

04-069-0005
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Regulatory Agreement

Housing for the Elderly, Nursing Homes,
Intermediate Care Facilities
and/or Board and Care Homes
(Nonprofit Only)

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

RETURNED
JUN - 7 2002

E 1760239 B 3060 P 442
SHERYL L. WHITE, DAVIS CNTY RECORDER
2002 JUN 7 1:36 PM FEE 22.00 DEP KM
REC'D FOR METRO NATIONAL TITLE

Project Number 105-43044-NP	Mortgagee REILLY MORTGAGE GROUP, INC.
Amount of Mortgage Note \$4,635,000.00	Date as of June 12, 2002
Mortgage Recorded. State Utah	County Davis
	Date Junc 12 th , 2002

This Agreement entered as of the 12th day of June, 2002, between BOUNTIFUL RETREAT
whose address is 401 South 400 East, Bountiful, Utah 84010

hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban Development, hereinafter called 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, and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and 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 or reinsurer of the Mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgaged property:

- (1) Mortgagor shall promptly make all payments due under the Note and Mortgage, and shall hold the Secretary harmless under its Contract of Mortgage Insurance.
- (2) (a) Mortgagor will 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 3,219.75* per month unless a different date or amount is approved in writing by the Secretary. Such fund, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the project or for any other purposes, may be made after the consent in writing of the Secretary. 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.
*(\$1,161.58 for Realty and \$2,058.17 for Non-realty)
- (b) Where Mortgagor is 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 Mortgagor acquires 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) The real property covered by the mortgage and this agreement is described in Exhibit A attached hereto.
- (4) Mortgagor shall not without the prior written approval of the Secretary:
 - (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to an approved by the Secretary, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the mortgage are required to be filed or recorded, duly assume all obligations under this agreement and under the insured Note and Mortgage;
 - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, and shall not disburse or pay out any funds except for usual operating expenses and necessary repairs;
 - (c) Remodel, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
 - (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;
 - (e) Enter into any contract or contracts for supervisory or managerial services;
 - (f) 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 fund 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;

- (g) 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 the originally approved by the Secretary.
- (5) The Mortgagor agrees to deposit in a residual receipts fund any residual receipts realized from the operation of the mortgaged property. No distribution from such fund shall be made without the prior written approval of the Secretary. Any distribution from such fund, which the party receiving such distribution is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds.
- (6) Mortgagor shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good and substantial repair and condition: Provided that, 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.
- (7) Mortgagor 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, 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 45 days.
- (8) Mortgagor shall immediately satisfy or release any mechanic's lien, attachment, judgment lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceeding involving the project or the mortgaged property.
- (9) (a) If the mortgagor has any business or activity other than the project and operation of the mortgaged property, it shall maintain all income and other funds of the project segregated from any other funds of the mortgagor and segregated from any funds of any other corporation or person. Income and other funds of the project shall be expended only for the purposes of the project.
- (b) Mortgagor shall provide for the management of the project in a manner satisfactory to the Secretary. Any management contract entered into by the mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Secretary addressed to the mortgagor and the management agent. Upon receipt of such request the mortgagor shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing property management of the project.
- (c) Mortgagor shall make no payment for services, supplies, or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation.
- Payments for such services, 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.
- (d) 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. Mortgagor shall keep copies of all written contracts or other instrument 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.
- (e) The books and account of the operations of the mortgaged property and other the project shall be kept in accordance with the requirements of the Secretary.
- (f) Within 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, certified to by an officer of the mortgagor and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (g) At the request of the Secretary, his agents, employees, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the property and the status of the insured mortgage and any other information with respect to the mortgagor or the mortgaged property and of the project which may be requested.
- (h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this agreement for expenses of the project. Any person receiving funds of the project 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 person receiving property of the project in violation of this agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.
- (i) Mortgagor or its lessee shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the State and/or other licensing authority. Mortgagor shall not lease all or part of the project except on terms approved by the Secretary.
- (j) The Mortgagor shall not collect from tenants or occupants or prospective tenants or occupants of the project an admission fee, founders' fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.

