



Issue Date	March 26, 2004
Audit Case Number	2004-SE-1003

TO: Philip Head, Acting Director, Region X Multifamily Hub, 0AHM

FROM: Frank E. Baca, Regional Inspector General for Audit, 0AGA

SUBJECT: Uptown Towers Apartments, Portland, Oregon
HAP Contract No. OR160039003
Master ACC Contract No. S-0029

INTRODUCTION

At the request of your office, we have completed an audit of Uptown Towers Apartments (Project), a HUD-subsidized project in Portland, Oregon. The purpose of our audit was to determine if:

- The Project owner received repayment of ineligible construction loans and capital contributions from Project funds;
- Commercial space income has been treated as Project income or owner's contribution;
- Commercial income has been paid out to the Project owner;
- The management agent has been receiving excessive management fees; and
- Certain Project expenses were eligible and benefited the Project.

To achieve our objectives, we performed audit procedures that included:

Obtaining and reviewing:

- Federal Regulations, the Annual Contributions Contract between HUD and Oregon Housing and Community Services Department (OHCS) and the Housing Assistance Payments (HAP) Contract between Uptown Towers Apartments and OHCS to determine the terms and conditions under which OHCS monitors the Project and under which the Project should operate.

- OHCS D and Guardian Management files and records related to Uptown Towers Apartments to obtain information relevant to the Project's operations.

Interviewing:

- HUD program staff to confirm our understanding of the request received;
- OHCS D staff to determine how they monitor the operations of the Project; and
- Guardian Management and Project employees to understand the operations of the Project.

Our audit covered the period from January 1998 through July 2003. We performed our audit work from June 2003 through January 2004 at the offices of: Oregon Housing and Community Services Department in Salem, Oregon; Guardian Management and Uptown Towers Apartments in Portland, Oregon; Dwyer Pemberton and Coulson P.C., in Tacoma, Washington; and HUD Seattle Multifamily Hub and OIG Office of Audit in Seattle, Washington.

We conducted the audit in accordance with generally accepted government auditing standards.

In accordance with HUD Handbook 2000.06 REV-3, within 60 days please provide us, for each recommendation without a management decision, a status report on: (1) the corrective action taken; (2) the proposed corrective action and the date to be completed; or (3) why action is considered unnecessary. Additional status reports are required at 90 days and 120 days after report issuance for any recommendations without a management decision. Also, please furnish us copies of any correspondence or directives issued because of the audit.

We appreciate the courtesies and assistance extended by the management and staff of Oregon Housing and Community Services Department, Guardian Management, and Uptown Towers Apartments.

Should you or your staff have any questions, please contact me at (206) 220-5360.

SUMMARY

Our audit found no repayments of construction loans. We determined that repayments of capital contributions from Project surplus cash to the owners were eligible. We also found that the Project's commercial income was properly treated as owner contributions or income, and that payments to the owner from the commercial income are allowable. However, the management agent received excessive management fees paid from residential income for the management of the Project's commercial income. Further, ineligible partnership expenses were paid from Project funds and some of those expenses

were paid without supporting documents in sufficient detail to show whether they were partnership or Project expenses.

BACKGROUND

Uptown Towers Apartments (Project) is a 72 unit elderly housing project located in Portland, Oregon. Each unit contains one bedroom, a living room, a kitchen, and a bathroom. Uptown Associates, Ltd., owns the property. It was built in 1983 using bond financing from OHCS D. The property was refinanced in 1992 through OHCS D under a Financing Adjustment Factor (FAF) Agreement between HUD and OHCS D. The property is not insured or financed by HUD. However, the Project owner entered into a Housing Assistance Payments (HAP) contract with OHCS D, dated July 19, 1983 under which HUD provides a monthly project-based rental subsidy (Section 8) for 71 of the Project's 72 units. One unit is a rent-free management unit. Project operations are monitored by OHCS D under terms of its Annual Contributions Contract with HUD.

Guardian Management manages Uptown Towers Apartments. In this capacity, Guardian Management is responsible for overseeing the day-to-day operations and maintenance of the property as well as all financial aspects of the property. To compensate for these services, Guardian Management receives a management fee expressed as a percentage of collections.

