

**FREE RECORDING IN  
ACCORDANCE WITH CALIFORNIA  
GOVERNMENT CODE SECTION  
27383 and 27388.1.**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

State of California  
Department of Housing and  
Community Development  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
Veterans Housing &  
Homelessness Prevention  
(VHHP) Program  
\_\_ -VHHP - \_\_

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
VETERANS HOUSING AND HOMELESSNESS PREVENTION (VHHP) PROGRAM**

**NOFA of December 2016**

**REGULATORY AGREEMENT**

LOAN NUMBER \_\_ -VHHP- \_\_

This Regulatory Agreement (the "**Agreement**") dated \_\_\_\_\_, 20\_\_, for reference purposes only, is made and entered into by and between \_\_\_\_\_, a \_\_\_\_\_ (the "**Borrower**"), and the Department of Housing and Community Development, a public agency of the State of California (the "**Department**").

**RECITALS:**

- A. Borrower has applied to the Department for a loan (the "**Loan**") for the purpose of assisting in the acquisition, construction, rehabilitation and/or preservation by Borrower of that certain [affordable multifamily supportive housing, affordable transitional housing, affordable rental housing] and/or related facilities for veterans and their families located at \_\_\_\_\_, California, consisting of a total of \_\_\_\_\_ rental units (the "**Development**"), of

which \_\_\_\_\_ Assisted Units are to be occupied by Eligible Households as provided in this Agreement. The Development is located on that certain real property located in \_\_\_\_\_ County, California more particularly described in Exhibit A hereto (the "**Property**"). The Department has conditionally agreed to provide the Loan under the Veterans Housing and Homelessness Prevention Program authorized by the Veterans Housing and Homelessness Prevention Act set forth in Military and Veteran's Code Division 4, Chapter 6, Article 3.2, commencing with Section 987.001 (the "**Program**") and the Veterans Housing and Homelessness Prevention (VHHP) Program Guidelines dated February 14, 2017 (the "**Guidelines**") applicable thereto, all as amended and in effect from time to time. The obligations imposed on the Borrower by the Program, the Guidelines, this Agreement and the Department's policies and procedures, as the same may be amended and in effect from time to time, are collectively referred to herein as the "**Program Requirements.**"

- B. As required by the Program, Borrower and the Department have entered into that Standard Agreement, numbered \_\_\_-VHHP\_\_\_\_\_, and dated \_\_\_\_\_, 20\_\_\_, regarding the Development and governing the terms of the Loan (the "**Standard Agreement**").
- C. Also as required by the Program and in addition to the Standard Agreement, Borrower has executed or will execute each of the following documents in form approved by the Department:
1. A [**Limited**] Recourse Promissory Note Secured by Deed of Trust of even date herewith evidencing the Loan specifying, inter alia, the principal amount thereof, the interest accruing thereon and the terms of repayment thereof (the "**Note**").
  2. A Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith securing the Note and naming the Department as beneficiary and the Borrower as trustor, and recorded or to be recorded against the Property (the "**Deed of Trust**"). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department.
  3. Such other documents and instruments as the Department may reasonably require.
- D. The Standard Agreement, the Note, the Deed of Trust, this Agreement and such other documents and instruments as are reasonably required by the Department, as the same may be hereafter amended, extended or supplemented, are collectively referred to herein as the "**Loan Documents**".

E. As further consideration for the Loan and in furtherance of the purposes of the Program, Borrower has agreed to enter into this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program Requirements.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.
2. Property. Borrower is the owner in fee of the Property and all improvements now and hereafter located thereon, including without limitation, the Development.

**[Or substitute one of the following & modify, as appropriate.]**

Property. Borrower is the owner of: (A) a ground leasehold interest in the Property pursuant to that certain Ground Lease dated as of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, as ground lessor, and Borrower, as ground lessee, a recorded memorandum of which was recorded in the Official Records of \_\_\_\_\_ County, California on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_, as amended and supplemented by that certain Lease Rider of even date herewith executed by the ground lessor, Borrower and the Department to be recorded in such Official Records immediately prior to the recordation of this Agreement, (such ground lease, as may from time to time be further amended, modified, extended, replaced or assigned, being the “**Ground Lease**”), and (B) the fee interest in all improvements now or hereafter located on the Property, including without limitation, the Development.