(10) The following requirements are applicable only to Section 231 mortgagors:

(a) Mortgagor will give preference or priority to opportunity to occupy its dwelling accommodations to elderly persons and handicapped persons as defined in the applicable HUD Regulations promulgated by the Secretary.

(b) Mortgagor will make its dwelling accommodations and services available to eligible occupants at charges established in accordance with a schedule to be approved in writing by the Secretary. Such accommodations shall not be rented for a period of less than thirty days. Commercial facilities, if any, shall be rented only in accordance with a schedule of charges fixed by the owners and approved in writing by the Secretary. Subleasing of dwelling accommodations or commercial facilities shall be permitted only upon the terms and conditions approved by the Secretary.

(11) The following requirements are applicable only to Section 232 mortgagors:

(a) The mortgagor shall, pursuant to HUD Regulations, be required to suitably equip the project for nursing homes, intermediate care facility, and/or board and care home operations. Mortgagor agrees to perform all obligations of any chattel mortgage, conditional sale, lease or lease-purchase agreement, or other type of financing arrangement designed to acquire equipment for the project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the mortgagee and the Secretary and shall contain provision extending to the mortgagee, its successors or assigns, the option to assume such financing (or leasing) obligation of the mortgagor upon default; further, such financing (or leasing) arrangement shall require the vendor-lessor to furnish written notice of default to the mortgagee and the Secretary before exercising any other its rights or remedies.

(b) The mortgagor shall execute and record a chattel mortgage in favor of the mortgagee covering the mortgagor's interest in all equipment used for the nursing home intermediate care facility and/or board and care home operation except for such equipment as HUD may exempt from such coverage. Said chattel mortgage shall provide that a default in the terms of the Note and Mortgage upon the realty shall also constitute a default thereunder.

(c) The mortgagor must be a sole asset mortgagor.

(12) Mortgagor agrees to comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion (creed), sex, handicap, familial status, or national origin, including the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19) and Executive Order 11063, Equal Opportunity in Housing (27 Fed. Reg. 11527), and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing any of the foregoing authorities.

(13) No litigation seeking the recovery of a sum in excess of \$3,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$3,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from the Secretary. Such consent may be subject to such terms and conditions as the Secretary may prescribe.

(14) Upon a violation of any of the above provisions of this Agreement by mortgagor, the Secretary may give written notice, thereof, to mortgagor, by register or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to the Secretary, be designed by the mortgagors as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within 30 days after the date such notice is mailed or within such further time as the Secretary determines it 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:

(1) (a) 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.

(b) 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 the 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;

(2) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this agreement and under the note and mortgage, and the necessary expenses of preserving the property and operating the project.

(3) Take possession of the project, bring any action necessary to enforce any rights of the mortgagor 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 mortgagor is 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.

(4) 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 property 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.

(15) 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 mortgagor respectively assigns, pledges and mortgages to the Secretary its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operations of the mortgaged property, subject, however, to any assignment of rents or project income in the mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to mortgagor 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, profits, income, and charges due to collected thereafter.

(16) As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", 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) "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;

(d) "Project" includes the mortgaged property and all its other assets or whatsoever situate, used in or owned by the business conducted on said mortgaged property.

(e) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for mortgage payments or for payment of reasonable expenses incident to its construction, operation and maintenance;

(f) "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.

(g) "Residual Receipts" 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 of Housing and Urban Development;

(ii) All amounts required to be deposited in the reserve fund for replacements:

(iii) All obligations of the project other than the mortgage insured or held by the Secretary 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;

(ii) All tenant security deposits held.

(17) The Secretary shall not be liable for any of his acts hereunder except for flagrant misfeasance.

