

**AGREEMENT OF ASSIGNMENT AND
ASSUMPTION OF MORTGAGE, MORTGAGE NOTE,
AND REGULATORY AGREEMENT**

(FHA Loan)

THIS AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2022, by and among **39th PLACE APARTMENTS, LLC**, a Missouri limited liability company (the “**Transferor**”), **AZURE APARTMENTS, LLC**, an Ohio limited liability company (the “**Transferee**”), **REGIONS BANK**, an Alabama banking corporation (the “**Lender**”) and **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** (“**HUD**” or the “**Secretary**”) having its principal office at 451 7th Street, SW., Washington, DC 20410.

WITNESSETH:

WHEREAS, Transferor is the tenant under that certain Lease Agreement (“Lease”) dated January 1, 2020, between the City of Independence, Missouri (“Landlord”) and the Transferor, a memorandum of which was recorded January 17, 2020 as instrument number 2020E0004943 in the Jackson County, Missouri recorder’s office, of real property known as 19700 East 39th Place, Independence, MO 64057, FHA No. 084-35403 located in the City of Independence, Jackson County, Missouri and encumbered by the following *Multifamily Deed of Trust, Assignment of Rents and Security Agreement* (the “**Mortgage**”):

Multifamily Deed of Trust, Assignment of Rents and Security Agreement made by Transferor to secure a mortgage loan in the original principal amount of \$39,552,900, dated as of January 1, 2020 and recorded on January 21, 2020 as Document #2020E0005850 in the official Public Records of Jackson County Clerk (“**Public Records**”).

WHEREAS, the Mortgage secures performance under a Note (the “**Note**”) in the original principal amount \$39,552,900, made pursuant to Section _____ of the National Housing Act, as amended (the “**Act**”) and the regulations promulgated by the Secretary pursuant thereto (the “**HUD Regulations**”); and

WHEREAS, the property described in the Mortgage and in **Exhibit A** attached hereto is referred to in this Agreement as the “**Project**”; and

WHEREAS, Transferor has agreed to assign the Lease covering the Project to the Transferee; and

WHEREAS, the Secretary and the Lender have approved the transfer of the Project from the Transferor to the Transferee; and

WHEREAS, in connection with the Secretary’s provision of the mortgage insurance, pursuant to the Act, and the HUD Regulations, Transferor and the Secretary entered into that certain *Regulatory Agreement for Multifamily Housing Projects* (the “**Regulatory Agreement**”),

dated as of January 1, 2020, and recorded January 21, 2020 as Document #2020E0005851 in the Public Records; and

WHEREAS, the Transferee wishes to accept the assignment of the Lease related to the Project and assume the obligations under the “Transfer Documents” (as defined below).

NOW, THEREFORE, in consideration of the consent of the Secretary and the Lender to the sale of the Project by the Transferor to the Transferee, and in order to comply with the requirements of the Secretary, the Act, and the HUD Regulations adopted pursuant thereto, and for other good and valuable consideration paid, the parties hereto hereby agree as follows:

Section 1. Effective as of the date of the assignment of the Lease related to the Project from the Transferor to the Transferee and recordation of this Agreement (hereinafter referred to as the “**Effective Date**”) in the Public Records, and except as limited below, the Transferee hereby assumes and agrees to be bound by and to perform, keep and observe all of the obligations, duties, liabilities, covenants and agreements of the Transferor under and pursuant to the Note, the Mortgage, and the Regulatory Agreement, and all other documents heretofore executed and delivered and/or assumed by the Transferor in connection with the Mortgage loan, including Financing Statements and the Security Agreement between Transferor and Lender or its predecessors (the “**Transfer Documents**”).

As of the Effective Date, the term “Owner” as used in the Transfer Documents, including the Regulatory Agreement, shall mean **AZURE APARTMENTS, LLC**, an Ohio limited liability company.

Section 50 of the Regulatory Agreement is amended by deleting the Section 50 Addendum attached thereto and replacing with the Section 50 Addendum attached hereto.

The Transferee does not and shall not assume personal liability for payments due under the Note, or the Mortgage, or for matters not under its control, provided that the Transferee shall remain liable only with respect to the matters hereinafter stated, namely:

- (i) for funds or property of the Project coming into its hands which, by the provisions thereof, it is not entitled to retain;
- (ii) for its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions of the Regulatory Agreement; and
- (iii) for its acts which violate statutes governing the conduct of owners of projects with HUD/FHA insured mortgages.

The Transferee hereby agrees to be bound by the Mortgage, the Note, the Regulatory Agreement, and the Transfer Documents, subject to the foregoing limitation of personal liability, to the same extent as if Transferee had been an original party to said instruments.

Section 2. As of the Effective Date, by its execution hereof, the Secretary agrees that the Transferor shall be and it hereby is released from any further obligations, duties, responsibilities, covenants and agreements to the Secretary under the Note, the Mortgage, the Regulatory Agreement, and the other Transfer Documents. Notwithstanding the foregoing, Transferor shall

remain liable under the Regulatory Agreement for any funds or personal property of the Project of which Transferor is in erroneously in receipt and for any acts committed by Transferor or its agents which would constitute a breach under the Regulatory Agreement.