Property. The Property is owned in fee by \_\_\_\_\_ a \_\_\_\_\_ (the “**Public Agency**”). Borrower has an agreement with the Public Agency for construction and operation of the improvements located on the Property.

3. Definitions. Unless the context requires otherwise or the terms are expressly defined herein, all initially capitalized terms used in this Agreement shall be governed by the definitions set forth in the Program statutes and Section 101 of the Guidelines, as applicable, as the same may hereafter be modified, amended or supplemented.

The following defined terms shall have the respective meanings assigned to them in this paragraph unless the context in which they are used clearly requires otherwise:

- a. **“Commercial Space”** shall have the meaning set forth in 25 CCR Section 8301(c).
- b. **“Eligible Households”** shall mean households that qualify under the Program Requirements as approved by the Department and specified in this Agreement or the Management Plan.
- c. **“Fiscal Integrity”** shall have the meaning set forth in 25 CCR Section 7301(g)
- d. **“Fiscal Year”** for the Development shall mean the annual period commencing on \_\_\_\_\_ and concluding on \_\_\_\_\_ each year.
- e. **“Initial Operating Year”** shall mean the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed Development and ending on the last day of that Fiscal Year.
- f. **“Net Cash Flow”** shall mean all annual Operating Income of the Development less the amounts paid therefrom as allowed in clauses (1) through (8) of subparagraph b. of paragraph 20 hereof.
- g. **“Operating Expenses”** shall have the meaning set forth in Section 101(m) of the Guidelines.
- h. **“Operating Income”** shall have the meaning set forth in 25 CCR Section 8301(k)
- i. **“Restricted Unit”** shall have the meaning set forth in 25 CCR Section 8301(p).
- j. **“Supportive Housing Units”** shall mean Assisted Units offered as permanent housing linked to supportive services where occupancy is restricted to eligible households that include Veterans who are Homeless, Homeless with a Disability or Chronically Homeless, as approved by the Department and specified in this Agreement. **“Supportive Housing”** has the meaning set forth in Section 101(r) of the Guidelines.

- k. **“Transitional Housing Units”** shall mean Assisted Units: (1) which are restricted under the Program in buildings configured as rental housing development, but operated under the program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future time, which shall be no less than six (6) months; and (2) where occupancy is restricted to eligible households that include Veterans who are Homeless, Homeless with a Disability or Chronically Homeless, as approved by the Department and specified in this Agreement. **“Transitional Housing”** has the meaning set forth in Section 101(t) of the Guidelines.
- l. **“Sponsor”** shall mean {  }.
- m. **“25 CCR”** means California Code of Regulations, Title 25, Division 1, Chapter 7.

To the extent the definitions set forth above, or in the Program statutes, in Section 101 of the Guidelines, in the Uniform Multifamily Regulations (commencing at 25 CCR Section 8300, *et seq.*) or in any other laws, statutes or regulations referenced in or incorporated by reference by such Program statutes or the Guidelines are hereafter amended or changed in a manner which affects the foregoing definitions, the same shall be deemed modified, amended or supplemented accordingly.

- 4. Compliance with Program Requirements / Loan Documents. The Borrower agrees that at all times its actions regarding the Development, the Property and the use of funds provided under the Standard Agreement shall be in conformity with all Program Requirements, including the requirements of this Agreement, and with the other Loan Documents. Borrower shall at all times comply with the Program Requirements and the Loan Documents, and Borrower acknowledges that it is familiar with and understands the Program Requirements and the Loan Documents and has substance and effect thereof explained to it by its independent legal counsel and other professional advisors to the extent necessary to enable the Borrower to fully understand and comply with the same.
- 5. Term of Agreement. This Agreement shall commence on the date set forth above and remain in full force and effect and shall apply to the Development through and including the fifty-fifth (55<sup>th</sup>) anniversary of the date of recordation of this Agreement pursuant to paragraph 33 hereof regardless of any prepayment of the Loan or sale, assignment, transfer, conveyance or other alienation of the Property or the Development, or any portion thereof or interest therein, unless expressly terminated earlier by the Department in writing or extended by the mutual written consent of the parties.