(18) This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner of reinsurer or the Mortgage, or obligated to insure the Mortgage.

(19) The invalidity of any clause, part of provision of this Agreement shall not affect the validity of the remaining portions thereof.

(20) Mortgagor warrants that it has 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.

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

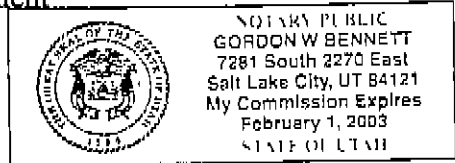
ALL REFERENCES HEREIN TO THE TERMS "NURSING HOME" OR "NURSING HOMES" SHALL MEAN AND INCLUDE THE TERMS "ASSISTED LIVING FACILITY" AND "ASSISTED LIVING FACILITIES."

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF.

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

BOUNTIFUL RETREAT
a Utah non-profit corporation

By: *W. Dean Belnap*
W. Dean Belnap
President



STATE OF UTAH
COUNTY OF *Salt Lake* } ss:

On the *2* day of June, 2002, personally appeared before me W. Dean Belnap, who being by me duly sworn, did say that he is the President of Bountiful Retreat, a Utah non-profit corporation, and did acknowledge that he executed and delivered said instrument as the voluntary act and deed of said corporation for the purposes therein contained

Gordon W Bennett
Notary Public

[SEAL]

My Commission Expires: *2003*

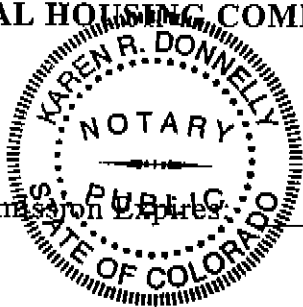
SECRETARY OF HOUSING AND URBAN
DEVELOPMENT ACTING BY AND
THROUGH THE FEDERAL HOUSING
COMMISSIONER

By: Marcie Laforte
Authorized Agent

STATE OF COLORADO]
COUNTY OF Denver]:ss]

I hereby certify that on this 6th day of June, in the year 2002, before me the subscriber, a notary public in and for the jurisdiction aforesaid, personally appeared Marcie Laforte, known to me and to me known to be the person who, as the duly Authorized Agent of the SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER, executed the foregoing Regulatory Agreement on behalf of said SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER by virtue of the authority vested in him/her as such Authorized Agent, and he/she did acknowledge the foregoing instrument to be the act and deed of said SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER for the purposes therein contained.

[SEAL]



Karen R. Donnelly
Notary Public

My Commission Expires 10/18/05

Prepared by and upon recording
return to:

Harrison C. Smith, Esq.
Krooth & Altman LLP
1850 M Street, NW, Suite 400
Washington, DC 20036

EXHIBIT A

Order Number: 01029316H

E 1760239 B 3060 P 44B

Beginning at a point on the North boundary of 500 South Street (a 66 foot wide right of way) which point is North 89 deg. 38'33" East 67.96 feet along the section line and South 0 deg. 11'23" East 516.71 feet along the centerline of 400 East Street (a 66 foot wide right of way) to an existing brass monument and North 89 deg. 44'04" East 486.42 feet along said centerline of said 500 South Street and North 0 deg. 11'23" West 33.00 feet from the relocated Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian; and running thence South 89 deg. 44'04" West 194.50 feet along said North boundary of 500 South Street; thence North 0 deg. 11'23" West 236.50 feet; thence North 89 deg. 44'04" East 26.08 feet; thence North 0 deg. 11'23" West 71.60 feet; thence North 89 deg. 44'04" East 147.05 feet; thence Southeasterly 8.84 feet along the arc of a 330.00 foot radius curve to the left through a central angle of 1 deg. 32'03" (radius point bears North 71 deg. 02'03" East from the beginning of the curve); thence South 20 deg. 30'00" East 53.05 feet; thence South 00 deg. 11'23" East 249.99 feet to the point of beginning.

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