A convenience store and parking area associated with the store occupies the lower portion of one side of the Project's building. The store generates lease income of \$3,000 per month, which flows through the books and records of the Project and is paid to the Project owner. Additionally, in September 1998 the owner entered into a contract to lease the side of the building as advertising space. This contract was terminated due to a city ordinance in 2001. However, while the contract was in effect, the income generated by this lease of about \$2,500 per month also flowed through the Project's books and records and was paid to the owner. The Project's residential operations do not benefit in any way from either of these commercial leases.

FINDING 1

PROJECT FUNDS WERE USED TO PAY FOR NON-PROJECT EXPENSES

We found that \$55,907 in Project funds were inappropriately used to pay \$14,720 in management fees on commercial income as well as \$41,187 in partnership expenses. Consequently, these funds were not available to reduce subsidy payments or to fund the residual receipts account, which reverts to HUD at the termination of the HAP contract. These ineligible expenditures of Project funds allowed the owners to receive distributions in excess of the limited distribution provided for in the Federal regulations. This occurred because controls were not in place to prevent or detect unauthorized use or disposition of Project resources.

Federal and OHCS D Requirements

Federal regulations at 24 CFR 883.702(e) and Section 2.6(c)(1) of the Project's HAP contract state that project funds must be used for the benefit of the project to: (1) make mortgage payments, (2) pay operating expenses, (3) make required deposits to the replacement reserve, and (4) provide limited distributions to the owner. Funds in excess of those needed for these purposes must be deposited into a separate account (residual receipts), from which withdrawal may only be made with OHCS D approval for project purposes including the reduction of HAP payments. Upon termination of the HAP contract, any funds in the residual receipts account must be remitted to HUD. Distributions to the Project owner are limited to six percent of equity.

Project Residential Income Was Used to Pay Ineligible Fees for Management of the Project's Commercial Income

During our audit period, Guardian Management received a fee of eight percent of the monthly rent paid for the space leased by the convenience store located within the Project. Guardian Management also received a fee of eight percent of the payments for the lease of the advertising space on the side of the Project's building. The following table illustrates the amount of commercial income generated by these leases and the fees paid to Guardian to manage this commercial income:

	<u>FY1999*</u>	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002*</u>	<u>Total</u>
Advertising Income		\$30,000	\$10,000		
Convenience Store Income	<u>\$36,000</u>	<u>36,000</u>	<u>36,000</u>	<u>\$36,000</u>	
Total Commercial Income	<u>\$36,000</u>	<u>\$66,000</u>	<u>\$46,000</u>	<u>\$36,000</u>	
Management Fee Percentage	<u>0.08</u>	<u>0.08</u>	<u>0.08</u>	<u>0.08</u>	
Management Fee Paid on Commercial Income	<u>\$ 2,880</u>	<u>\$ 5,280</u>	<u>\$ 3,680</u>	<u>\$ 2,880</u>	<u>\$14,720</u>

*A management fee was not paid on advertising income in 1999 and there was no advertising income in 2002

We found that this commercial income did not in any way benefit the Project's residential operations as it flowed through the Project's books and records and was paid out in its entirety to the Project's owner. Because all of the commercial income was paid out, the \$14,720 paid out for the commercial income management fee came from the Project's residential income. The entire \$14,720 is an ineligible Project expense since it only covers expenses related to the generation of commercial income paid to the owner.

Project Funds Were Used to Pay Ineligible Partnership Expenses

We reviewed all Project checks written for accounting, auditing, bookkeeping, legal fees, and tax services from January 1, 1999 through July 31, 2003. We also reviewed all checks in excess of \$50 written to the general partner of the ownership entity or to his wife for miscellaneous expenses, software, or supplies. Our review disclosed \$41,187 of ineligible expenses relating to the operation of the Uptown Associates, Ltd. partnership.

We also found \$2,042 in unsupported expenses. The ineligible payments were not for legitimate Project expenses since they were not: (1) part of the mortgage payments; (2) for Project operating expenditures; (3) for payments to the reserves for replacement; or (4) authorized distributions to the owners.