6. Assisted Units, Restricted Units, Supportive Housing Units or Transitional Housing Units.
- a. For the full term of this Agreement, Borrower shall provide within the Development, the number, type and size of Assisted Units set forth in Exhibit B, Part I, attached hereto and incorporated herein.
  - b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
  - c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Borrower may change the designation of a particular Unit from Assisted Unit to non-Assisted Unit, and vice versa, over time.
  - d. Borrower shall comply with all the requirements for Supportive Housing Units, supportive services and Transitional Housing Units, if any, as set forth in Exhibit B, Part II.
7. Tenant Selection Procedures. Borrower shall rent Assisted Units in the Development to Eligible Households in accordance with the Management Plan developed by the Borrower and approved by and on file with the Department (the “**Management Plan**”) pursuant to Paragraph 13 of this Agreement. The Management Plan shall:
- a. detail actions to be taken by Borrower to affirmatively market all Units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor;
  - b. specify reasonable criteria for determination of tenant eligibility, including household size;
  - c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Department;
  - d. require eligible applicants to be notified of eligibility and, based on turnover history, when a Unit may be available;
  - e. require ineligible applicants to be notified of the reason for their ineligibility;

- f. specify procedures through which applicants deemed to be ineligible may appeal this determination;
  - g. require maintenance of a waiting list of eligible applicants;
  - h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations;
  - i. be made available to prospective tenants upon request; and
  - j. specify procedures for obtaining statistical information for identifying the status of tenants as either elderly or veteran.
8. Non-Discrimination. Borrower shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920 including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information., or any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing. The restriction of housing to veteran and specific populations contemplated by the Program Requirements is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law, and only with prior approval of the selection criteria by the Department.
9. Rental Agreement and Occupancy Procedures.
- a. Each Eligible Household selected to occupy an Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Borrower, the form of which shall be subject to approval by the Department and be consistent with the Program Requirements. Such rental agreement shall, among other things, provide for good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.
  - b. The Borrower may establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the Program Requirements and shall not distinguish or discriminate between Restricted Units and non-Restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall

become effective no less than thirty (30) days after giving written notice thereof to each household in the Development.

10. Assisted Unit Rents.

- a. For the Initial Operating Year, Borrower shall charge Rents for the Assisted Units in the Development in accordance with Exhibit B hereto.
- b. After the Initial Operating Year, Rents for Assisted Units may be adjusted no more often than every twelve (12) months. The amount and method of adjustment for Assisted Units shall be in accordance with TCAC.
- c. Notwithstanding the previous subparagraph, Rents for Assisted Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the Units continue to receive the rental assistance.
- d. Units in the Development covered by project-based rental assistance, if any, are described in Exhibit C. For such Units:
  - (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and
  - (2) If the project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. In addition, Rents for Units designated in Exhibit C as restricted to households with incomes not exceeding a specified percentage of state median income shall not in any event be increased to an amount in excess of thirty percent (30%) of fifty percent (50%) of area median income, adjusted by bedroom number in accordance with the requirements of the LIHTC.

11. Rents for non-Assisted Units and Commercial Space. Borrower shall establish and implement a rent structure and operations budget for non-Assisted Units and/or Commercial Space, as applicable, which ensures the Fiscal Integrity of the Development. Rent for non-Assisted Units shall be in compliance with Exhibit B hereto. Borrower shall estimate all income and expenses attributable to the non-Assisted Units and, if applicable, Commercial Space, in the annual operating budget described in paragraph 15 herein, and shall report all income



and expenses attributable to non-Assisted Units and Commercial Space in the annual report described in paragraph 17 herein.

12. Certification of Tenant Income and Household Size.

- a. The income and household size of all households occupying Assisted Units shall be certified by the Borrower prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the low income housing tax credit program ("LIHTC").
- b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the income level applicable to new tenants for respective Assisted Units, and, to the extent a rent increase for the household is permitted by statutes and regulations governing the LIHTC, the Borrower shall:
  - (1) redesignate the tenant's Unit as a Unit at the higher income level;
  - (2) increase the tenant's Rent to the level applicable to Units at the higher income level; and
  - (3) designate the next available comparable Unit as a Unit at the income level originally applicable to the household until the Unit mix required by this Agreement is achieved. A Unit shall be deemed "comparable" if it has the same number of bedrooms as the original Unit.

