer, P.C.
714 Locust Street, St. Louis, MO 63101
(314) 621-2939

-41- 10-112320

Regulatory Agreement for Multifamily Housing Projects

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

Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

Project Number 103-43053		Mortgagee Gershman Investment Corp.	
Amount of Mortgage Note \$7,425,000.00		Date August 1, 2011	
Mortgage Recorded Book	State Nebraska	County Douglas	Date concurrently herewith
		Page	Originally endorsed for insurance under Section 232/223(a)(7) Lean Program

This Agreement entered into ~~this~~ as of this 1st day of August, 2011 between St. Joseph Tower, L.L.C., a Nebraska limited liability company whose address is 2205 South 10th Street, Omaha, Nebraska 68108

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners 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 Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to \$ 3,300.00 per month unless a different date or amount is approved in writing by the Secretary.*

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.
3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.
(This paragraph 4 is not applicable to cases insured under Section 232.)
4. ~~(a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.~~
 - (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.
 - (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and ~~within a reasonable time shall.~~

Replaces FHA-2466 which may be used until supply exhausted

form HUD-92466 (11/2002)
ref Handbook 4571.1

*An additional deposit in the amount of not less than \$283,009.00 shall be made at the time of endorsement.

St. Joseph Tower Apts - Project No. 103-43053

- ~~(i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or~~
- ~~(ii) Deny the increase stating the reasons therefor.~~
5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.
- (b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:
- (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;
- (2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and
- (3) Through such further provisions agreed to in writing by the parties.
- (c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.
- (d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.
6. Owners shall not without the prior written approval of the Secretary:
- (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.
- (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.
- (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.
- (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.
- (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:
- (1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;
- (2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
- (3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and
- (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
- (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.
- (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.
- (h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.
9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
- (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (c) 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 Secretary or his duly authorized agents. Owners 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 Secretary or his duly authorized agents.

- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.
- (g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
- (h) If the mortgage is insured under Section 232:
- (1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.
 - (2) The Owners shall suitably equip the project for nursing home operations.
 - (3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.
 - (i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.
 - (4) See additional provisions in Lean Rider attached hereto.
10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).
11. Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:
- (a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
 - (ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.
 - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;
- (d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;
- (f) "Surplus Cash" means any cash remaining after:
 - (1) the payment of:
 - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
 - (ii) All amounts required to be deposited in the reserve fund for replacements;
 - (iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
 - (2) the segregation of:
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
 - (ii) All tenant security deposits held.
- (g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

- (h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;
- (i) "Section" refers to a Section of the National Housing Act, as amended.
- (j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.
- (k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.
15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.
17. The following Owners: **St. Joseph Tower, L.L.C., its manager and members**
Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:
- (a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and
 - (b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

(To be executed with formalities for recording a deed to real estate.)

18. See additional provisions in Lean Rider attached hereto.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE LEAN RIDER ATTACHED

MORTGAGOR SIGNATURE PAGE
FOR
REGULATORY AGREEMENT

IN WITNESS WHEREOF, the undersigned has executed this Regulatory Agreement as of the date first written above.

[NOTE: Use Black Ink]

MORTGAGOR:

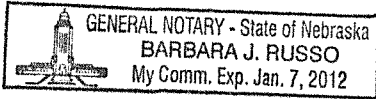
ST. JOSEPH TOWER, L.L.C.,
A Nebraska limited liability company

By: James B. O'Brien
James B. O'Brien, Manager

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this 18th day of August, 2011, before me the undersigned, a Notary Public in and for the County and State, appeared James B. O'Brien, to me personally known, who, being by me duly sworn did say that he is the Manager of ST. JOSEPH TOWER, L.L.C., a Nebraska limited liability company; and that said instrument was signed on behalf of said limited liability company by authority of its Manager; and said Manager acknowledged the said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Barbara J. Russo
(Notary Public)


My term expires January 7, 2012

HUD SECRETARY SIGNATURE PAGE
FOR
REGULATORY AGREEMENT

IN WITNESS WHEREOF, the undersigned has executed this Regulatory Agreement as of the date first written above.