Supplies and Miscellaneous Expenses

We reviewed \$4,406 in supplies and miscellaneous expenses reimbursed to the general partner, of which \$1,702 (38.6 percent) was ineligible and \$1,804 (40.9 percent) was unsupported. These expenses included reimbursements to the general partner for his purchases of computer software and office supplies such as toner, binders, and paper. The general partner of the ownership entity resides in a different state from that in which the Project is run and he purchased these items for use in his home office. The management agent reimbursed these expenses using Project funds even though the items were not used for the benefit of the Project.

Further, the management agent did not require the general partner to submit itemized invoices that would show if the expenses were for the partnership or the Project. Consequently, many of the supporting documents we received from the general partner through the management agent did not support the costs in question.

Bookkeeping Expenses

We reviewed \$59,781 of expenses classified as auditing, bookkeeping, and tax services and found that \$13,790 (23.1 percent) was for ineligible partnership expenses. The general partner's wife typically invoiced the Project \$450 for bookkeeping services once every three months. These expenditures were categorized as either auditing or bookkeeping fees. The management agent has been paying these invoices from Project funds for at least as far back as 1990. However, the management agent did not know when or what auditing or bookkeeping services the general partner's wife performed. Since all of the Project's bookkeeping and auditing functions are performed and managed by the management agent, any auditing or bookkeeping performed by the General Partner's wife is not reflected in the Project's accounting system and did not benefit the Project.

We also found costs relating to the purchase of filing cabinets and furniture on some of these bookkeeping invoices. As discussed above, the furniture and file cabinets are used in the general partner's home office and are not for the benefit of the Project. Further, we identified expenses categorized as accounting and tax fees that related to the sale of the property. These are asset management services that benefit the partnership, not the Project as discussed below.

Legal Fees

We reviewed \$38,144 in legal expenses and found \$25,695 (67.4 percent) was ineligible. Expenses categorized as legal fees included legal services related to the advertising lease,

the convenience store lease, and the sale of Uptown Towers Apartments. Since the Project does not benefit from either of the commercial leases, any expenses related to these leases are ineligible non-Project expenses. Additionally, services related to the sale of the property are asset management services that benefit the owners, not the Project itself. Therefore, these expenses are partnership, not Project expenses. Further, the management agent was unable to provide support for \$238 of the expenses listed as legal fees.

The Owner Did Not Have Controls In Place to Prevent or Detect Unauthorized Use or Disposition of Resources.

Guardian Management reimbursed the owners of Uptown Towers Apartments for partnership expenses and paid itself a management fee on commercial income from Project funds because controls were not in place to prevent or detect unauthorized use or disposition of resources. When asked why Guardian Management allowed the ineligible payments, the Portfolio Manager told us that the question had never come up before since neither HUD nor OHCS D had ever looked at expenditures in this detail before.

Since Project funds were used for non-Project expenses, these funds were not available to reduce subsidy payments to the Project. Further, these funds were not available to fund the residual receipts account, which could then be used for the benefit of the Project as needed and which revert to HUD at the termination of the HAP contract. Use of Project funds in this manner also allowed the owner to receive a greater return on equity than provided for in the regulations and HAP contract.

AUDITEE COMMENTS

The general partner of the ownership entity responded to our draft report, in writing, on March 24, 2004. In his response, the general partner stated that:

1. He participated in major decisions involving the management of the Project, assisted in management related decision-making, worked closely with OHCS D staff on a variety of issues related to both residential and commercial operations, played a role in coordinating the annual audit from beginning to end each year to meet HUD requirements, and maintained records dating back 20 years while the management agent only kept records 7 years.
2. He agreed that management and professional fees paid in relation to the commercial portion of the Project were improperly paid with residential income, and that the partnership should reimburse the project's residential operations for these expenses. However, he also stated that the commercial space provides a net benefit to the property as the commercial tenant pays a portion of the property taxes related to the project, and asked us to consider whether this benefit would offset the deficiency. He also explained that payment of the management fees occurred in error as the result of

an accounting software error following Guardian Management's conversion to new software.