For example, in a Development where the income limits utilized to qualify new tenants are 20%, 40% and 50% of Area Median Income, if the income of a household occupying a Unit designated as a 20% Unit increases to 48% of Area Median Income, the Sponsor must redesignate the household's Unit as a Unit at the 50% level, increase the tenant's Rent to the level applicable to Units at the 50% level, and designate the next available comparable Unit as a Unit at the 20% income level.

- c. If at the time of recertification a tenant household's income exceeds the income limit designated for the household's Unit, but does not exceed the limit for a higher income level applicable to new tenants, the Sponsor may increase the household's Rent to an amount not exceeding the Rent limit applicable to the household's income level at the time of recertification.

For purposes of this subsection, income levels shall not be limited to those applicable to new tenants, and shall consist of five percent increments of Area Median Income. Continuing with the example described in the subsection (b), the income levels utilized to establish Rent limits upon recertification would be 20%, 25%, 30%, 35%, etc. A household occupying a Unit in this Development with a 20% limit whose income, upon recertification, had increased to 32% of Area Median Income could have their Rent increased to the Rent level applicable to the 35% income level.

13. Management and Maintenance.

- a. Borrower is responsible for all maintenance, repair, operational and management functions related to the Property and the Development, including without limitation, the following: selection of tenants; recertification of family income and size; evictions; collection of Rents; routine and extraordinary repairs; and replacement of capital items. Borrower shall maintain all residential Units, common areas and Commercial Space in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan described herein.
- b. Borrower is responsible for operating the Development in accordance with the Management Plan. All amendments to this plan require prior written approval of the Department.
- c. Borrower may, with the prior written approval of the Department, contract with a management agent for the performance of the services or duties required in subparagraphs a. and b. of this Paragraph 13. However, such an arrangement does not relieve the Borrower of responsibility for the full, proper and timely performance of these duties. Such contract shall be subject to prior written approval by the Department and shall contain a provision allowing the Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Department, and notice to the Borrower thereof, that the contractor performing the functions required in subparagraphs a. and b. has failed to operate the Development in accordance with this Agreement and the approved Management Plan, the Borrower shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Department written approval, for continuing performance of the functions required in subparagraphs a. and b.

- d. Upon a determination by the Department, and notice to the Borrower thereof, that the Borrower has failed to operate the Development in accordance with this Agreement, the Department may require the Borrower to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Department deems necessary to ensure performance of the functions required in subparagraphs a. and b.
- e. Borrower shall operate, maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.

14. Hazard and Liability Insurance and Condemnation.

a. Insurance

(1) The Borrower shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Department, all at Borrower's sole cost and expense. Without limiting the generality of the preceding sentence, Borrower shall at all times obtain and maintain all hazard, liability and other insurance required by the Deed of Trust. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Department.

(2) All policies of insurance contemplated herein shall be in such form and amount, and shall be issued by such companies admitted to do business in California with such ratings, as reasonably acceptable to Department in writing, shall contain the "standard non-contributory mortgagee clause" and the "standard Departments' loss payable clause," or their equivalents, in favor of Department, and shall provide that the proceeds thereof shall be payable to Department to the extent of its interest. Department shall be listed as a loss payee and/or an additional insured, as applicable, on all such policies; and Department shall be furnished with a certificate of insurance for each policy required to be provided by Borrower hereunder, which policy shall provide that it shall not be modified or canceled without thirty (30) days' prior written notice to Department. Borrower shall furnish Department with receipts for the payment of premiums on all such insurance policies or other evidence of such coverage reasonably satisfactory to Department. If Borrower does not deposit with Department a certificate of insurance with evidence of payment of premium thereon at least thirty (30) days prior to the expiration of any expiring policy or otherwise fails to procure or maintain any

insurance coverage described herein, then Department may, but shall not be obligated to, procure such insurance at Borrower's expense; and Borrower shall pay or reimburse Department, as applicable, for the premiums and other expenses incurred by Department in connection therewith promptly upon demand, together with interest thereon at a rate equal to the lesser of (i) ten percent (10%) annum compounded annually or (ii) the maximum rate permitted by law from the date such costs are incurred by Department until paid. Department shall not, by the fact of approving, disapproving, accepting, obtaining or failing to obtain any such insurance, incur any liability for the form or legal or economic sufficiency of any insurance contracts, solvency of insurers, or payment of losses, or any other matter whatsoever; and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Purchase of insurance by the Department shall not be considered a waiver by Department of any default, right or remedy under this Agreement or any of the other Loan Documents.