Section 3. The Transferee agrees that it shall comply fully with: (a) the provisions of any laws prohibiting discrimination in housing on the basis of race, color, creed, disability, handicap, familial status, sex or national origin; and (b) the HUD Regulations providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with such provisions shall be a proper basis for the Secretary to take any corrective action the Secretary may deem necessary, including, but not limited to, the rejection of future applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the Transferee is identified; and further, the Secretary shall have similar rights of corrective action with respect to (i) any individuals who are officers, directors, principal stockholders, trustees, managers, partners or associates of the Transferee; and (ii) any corporation or any other type of business association or organization with which the officers, directors, principal stockholders, trustees, managers, partners or associates of the Transferee may be identified.

Section 4. Nothing herein shall in anyway impair the Note or the security now held for said indebtedness, or alter, waive, annul, vary or affect any provision, condition or covenant therein, nor affect or impair any rights, powers or remedies under the Note and the Mortgage, it being the intent of the parties hereto that the terms and provisions of said Note and Mortgage shall continue in full force and effect, except as modified hereby.

Section 5. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

Section 6. All of the terms, covenants, conditions and agreements hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 7. The whole of the real property described in the Mortgage shall remain subject to the liens, charges, or encumbrances of such Mortgage, and nothing herein contained or done pursuant hereto shall affect or be construed to affect the liens, charges, or encumbrances of the Mortgage, or the priority thereof over other liens, charges, or encumbrances, or, except as herein otherwise expressly provided, to release or affect the liability of any party or parties whosoever would now or may hereafter be liable under or on account of such Note, Mortgage, or Regulatory Agreement; provided that the Transferor shall remain liable under the Transfer Documents in all acts done as mortgagor.

Section 8. Nothing in this Agreement shall waive, compromise, impair or prejudice any right the Secretary of HUD may have to seek judicial recourse for any breach of any Regulatory Agreement that may have occurred prior to or may occur subsequent to the date of this Agreement. In the event that the Secretary of HUD initiates an action for breach of any Regulatory Agreement and recovers funds, either on the Secretary's own behalf or on behalf of the Project or the Transferor or Transferee, those funds may be applied, at the discretion of the Secretary of HUD,

to payment of the delinquent amounts due under the Mortgage or as a partial prepayment of the Mortgage debt.

**[SIGNATURES AND ACKNOWLEDGMENTS
CONTAINED ON THE FOLLOWING PAGES]**

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date set forth above.

TRANSFEROR:

39TH PLACE APARTMENTS, LLC,
A Missouri limited liability company

By: The Spanos Corporation,
A California corporation
Its: Manager

By: _____
Justin Garner, Chief Financial Officer

STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

On ___ day of _____, 2022 before me, the undersigned, Notary public, personally appeared Justin Garner, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the written instrument and acknowledgement to me that they executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public

My commission expires: _____

**[ADDITIONAL SIGNATURE AND ACKNOWLEDGEMENT
ON THE FOLLOWING PAGE]**

TRANSFeree:

**AZURE APARTMENTS, LLC,
AN OHIO LIMITED LIABILITY COMPANY**

BY: _____
HERBERT NEWMAN, CO-MANAGER

STATE OF OHIO)
)SS:
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 2022 by Herbert Newman, the Co-Manager of Azure Apartments, LLC, an Ohio limited
liability company, on behalf of the limited liability company.

Notary

**[ADDITIONAL SIGNATURES AND ACKNOWLEDGEMENTS
ON THE FOLLOWING PAGES]**

SECRETARY:

SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner

By: _____
Name:
Title:

State of _____)
County of _____)

On _____, 202__, before me, _____, personally appeared _____ and _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires:

**[ADDITIONAL SIGNATURE AND ACKNOWLEDGEMENT
ON THE FOLLOWING PAGE]**

The Landlord joins in execution of this Agreement to acknowledge that the Lease has been assigned to the Transferee, and that the terms and conditions contained in the Mortgage, including the Rider to Security Instrument Fee Joinder, are still applicable to the Landlord after the recording of this Agreement.

LANDLORD:

CITY OF INDEPENDENCE, MISSOURI

By: _____
Name: Zachary Walker
Title: City Manager

ATTEST:

By: _____
Name: Rebecca Behrens
Title: City Clerk

State of Missouri)
) SS.
County of Jackson)

On _____, 2022, before me, the undersigned, a Notary Public, personally appeared Zachary Walker, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Independence, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed on behalf said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the fee act and deed of said City.

In Witness Whereof, I have hereunto set my hand affixed my notarial seal the day and year last written.

Signature _____ (Seal)

My Commission Expires:

**[ADDITIONAL SIGNATURE AND ACKNOWLEDGEMENT
ON THE FOLLOWING PAGE]**

LENDER:

REGIONS BANK,
an Alabama banking corporation

By: _____
Name:
Title:

STATE OF)
)SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____, 20__,
by _____, the _____ of Regions Bank, an Alabama banking
corporation, on behalf of the banking corporation.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

REGULATORY AGREEMENT – SECTION 50 ADDENDUM

The Loan is nonrecourse. Each individual/entity (each, a “Section 50 Party”) as identified below

- 1. Herbert Newman

does not assume personal liability for payments due under the Note and Security Instrument, or for the payments to the Reserve for Replacements, or for matters not under its control, provided that each Section 50 Party shall be personally liable under the Regulatory Agreement only with respect to the matters hereinafter stated; namely: (a) for funds or property of the Project coming into its hands which, by the provisions hereof, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of Section 35(a) of the Regulatory Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of the Regulatory Agreement. The obligations of each Section 50 Party shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of the Regulatory Agreement, or any release of record of the Security Instrument.

Herbert Newman

STATE OF OHIO)
)SS.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ 2022, by
Herbert Newman.

Notary Public