3. He has maintained files for the project's residential and commercial activities (e.g. original submission documents, "as built," repair documentation, annual audits, etc.). No one else has these documents, it benefits the project for him to provide safe and secure maintenance of these records, and he has not asked for reimbursement for these costs. Because of the time, effort, and cost to store the documents, he believes the ineligible and unsupported partnership expenses should be allowed. He has also offered to provide invoices for future expenses to OHCSO for approval prior to seeking reimbursement from Guardian Management for these expenses. Additionally, his wife has stopped charging the residential operations for bookkeeping fees.
4. He believes the professional fees related to the proposed sale of the property should be allowed. OHCSO would not have allowed a sale of the property if the parties had not first agreed to extend the current use as low-income housing. This is a direct benefit to the residential segment of the project and would also mean there would be no eviction or relocation costs. In addition, OHCSO offered to forego its portion of the savings that resulted from the bond refinancing to add to the income of the project after the sale. He then stated he would be open to allocating the professional fees related to the proposed sale on the percentage basis of residential vs. commercial space in the Project.

The general partner's response is included in its entirety in Appendix B of this report.

OIG EVALUATION OF AUDITEE COMMENTS

1. While it is commendable that the general partner expended much time and energy participating in the management of the Project and maintaining files and records related to the Project over the past 20 years, the services he has provided are considered a function of asset management. Asset management functions are those activities associated with managing and protecting the assets of the ownership entity and overseeing the management agent's performance. These functions include how the owner will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs of the Project. In other words, asset management functions operate to protect the owner's investment. The costs for these services are the costs of ownership and should not be borne by the Project's operations.
2. Although the commercial tenant pays a portion of the property taxes related to the project, we do not agree that any benefit should offset the deficiency. The portion of the property taxes paid by the commercial tenant is directly related to the commercial portion of the building.

3. The general partner's maintenance of files and records for the Project such as building documents and annual audits are asset management functions. These are costs related to protecting the ownership entity's investment in the project and as such are costs of ownership.
4. As previously mentioned, the sale of the property is a function of asset management. It is the owner's responsibility to bear the costs of disposition of the property.

RECOMMENDATIONS

We recommend that the Director instruct OHCS D to require the owners of Uptown Towers to:

- 1.A. Submit monthly accounting reports, and review the reports to ensure that only Project expenses are paid with Project funds.
- 1.B. Reimburse the residual receipts account \$55,907 for ineligible partnership expenses and ineligible management fees paid on commercial income through July 31, 2003. Also require the owners to reimburse the residual receipts account for any ineligible partnership expenses and management fees paid on commercial income since August 1, 2003.
- 1.C. Provide support for the \$2,042 in unsupported supplies, miscellaneous, and legal expenses or reimburse the residual receipts account if no support is provided.
- 1.D. Implement controls to ensure that only Project expenses are paid with Project funds.
- 1.E. Stop paying a management fee on the commercial space from residential income.

MANAGEMENT CONTROLS

In performing our review, we considered the management controls relevant to Uptown Towers Apartments' operations to determine our audit procedures, not to provide assurance on those controls. Management controls in the broadest sense include the plan of organization, methods, and procedures adopted by management to meet its missions, goals, and objectives. Management controls include the processes for planning, organizing, directing, and controlling program operations. It includes the systems for measuring, reporting, and monitoring program performance. It also serves as the first line of defense in safeguarding assets and preventing and detecting errors, fraud, and violations of laws and regulations. Officials of the audited entity are responsible for establishing effective management controls.

We determined the following management controls were relevant to our review objectives:

- Program Operations - Policies and procedures that officials of the audited entity have implemented to reasonably ensure that a program meets its objectives and that unintended actions do not result.
- Compliance with Laws and Regulations - Policies and procedures that officials of the audited entity have implemented to reasonably ensure that resources used are consistent with laws and regulations.
- Safeguarding Resources - Policies and procedures that officials of the audited entity have implemented to reasonably prevent or promptly detect unauthorized acquisition, use, or disposition of resources.

It is a significant weakness if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet an organization's objectives.

Based on our review, we believe the following items are significant weaknesses:

We identified a significant weakness in Uptown Towers Apartments' management controls when it did not require documents in sufficient detail to support reimbursements to the general partner and others. As a result, we found during our audit that controls did not reasonably ensure that all resources were used consistent with laws and regulations. In addition, management controls did not reasonably prevent or promptly detect unauthorized use or disposition of resources.