(3) From time to time during the term hereof, but not more frequently than once every two (2) years, Department shall have the right, upon written notice to Borrower, to request an increase in the dollar amount(s) of any insurance coverage(s) or a change in types of coverages being maintained by Borrower pursuant hereto which Department in its reasonable discretion deems necessary; and Borrower shall, at its sole cost and expense, within thirty (30) calendar days of such request by Department obtain such increased, new or additional coverage and provide Department with written certification thereof.

- b. Application of Insurance / Condemnation Proceeds. In the event of any fire or other casualty to the Property or the Development or any condemnation, eminent domain or taking proceedings (or proceedings in lieu thereof) (each a "**Taking**") resulting in the taking of all or any portion thereof, Borrower shall have the right to rebuild the Development, and to use all available insurance or condemnation proceeds paid or awarded in connection therewith (collectively, the "**Awards**") to pay for such rebuilding, provided that, as determined by the Department in its sole discretion, all of the following conditions are satisfied: (i) such proceeds are sufficient to keep the Loan in balance and rebuild the Development in a manner that provides adequate security to the Department for repayment of the Loan or if such proceeds are insufficient, then Borrower shall have funded any deficiency, (ii) the Department shall have the right to approve all plans and specifications for any major rebuilding and the right to supervise and approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or

similar arrangement, and (c) no material breach or default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Development and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Department for repayment of the remaining balance of the Loan, subject to the same conditions set forth in the immediately preceding sentence. Otherwise, the Department shall be entitled to apply all such Awards towards costs incurred in securing the same and to the repayment of the Loan.

The Department shall be entitled to actively participate in all negotiations, agreements, settlements, compromises and adjustments of any and all Awards and other claims contemplated above with respect to any casualty or Taking, including all claims with respect to all insurance policies provided hereunder or under the Deed of Trust and all Takings, and Department may deduct and retain from the Awards all expenses incurred by it in connection with any such settlement or adjustment, together with interest thereon as provided herein. Borrower shall not negotiate, agree to, settle, adjust, compromise or finalize any Award, or any other rights, claims, circumstances or facts underlying the same, without the express prior written consent of Department.

15. Annual Operating Budget.

- a. For the Initial Operating Year, Borrower shall operate the Development and expend Operating Income in accordance with the initial operating budget approved by and on file with the Department. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year.
- b. No later than sixty (60) days prior to the beginning of each subsequent Fiscal Year of the Development, the Borrower shall submit to the Department a proposed annual operating budget on a form provided by the Department. The proposed annual operating budget shall set forth the Borrower's estimate of Operating Income, Operating Expenses and debt service for the upcoming year, amounts payable to reserves, and proposed Rent adjustments.
- c. If the Development contains either non-Assisted Units or Commercial Space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between Assisted Units, Restricted Units, non-Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Department

written approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Development.

16. Periodic Reports. During the Initial Operating Year, Borrower shall submit to the Department such periodic reports as deemed necessary by the Department to monitor the Borrower's compliance with this Agreement. The reports may include, but are not limited to:
- a. an income and expense statement for the reporting period;
  - b. a summary of the occupancy of the Development, indicating the number and type of Units reserved for Eligible Households, the number of vacant Units, and the number of evictions completed or in process;
  - c. a report on maintenance or other issues anticipated to impact the current budget needs of the Development;
  - d. information on the status of waiting lists for the Assisted Units, including the number of households on lists for different Unit sizes and by income group; and
  - e. other information as required by the Department to accurately monitor Borrower's performance hereunder.

If, after the Initial Operating Year, the Department determines that such periodic reports continue to be necessary, the Department shall so notify the Borrower as part of the annual budget approval process. Upon such notification, Borrower shall submit the requested reports.

17. Annual Report and Audit.
- a. Borrower shall file an annual report with the Department no later than ninety (90) days after the end of each Fiscal Year for the Development. The report shall be in such form and contain such information as required by the Department.
  - b. As part of the annual report, the Borrower shall submit an audit of the Development prepared by an independent certified public accountant in accordance with Department audit requirements, as specified in the Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing", published June 2013, as periodically updated.