[NOTE: Use Black Ink]

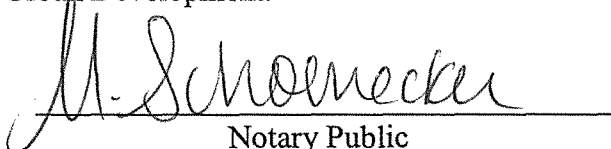
HUD:
Secretary of Housing and Urban Development,
acting by and through the **Federal Housing**
Commissioner

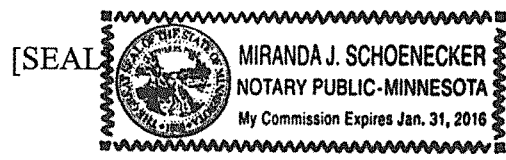
By: 
Timothy P. Gruenes
Authorized Agent
Office of Residential Care Facilities

ACKNOWLEDGEMENT

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on 22nd day August, 2011, by Timothy P. Gruenes as duly authorized agent of the Secretary of the U.S. Department of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and a Supervisory Account Executive in the Office of Residential Care Facilities, U.S. Department of Housing and Urban Development, and that he, being authorized to do so by virtue of such office, executed the foregoing instrument on behalf of the Federal Housing Commissioner, acting for the Secretary of the U.S. Department of Housing and Urban Development.


Notary Public



(Print Name) Miranda Schoenecker
Healthcare Program Specialist HUD/OHP
Title (and rank)

My commission expires: 31 JAN 2016

Schedule A
Federal Housing Administration
St. Joseph Tower Apartments
Omaha, Nebraska
FHA Project No. 103-43053

LEGAL DESCRIPTION

The land referred to herein is situated in the City of Omaha, Douglas County, Nebraska, and is described as follows:

Unit 2, St. Joseph High Rise Condominium Property Regime, a condominium regime organized under the laws of the State of Nebraska, in the City of Omaha, Douglas County, Nebraska, pursuant to Master Deed and Declaration of Covenants, Conditions and Restrictions and Reservation of Easements dated August 14, 1988, and recorded October 19, 1998, in Book 2104 at Page 216 of the Deed Records of Douglas County, Nebraska, and as Amended by First Amendment to the Master Deed and Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, dated June 1, 1999, and recorded August 13, 1999, at Book 1300, page 150 of the Miscellaneous Records of Douglas County, Nebraska.

COMMONLY KNOWN AS: 2205 S. 10th St., Omaha, Nebraska 68108

PARCEL ID#: 2245150684

LEAN Rider
to Regulatory Agreement for
Multifamily Housing Projects

This Rider is attached to and made a part of that certain Regulatory Agreement for Multifamily Housing Projects dated August 1, 2011 (the "Agreement"), by and between ST. JOSEPH TOWER, L.L.C. ("Owners") and the Secretary of Housing and Urban Development (the "Secretary") with respect to St. Joseph Tower Apartments, FHA Project No. 103-43053. In the event of any conflict between any provision of this Rider and any other provision of the Agreement, the provision of this Rider shall be controlling. The Agreement is hereby amended and supplemented as follows:

A. Reserve Fund for Replacements. The following is hereby added to the end of the first subparagraph of paragraph 2(a) of the Agreement:

The amount of the monthly deposits to the reserve fund for replacements shall be subject to change in accordance with the requirements of the Secretary, but such change can be accomplished by a letter from HUD to the Owner and will not necessitate an amendment to the Agreement. In connection therewith, every ten (10) years, the mortgagee shall obtain a physical and capital needs assessment report for the Secretary to evaluate. The cost of such report may be paid from the reserve fund for replacements.

In addition to the required monthly deposits to the said reserve fund, Owners shall make an initial deposit in an amount not less than \$283,009.00.

In addition to the required monthly deposits to the said reserve fund, the balance in the replacement reserve fund existing with respect to the project under FHA Project No. 103-43043-PM shall be transferred to the replacement reserve fund to be established pursuant to this Agreement under FHA Project No. 103-43053.

B. Certain Matters Requiring Approval of the Secretary.

(1) Paragraph 6(c) of the Agreement is hereby amended to read as follows:

(c) Convey, assign, or transfer any right to manage or receive the rents and profits from the mortgaged property.

(2) The following is hereby added to the end of paragraph 6 of the Agreement:

(i) Permit any conveyance, assignment, or transfer of any direct or indirect legal or beneficial interest in the Owners that requires approval of the Secretary under (i) the Secretary's transfer of physical assets requirements and procedures or (ii) the Secretary's previous participation approval requirements and procedures.