SCHEDULE OF QUESTIONED COSTS AND FUNDS PUT TO BETTER USE

Recommendation Number	Type of Questioned Cost		Funds Put to Better Use <u>3/</u>
	Ineligible <u>1/</u>	Unsupported <u>2/</u>	
1B	\$ 55,907		
1C		\$ 2,042	
1E			\$ 2,880
Totals	\$ 55,907	\$ 2,042	\$ 2,880

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law, contract or Federal, State or local policies or regulations.
- 2/ Unsupported costs are costs charged to a HUD-financed or HUD-insured program or activity and eligibility cannot be determined at the time of audit. The costs are not supported by adequate documentation or there is a need for a legal or administrative determination on the eligibility of the costs. Unsupported costs require a future decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of Departmental policies and procedures.
- 3/ Funds Put to Better Use are costs that will not be expended in the future if our recommendations are implemented. Specifically, we estimate that if the owner of Uptown Towers Apartments is required to stop paying a management fee on the commercial space from residential income \$2,880 will be available in the next year to reduce HUD subsidy payments or to deposit into the residual receipts account.

AUDITEE COMMENTS

FROM : CFG ENERGY, INC.

FAX NO. : 970 330 2657

Mar. 24 2004 03:05PM P2

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March 24, 2004

**Sent by E-Mail (FBaca@hudoig.gov),
Fax (206-220-5159), and Mail**

Mr. Frank E. Baca
Regional Inspector General for Audit
U.S. Department of Housing and Urban Development
Office of the Inspector General for Audit
Northwest/Alaska Region 10
909 First Avenue, Suite 126
Seattle, WA 98104-1000

Re: Formal Draft Audit Report Re Uptown Tower Apartments

Dear Mr. Baca:

Thank you for the opportunity to review your agency's formal draft audit memorandum report, dated March 11, 2004. This letter constitutes the Uptown Towers Associates written comments on the audit results and recommendations. It includes the information supplied to your office on March 3, 2004, supplemented by some additional information, including a summary of information provided to you by Guardian Management during the exit conference.

Since 1980, as General Partner of Uptown Associates, Ltd., owner of Uptown Tower, I have participated in major decisions involving the management of Uptown Tower and have handled various project-related responsibilities with respect to both residential and commercial operations. As a result of my continuous participation, I have been uniquely able to provide helpful information relating to important management matters and to assist in management related decision-making. Many staff and senior management personnel, both past and present, of the Oregon Housing and Community Services Department ("OHCS") (the HFA for Uptown Tower); of Guardian Management, LLC (the project's property manager); of Dwyer Pemberton & Coulson (the project's auditors); and numerous third party consultants and contractors are well aware of my contributions. My "hands on" very active participation explains why I felt justified in recent years to pass on invoices for out of pocket expenses to Guardian Management for reimbursement without first obtaining the approval of OHCS.

In the early years, the project was poorly capitalized and heavily leveraged with bank debt. In April 1986 three of the seven original partners opted out when the bank called in the equity loans. Two of the remaining four partners, each with a five percent limited partnership position, refused to fund their shares. As a result, the remaining two partners, Bradford P. Frisselle and I funded the \$552,257.00 owed to the bank. In addition to the bank debt, five of the seven partners had loaned in excess of \$150,000 to fund residential cash flow shortages. With the exception of two minor dividend payments in the early years, aggregating less than \$3,000, it took until 1997 for the final payment of "accrued" dividends to be paid - no interest accrued on these sums over the years. It took over 13 years from first rentals for the project to generate enough "surplus cash" to be able to pay just the accrued dividends.

In spite of the financial difficulties the project experienced until recent years, we always kept the project's reserve accounts funded as required, and we never allowed any default on any obligation. OHCSO closely monitored this performance and we stayed in close communication with Guardian and OHCSO throughout the years. Although staff changed at both Guardian and OHCSO, I always maintained a close working relationship with both agencies.

During the years, two (Marlys Laver and Marsha (Morey) Steffen) of the three individuals who served as Administrators of Oregon Housing, either prior to or after their State service, managed Uptown Tower while employees of Guardian. The third Oregon Housing Administrator, Pauline Phillips, who served as Administrator between Marsha Steffen's and Marlys Laver's state employment, did not work for Guardian. Throughout these years I worked closely with OHCSO auditors Stephen Westfall, Jake Thiessen and recently John Skelton on a wide variety of issues relating to both the residential and commercial operations. I also worked closely with the auditors at the accounting firm of Dwyer Pemberton & Coulson, John Simkins and Terry Cronk (who provided yearly project financial audits). I specifically mention these individuals in case your office wishes to contact them to verify just how deeply involved I have been in the management of the project.