- c. The report must specifically identify the number of units rented to the elderly. The report must also specifically identify the number of units rented to military veterans.
18. Required Reserves. Borrower shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Borrower, earn interest, and, unless otherwise approved in writing by the Department, be insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. Withdrawals from the reserve accounts shall require prior written approval of the Department. Should the Department fail to take action on a request for a withdrawal from a reserve account within thirty (30) days of documented receipt of the request, that request will be deemed approved.
- a. Replacement Reserve Account. Commencing no later than the date funds are disbursed pursuant to the Loan Documents, Borrower shall establish a segregated replacement reserve account. Borrower shall make annual deposits from Operating Income to the replacement reserve account in the amount set forth in Exhibit C, unless the Department determines, in its sole discretion, that more frequent deposits are required. Borrower shall also deposit any Development funds designated for replacement reserves into this account, including those identified in Exhibit C. The amount of the minimum annual deposit may be adjusted, as determined by the Department, in its sole discretion, based on the results of reserve studies, performed by an independent third party at the Borrower's expense as requested by the Department or as based on other reliable indicators of the need for reserve funds over time.
- b. Operating Reserve Account. Borrower shall establish an operating reserve account or sub-account within the Development's general operating account no later than sixty (60) days from the date of recordation of this Agreement. Borrower shall fund the operating reserve account with an initial deposit in an amount as specified in Exhibit C, and through monthly deposits from Operating Income in amounts as specified in Exhibit C or in approved annual operating budgets. Borrower shall fully replace any withdrawals from the operating reserve account using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.
- c. Other Reserve Accounts. Borrower certifies that Exhibit C hereto contains a complete listing of all reserve accounts established or to be established

for the Development. All withdrawals from these accounts shall require prior written Department approval, except as specifically noted in Exhibit C.

19. Accounting Records. In a manner subject to Department approval, Borrower shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. All records and books relating to this system shall be retained for not less than seven (7) years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the Department or its representative.
  
20. Use of Income from Operations.
  - a. The Borrower, or Borrower's management agent, shall promptly deposit all Operating Income in a segregated account established in the Borrower's name exclusively for the Development and insured by an agency of the federal government or other comparable federal insurance program.
  
  - b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement and the approved annual operating budget, and Operating Income shall be disbursed, applied, or reserved and set aside, to the extent available, for payment when due of the following costs and expenses, in the following priority:
    - (1) salaries, wages, and any other compensation due and payable to the employees or agents of the Borrower employed on site in connection with the maintenance, administration or operation of the residential portion of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;
  
    - (2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums, all to the extent properly and fairly allocable to the residential portion of the Development and Property;
  
    - (3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, including the Loan, which are secured by liens on the Property, which have been



approved by the Department, payments on which are to be made prior to the determination of Net Cash Flow, as specified in Exhibit C, hereto;

- (4) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the Department, all to the extent properly and fairly allocable to the residential portion of the Development and Property;
- (5) deposits to required reserve accounts;
- (6) deferred Developer Fee;
- (7) asset management, partnership management and similar fees, to the extent such fees are specified under the terms of financing from a local public entity and approved by the Department, or if there is no local public entity financing, asset management, partnership management and similar fees, in an amount not to exceed \$12,000 per year and any amount not paid in one year may not be carried over into future years.
- (8) Distributions, in accordance with paragraph 21 of this Agreement.

The withdrawals permitted under subparagraph 20 (b) (6), (7) and (8) shall also be subject to the restrictions and obligations of paragraph 18 (b) above.

The Borrower may depart from the foregoing priorities of payment only upon the express written approval of the Department. Net Cash Flow shall be distributed in accordance with paragraph 22 hereto.

## 21. Distributions.

- a. Borrower shall be limited to annual Distributions equal to fifty-percent (50%) of the annual Operating Income remaining after payment of the items allowed in clauses (1) through (7) of subparagraph b. of paragraph 20 above. If the Development generates insufficient cash flow to permit payment of Distributions in a particular year, Distributions in future years shall not be accrued, or increased to cover the lack of Distributions in prior years.