- (j) Enter into, or agree to the assignment of, any operating or commercial lease for all or part of the mortgaged property. As a condition of the Secretary's approval of any operating lease or any assignment thereof, the lessee or assignee, as applicable, shall execute a regulatory agreement in form and substance satisfactory to the Secretary.
- (k) Enter into any amendment of any operating or commercial lease of all or any part of the mortgaged property that (i) reduces the rent or other payments due thereunder, (ii) increases the obligations of the Owners or the rights of the lessee, (iii) decreases the rights of the Owners or the obligations of the lessee, or (iv) alters any provision of such lease required by the Secretary to be included therein.
- (l) Use the mortgaged property for any purpose other than the Approved Use.

C. Management Contracts. Paragraph 9(a) of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

- (a) Any management contract involving the project entered into by any of the Owners or any lessee shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate such management contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project. In addition to the foregoing, in the event that a management agent is (or will be) the holder of the project's license or is (or will be) the payee under one or more third-party payor agreements with respect to the project, the provisions of paragraphs 6(j) and 6(k) of this Agreement shall be applicable to such management agreement as and to the same extent as if such management agreement were an operating lease.

D. Confidentiality of Resident/Patient Medical Records and Information. The following is hereby added to the end of paragraph 9(c) of the Agreement:

The obligations of Owners under this paragraph shall be limited to the extent necessary in order for Owners to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

E. Financial Statements. Paragraph 9(e) of the Agreement is hereby amended to replace "sixty (60) days" with "ninety (90) days."

F. Permits and Approvals. Paragraph 9(h) of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

- (h)(1) The Owners shall at all times maintain in full force and effect, or cause the lessee or management agent (as applicable) to maintain in full force and effect, all certificates of need, bed authority, provider agreements, licenses, permits and approvals required to operate the project for the Approved Use (collectively, the "Permits and Approvals"). Without the prior written consent of the Secretary, none of the Permits or Approvals shall be conveyed, assigned, encumbered, transferred or alienated from the project. The Owners shall ensure that the project is at all times operated in accordance with the requirements of the Permits and Approvals.
- (2) The security agreement and UCC financing statements referred to in paragraph 9(i) below shall constitute, to the extent permitted by law, a first lien upon all of the Owners' rights, titles and interest, if any, in the Permits and Approvals. However, in the event of either a monetary or other default under this agreement, the note, or the mortgage, the Owners shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the project for the Approved Use. For the intents and purposes herein, Owners hereby irrevocably nominate and appoint the Secretary, his/her successors and assigns, as their attorney-in-fact coupled with an interest to do all things necessary to continue to operate the project for the Approved Use including but not limited to the power and authority to provide any and all information and data, pay such fees as may be required, and execute and sign in the name of the Owners, their successors or assigns, any and all documents, to the extent that such information, data, fees and documents may be required by any governmental entity exercising jurisdiction over the project.
- (3) The Owners shall not alter, or suffer or permit the alteration of, any Permit or Approval, without the prior written approval of the Secretary. In the event that any such alteration is proposed, upon learning of such proposed alteration, the Owners will advise the Secretary and mortgagee promptly. The Owners will insert the foregoing requirements into any operating lease for the project.
- (4) The Owners shall deliver to the Secretary and the mortgagee, within ten (10) days after receipt thereof, copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by the Owners from any governmental authority that includes any statement, finding or assertion that (i) the Owners, any lessee, any management agent or the project is or may be in violation of (or default under) any of the Permits or Approvals or any governmental requirements applicable thereto, (ii) any of the Permits or Approvals are to be terminated or not

renewed or (iii) the Owners are, or any lessee, any management agent or the project is. subject to any governmental investigation or inquiry involving fraud. The Owners shall deliver to the Secretary and the mortgagee, simultaneously with delivery thereof to any governmental authority, any and all responses given by or on behalf of the Owners to such governmental authority and shall provide to the Secretary and the mortgagee, promptly upon request, such information regarding any of the foregoing as the Secretary or the mortgagee may request. The receipt by the Secretary or the mortgagee of notices, reports, surveys, correspondence and other information shall not in any way impose any obligation or liability on the Secretary, the mortgagee or their respective agents, representatives or designees to take (or refrain from taking) any action, and the Secretary, the mortgagee and their respective agents, representatives and designees shall have no liability for any action or failure to act thereon or as a result thereof.