During the exit conference our counsel attended on March 10, 2004, HUD's auditors heard from Guardian Management personnel Tom Brenneke, Carolyn Mayo and Jeff Lind. Each confirmed for your office the extent of my active, and helpful participation in management of the Uptown Towers housing project.

For example, Jeff Lind commented during the exit conference on my role in the coordination of yearly audits to meet HUD requirements. Indeed, it was totally my own responsibility to see that effort to a conclusion each year. The yearly audit process begins in December with the procurement of the "engagement letter" and a delivery of a copy of that letter to OHCSO. I have always handled that, as reflected in the records of OHCSO that your auditor reviewed. During January and February of each year, there have always been numerous consultations with the auditing firm representatives relating to audit issues, which I have always handled. Thereafter, the process has involved review of the draft audit report; receipt of the final audit version at which time I have signed on behalf of the partnership; delivery of an original copy of the audit report to OHCSO by March

1st; delivery of audit copies to Guardian Management company; receipt and review in March of the response letter from OIICSD; response thereafter to any concerns, raised by OHCSO; and circulation of OHCSO's letter approving the annual distribution and deposit to residual receipts, if directed. The records of the audit process make clear the extent of my involvement in that process.

Also during the exit conference, Guardian personnel explained to your office that I have been actively involved in investigation and resolution of resident fair housing complaints, and supervision of counsel with respect to that topic. According to my counsel, who was present during the exit conference, you heard from all three of the Guardian representatives about my active and positive involvement in management of the project, to the benefit of its tenants.

HUD also heard during the exit conference about the importance of the records I have maintained relating to the project, dating back 20 years. Guardian's Jeff Lind informed you that Guardian shreds after seven years, which required that I provide records to the auditors that Guardian would not have been able to otherwise provide.

Addressing your audit evaluations of the expenses paid by Guardian Management, I have categorized your proposed disallowed expenses as follows:

1.	Management Fees on Commercial Income	\$14,720.00
2.	Professional Fees on Commercial Endeavors:	\$ 9,664.00
3.	Bookkeeping Fees – Laura Croke:	\$ 8,100.00
4.	Filing Cabinets, Supplies, Etc.	\$ 860.00
5.	Office Supplies, Computer Programs & Misc.	\$ 1,702.00
6.	Professional Fees – Proposed Sale	<u>\$20,861.00</u>
	sub total	\$55,907.00
7.	Unsupported Invoices	\$ 2,042.00
	Total	<u>\$57,949.00</u>

With regard to categories 1 and 2, totaling \$24,384.00, assuming a strict construction and reading of the relevant governing documents, I have already stated that we agree with you that these expenses have been improperly paid with residential income and we have agreed that the partnership should reimburse the project's residential operations if HUD concludes that is needed. We understand that Guardian has pointed out the net benefit to the residential side of the project from the property taxes contributed by the commercial side, which the residential side would otherwise have to pay the entirety. If HUD agrees that should offset any deficiency related to the payment of management fees for commercial space, we ask that the audit recommendations reflect that.

HUD has heard from Guardian Management concerning how payment of the commercial space management fees happened. It occurred as the result of an accounting software error, following conversion to new software. It was not intentional on the part of anyone, it was not noted by anyone during the reconciliation and auditing process, and we believe that any conclusions by HUD on this topic should not affect the standing of either the owners or Guardian Management.