- b. Borrower may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future distributions shall not reduce the otherwise permitted Distributions in those subsequent years.
- c. Distributions shall be permitted for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Borrower submits a complete annual report and operating budget and the Department determines that the report and budget demonstrate compliance with all Program Requirements.
- d. No Distributions, deferred Developer Fee, asset management fees, partnership management fee and similar fees shall be made in the following circumstances:
  - (1) when written notice of default has been issued by any entity, including the Department, with an equitable or beneficial interest in the Development or the Property;
  - (2) when the Department determines that the Borrower or Borrower's management agent has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Development or the Property;
  - (3) if all currently required debt service, including mandatory payments on the Loan, and Operating Expenses have not been paid; or
  - (4) if the replacement reserve account, operating reserve account or any other required reserve account is not fully funded pursuant to this Agreement.

22. Use of Net Cash Flow.

Net Cash Flow shall be applied to payment of interest, principal, impound fees and charges, if any, on loans which are secured by liens on the Property, including the Loan, which have been approved by the Department and which are to be paid from Net Cash Flow in the amounts, proportion and in accordance with the terms specified in Exhibit C hereto. Upon payment in full of the loans payable from Net Cash Flow as set forth in Exhibit C, all Net Cash Flow shall, at the elections and sole discretion of the Department, be paid to the Department as excess cash, used to reduce rents in Assisted Units, and/or used for other purposes related to the Development as approved by the Department in its sole discretion.

23. Department Review and Inspections.

- a. At any time during the term of this Agreement, the Department or its designee may enter and inspect the physical premises and inspect all accounting records pertaining to the construction, development or operation of the entire Development or Property. Upon request by the Department, the Borrower shall notify occupants of upcoming inspections of their Units in accordance with state law.
- b. In addition to the annual audit required in paragraph 17 above, and at the Department's request, the Borrower shall provide, at Borrower's expense, a special audit of the Development certified by an independent certified public accountant. The Department may also perform or cause to be performed audits of any and all phases of the Borrower's activities related to the Development and the Property.
- c. The Department may request any other information that it deems necessary to monitor compliance with the Program Requirements and the requirements set forth in this Agreement and the Standard Agreement. The Borrower shall promptly provide such information.

24. Restrictions on Sale, Encumbrance, and Other Acts.

- a. Except with the Department's prior written approval, which may be withheld or conditioned in its sole discretion, Borrower shall not:
  - (1) sell, encumber, hypothecate, assign, refinance, pledge, convey, transfer, option, exchange or otherwise alienate in any other form, directly or indirectly, by operation of law or otherwise, all or any portion of the Property or Development, or any interest therein, or enter into any agreement to do any of the foregoing;
  - (2) substantially add to, further improve, remodel, reconstruct, remove or demolish any part of the Development or the Property;
  - (3) permit the use of the Development or the Property for any purpose other than that expressly permitted by this Agreement;
  - (4) incur any liability or obligation in connection with the Property or Development, other than for current Operating Expenses, or incur any liability, charge, assessment, or obligation whatsoever that is secured in whole or in part by any interest in or lien or

encumbrance on the Property or the Development, provided that the Department may, in its sole discretion, permit refinancing or additional financing secured by the Property to the extent the Department determines necessary to maintain or improve the Development's Fiscal Integrity, or to maintain affordable Rents;

- (5) enter into any contract relating to rehabilitating or managing the Development or the Property; or
- (6) enter into any lease or ground lease with respect to all or a portion of the Development or the Property except for: (i) leases for a single individual rental Unit, and (ii) leases for any Commercial Space in the Development.

Where the Borrower (or its successor in interest) is a limited partnership, limited liability company or other entity, each of the following shall, without limiting the generality of subparagraph 24a.(1) above, constitute a prohibited indirect transfer under such subparagraph:

(A) any discharge, removal or replacement of any general partner, manager, managing member or other control person of Borrower (each a **"Control Person"**), or any transfer or encumbrance of any of their partnership, membership or other ownership interest in the Borrower;

(B) any discharge, removal or replacement of any general partner, manager, managing member or other control person of any Control Person, or any transfer or encumbrance of any of their partnership, membership or other ownership interest in the Control Person;

(C) the admission of any new or additional general partners, managers, managing members or control persons to Borrower, to any Control Person or to any person controlling or managing any Control Person; or

(D) any amendment, modification or addition to the partnership agreement, operating agreement or other organizational documents of Borrower, of any Control Person, or of any general partner, manager, managing member or other control person of any Control Person.