G. Personal Property; Security Interests. The following is hereby added to the Agreement as paragraph 9(i):

- (i) The Owners shall suitably equip, or cause to be equipped, the project for its use and operation for the Approved Use. Except as otherwise approved in writing by the Secretary, the Owners shall grant to the mortgagee and the Secretary a first lien security interest in all personal property of the Owners as additional security for the obligations of the Owners under the note, mortgage and this agreement. Such security interest shall be evidenced by such security agreements as the mortgagee and/or the Secretary may require and, in connection therewith, the Owners shall execute and deliver such deposit account control agreements as may be required by the mortgagee and/or the Secretary. Owners hereby authorize each of the mortgagee and the Secretary to file such UCC financing statements and continuation statements as either of them may deem to be necessary or appropriate in connection with the foregoing security interest. The Owners shall not be permitted to grant any other liens on any of such personal property without the prior written approval of the mortgagee and the Secretary. If the project includes a skilled nursing home and is not subject to an operating lease, the Owners shall be permitted to pledge their accounts receivable to an accounts receivable lender in a manner approved by the mortgagee and the Secretary. In the event that the mortgagee and the Secretary grant such approval, (i) the holder(s) of such lien shall enter into an intercreditor agreement and a rider thereto with the mortgagee or the Secretary, or both, on such terms and conditions as may be required by the mortgagee and the Secretary and (ii) the Owners shall comply with any requirements imposed on them by the mortgagee or the Secretary (or either of them) in connection therewith.

H. Professional Liability Insurance. The following is hereby added to the Agreement as paragraph 9(j):

- (j) The Owners shall maintain, or cause the lessee or management agent (as applicable) to maintain, professional liability insurance that complies with the applicable requirements of the Secretary. Annually, the Owners shall provide, or cause the lessee or management agent (as applicable) to provide, to the Secretary and mortgagee, a certification of compliance with the Secretary's professional liability insurance requirements as evidenced by an Accord or certified copy of the insurance policy.

I. Notices. Notices sent pursuant to Paragraph 11 of the Agreement may be sent by registered or certified mail, hand delivery or by a nationally recognized overnight delivery service.

J. Defined Terms. The following definitions are hereby added to paragraph 13 of the Agreement:

- (l) "rent," "profits" and "income" shall include: all healthcare insurance receivables, rents, lease payments, revenues, charges, fees and assistance payments arising from the operation of the project, including but not limited to workers' compensation, social security and other third-party reimbursement payments, Accounts Receivable (as defined in the Collateral Description for the Security Agreement and UCC-1 Financing Statement for the Mortgagor) and all payments and income arising from the operation of the project and/or the provision of services to residents or tenants thereof.
- (m) "Approved Use" means the use of the project as a 110 licensed bed assisted living facility, and such other uses as may be approved in writing from time to time by the Secretary based upon a request made by the Owners, lessee or management agent, but excluding any uses that are discontinued with the written approval of the Secretary.

[To be executed and notarized in the same manner as the Regulatory Agreement]

OWNERS SIGNATURE PAGE
FOR LEAN RIDER TO
REGULATORY AGREEMENT

IN WITNESS WHEREOF, the undersigned has executed this Regulatory Agreement as of the date first written above.

[NOTE: Use Black Ink]

OWNERS:

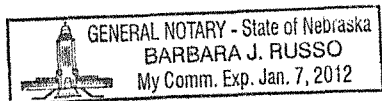
ST. JOSEPH TOWER, L.L.C.,
A Nebraska limited liability company

By: James B. O'Brien
James B. O'Brien, Manager

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this 18th day of August, 2011, before me the undersigned, a Notary Public in and for the County and State, appeared James B. O'Brien, to me personally known, who, being by me duly sworn did say that he is the Manager of ST. JOSEPH TOWER, L.L.C., a Nebraska limited liability company; and that said instrument was signed on behalf of said limited liability company by authority of its Manager; and said Manager acknowledged the said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Barbara J. Russo
(Notary Public)

My term expires January 7, 2012