With respect to categories 3, 4, 5 and 7, totaling \$12,704.00, we have respectfully disagreed concerning whether these were proper expenses of the project. For over 23 years, I have maintained records and files for the project's residential and commercial activities, including but not limited to: (1) original submission documents for Uptown Tower, as well as the continuous and unbroken record of HUD approvals dating back to August 1979; (2) plans (including "as built" and original architectural drawings); (3) engineering calculations and re-calculations (including seismic calculations); (4) permits; (5) building code books in effect at the time of proposal and construction; (6) construction invoices; (7) major repair documentation; (8) insurance policies during construction; (9) annual audits (financial for all years and physical for many years); and (10) financial, repair and replacement projections; among other things. Many of these records are invaluable and could not be duplicated today. No one else has these records. Someday they will be needed, e. g. for installation of a second elevator; upgrade of electrical, plumbing or mechanical systems; or a major calamity. If an earthquake or a fire were to damage the building and there were questions as to whether or not the structure met code at the time of construction; or, whether or not it was inspected as required; or, whether the insurance policy that was in effect at that time provided coverage for repair of the damage, only the records and files I have maintained would provide the answers. Guardian Management personnel have confirmed this point. And, as your auditing staff know, many documents were supplied to your agency for purposes of your audit, which records came from my files.

There has been a benefit to the project, both residential and commercial, for the safe and secure maintenance of these records, and a cost to me, which has never been reimbursed. EZ Self Storage in Greeley, Colorado, quoted me a fee of \$35 per month as a minimum charge for space with minimal security and no fire protection. Commercial storage of documents is far more expensive. For example, DocuVault in Seattle is a secure facility with video surveillance, fire sprinkler system, everything stored on racks, card key access and background checks of all employees, etc. Their minimum charge is \$60 per month. Calculating from July 19, 1983 to the end of 2003 is 245 months. At the minimum quote of \$35 per month from EZ Storage, the storage cost alone equals \$8,575.00. At the minimum quote of \$60 per month from DocuVault, the storage cost alone equals \$14,700.00.

These estimated values of storage of relevant files and documents do not include the time I have spent organizing, filing, packaging and transporting records. To ensure ready access and to maintain strict control, I have kept these records with me wherever I have lived, as I do today. The records are maintained in the fire sprinkler protected basement in our home in the file cabinets and folders for which reimbursement was requested and received; the plans and original drawings are in large boxes I purchased for their

safekeeping; and the electronic records and projections have been kept on four different computers that I have saved (none of which were paid for by the project) so that early records in DOS format, and later records in Microsoft Windows related formats, can be recovered and printed when needed. In recent years I asked for and received reimbursement for a computer and some operating software to offset the costs I incurred in the first 15 years of the project, during which 15 years I never once received any reimbursement for those costs to me.

Although I understand my approximation of costs over time, and related invoices for reimbursement has invited your questions, those reimbursements are barely sufficient to reimburse me for the many expenses I incurred over the years, particularly the 13 plus years when this project struggled just to pay "accrued" dividends, yet my partners and I were responsible to keep it going and thereby providing housing to those who needed it. It has never been my intention to improperly enhance my return, or however one would categorize it.

Given the time and effort of storage and the cost of storage itself, I believe the full \$12,704.00 of invoice reimbursement costs should be allowed with a provision that future requests for reimbursements for costs of this nature be first submitted to OHCSO for approval prior to submission to Guardian for payment.

Please be advised that Laura Croke has stopped charging the residential operations for Bookkeeping Fees, as noted in the project's annual financial audit for the year ended December 31, 2003.

In my view, the fact that my efforts and contributions to the project have occurred off the premises no more invalidates the value of these contributions to the project or its residents than the fact that the efforts of Guardian, OHCSO or HUD were performed offsite.

Finally, with respect to category 6, I take issue with the disallowance of Professional Fees, totaling \$20,861.00, related to the proposed sale of Uptown Tower. OHCSO would never have allowed the parties, seller and purchaser, to proceed with the attempted sale if we had not first agreed to extend the current use as low income housing for (effectively) the useful life of the facilities, instead of having such use terminate in November 2013, about 9.75 years from now.

To support this position, I direct you to page 35 of the Housing Council Packet, of the Oregon State Housing Council Meeting, held on February 28, 2003 at 9:00a.m., at which meeting the recommendation for approval of the sale of Uptown Tower was unanimous. The report states: "For Uptown Tower, the Department has determined that the mitigating factors in favor of using the Market Value with Favorable Financing are: (1) The preservation of this project in maintaining, and extending, the affordability for 71 elderly households." The second to last paragraph reads: "Not only is the preservation of Uptown important to the Department in maintaining affordable housing, the Portland Development Commission supports the project. In a letter of support provided by the Portland Development Commission, they indicate that "the preservation of these 72 units,

which serve elderly households earning at or below 30% of area median income, would only enhance the city's efforts in maintaining affordable housing." It is significant that the Department stated for the record that "preservation of use" was the number one priority.

If the use were extended as contemplated by the agreements, there would be no eviction notices to the residents; no relocation costs to the residents and to the public sector; no disruption to the community of Uptown Tower and the friendships established there; and there would be opportunity beyond 2013 for a significant number of needy elderly persons to have clean, safe and enjoyable shelter that they may well not have otherwise.

The sale, by any acceptable measure used in financial circles, would not create additional value for the present owners, but would only recognize current value as determined by an unrelated third party transaction. To contend that only the transaction participants will benefit is unrealistic. OHCS D believed in the benefit to the current and future residential communities because it was willing to forego its share of future "trustee sweep" - a right OHCS D has as set forth in HUD's Notice H 03-28 issued December 1, 2003; and, as set forth in 24 CFR Part 891 (published via the Federal Register, Monday, December 1, 2003). This "trustee sweep" amounts to significant revenue to both HUD and OHCS D each month. If OHCS D did not believe there would be sufficient benefit to the residential communities at Uptown Tower now and in the future as a result of the proposed transaction; and, if HUD didn't recognize the potential for preserving existing low income housing in the public sector by extension of the use, why would OHCS D agree to give up the "trustee sweep" and why would HUD go to the cost and effort of publishing the rules set forth in the Notice and Federal Register?

So, if there is benefit to the residential communities by a possible extension of use, the costs to pursue that eventuality are legitimate costs of the project, including the residential portion. I am open to allocating the costs between commercial and residential on the percentage basis determined in the "equity calculation" as a fair sharing of these costs between the 2 elements - 95.4% residential and 4.6% commercial.

A sale before November 2013 will only be approved if current use - low income elderly housing - is extended for a significant period of time. How could that not be construed as a direct benefit to the residential segment of the project? The effort may not be successful and it does bear costs to pursue, but it is a legitimate effort on behalf of the owners and the residents, present and future. Consequently, these Professional Fees are legitimate costs of the project, in my view.

It was never my intent to seek additional benefit from the project as a result of the reimbursement of costs submitted to Guardian. Any or all of those named above, most of whom I've never met face to face, will confirm my honesty, my sense of fairness and my dedication to the successful operation and management of the project. I understand that all of the Guardian Management personnel present during the exit conference did so confirm. And I am sure that you learned about my history of open dealing with OHCS D over the years, including their complete knowledge of how we were handling the

management fees. I have never sought to hold back any information from OHCSO relevant to this project, which should be more than clear by now.

Although we do not agree on some of the audit report issues, we respect the HUD audit process and HUD's goals of assuring safe and affordable housing for low income tenants. As my counsel indicated in the exit conference, we expect to fully resolve your office's audit concerns and recommendations, if they are accepted by HUD project managers. In light of the fact that any errors were not intentional, and the relative significance of the audit findings in light of our more than 20 year history of providing affordable housing in Portland (much of which was subsidized by my partners and I), it will be very important to us, before we determine whether or not to acquiesce in any HUD audit findings, that HUD confirm that audit findings should not impact our standing with HUD.

Concerning future reimbursements for my expenses, I am happy to volunteer, as my counsel did during the exit conference, that such expenses will be submitted to OHCSO before I seek reimbursement from Guardian Management. In light of that proposal, we recommend HUD accept Guardian's proposal, made during the exit conference, to submit copies of the already regularly generated monthly project reporting, so Guardian will not have unnecessary additional reporting obligations.

Thank you for providing us with opportunity to comment on the audit report draft.

Very truly yours,



Thomas B. Croke, III
General Partner

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The Honorable Joseph Lieberman, Ranking Member, Committee on Government Affairs

The Honorable Susan M. Collins, Chairman, Committee on Government Affairs

The Honorable Thomas M Davis, III, Chairman, Committee on Government Reform

The Honorable Henry A. Waxman, Ranking Member, Committee on Government Reform

Elizabeth Meyer, Senior Advisor, Subcommittee on Criminal Justice

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Kay Gibbs, Committee on Financial Services

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Steve Redburn, Chief Housing Branch, Office of Management and Budget

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