Notwithstanding the immediately preceding paragraph:

(1) the withdrawal or removal for cause (defined herein as gross negligence or willful misconduct) of a general partner, manager or managing member of the Borrower, and/or the replacement of such general partner, manager or managing member as a result thereof, pursuant to the terms of the Borrower's organizational documents shall not constitute a default under any of the Loan Documents and shall not accelerate the maturity of the Loan, provided that Borrower provides prior written notice to the Department of any such withdrawal or removal, the reasons therefor, and the identity and qualifications of the proposed substitute general partner, manager or managing member and that such proposed substitute partner satisfies Program Requirements and is otherwise reasonably acceptable to the Department and is selected with reasonable promptness; and

(2) transfers of limited partner or non-managing membership interests in the Borrower shall be permitted so long as such transfers are first approved in writing by Lender and do not, either individually or cumulatively when taken with prior transfers, result in a removal or alteration of the Borrower's Control Persons, or the persons controlling the same.

b. The Department may, but shall not be required to, approve a sale, transfer or conveyance of the Property or Development provided all of the following conditions are met (and may approve a refinance if conditions 1, 4 and 5 are met):

(1) The transferor Borrower (or Borrower, as applicable) is in compliance with this Agreement, or the sale, transfer, conveyance or refinance will result in the cure of any existing violations of this Agreement.

(2) The transferee Borrower agrees to assume all obligations of the transferor Borrower pursuant to this Agreement, the other Loan Documents and the Program Requirements in a manner acceptable to the Department in its sole discretion.

(3) The transferee Borrower demonstrates to the Department's satisfaction that it has the ability to own and operate the Development in full compliance with this Agreement and the Program Requirements, and the transferee Borrower is otherwise acceptable to the Department.

- (4) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the Department's security or the transferee Borrower's (or Borrower's, as applicable) ability to comply with all Program Requirements.
- (5) The Department will not approve any cash payment to, or the receipt or any other benefit or consideration (whether monetary or non-monetary) by, the selling party or any party related to or affiliated with the selling party. Without limiting the generality of the foregoing, neither the Sponsor, Borrower's Control nor any other person may cash out its equity, and neither the deferred developer fee nor any seller carry back loans shall be cashed out from the proceeds of a sale, transfer, conveyance or refinance.
- c. The Department may grant its approval for a sale, transfer, conveyance or refinance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Development or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.
- d. If Borrower or its successor in interest is a limited partnership, the execution and delivery of the purchase option and right of first refusal agreement (the "**Option/ROFR Agreement**"), if any, described in the Borrower's partnership agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder, provided that such Option/ROFR Agreement is and at all times remains subject and subordinate to this Agreement, the Deed of Trust and all other documents securing or evidencing the Loan. Any requisite consent of the Department to (a) the exercise of said Option/ROFR Agreement by the Development sponsor identified therein, and to (b) the assumption without penalty of Loan obligations by the Development sponsor and the release of Borrower from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution and delivery to the Department of an operating guaranty from the Borrower and/or any other persons required by the Department in form provided by the Department. Subject to any such consent, subordination and other requirements, the exercise of rights under such agreement shall not constitute a default under the Loan Documents or accelerate maturity of the Loan.

- e. If Borrower or its successor in interest is a limited partnership and the Option/ROFR Agreement is not exercised and the Development is sold subject to low-income housing use restrictions contained in this Agreement, the requisite consent of the Department to said sale, and to the assumption without penalty of Loan obligations by the purchaser and the release of Borrower from such obligations, shall not be unreasonably withheld, but may be conditioned upon, among other requirements, the execution of an operating guaranty from the Borrower and/or any other persons required by the Department in form provided by the Department.
- f. The Borrower agrees that if it is organized as a partnership or other legal entity, Borrower shall not, prior to the expiration of the term of this Agreement, (i) dissolve or terminate Borrower, (ii) merge Borrower with or into any other person or entity, or (iii) the convert the Borrower into a different form of entity, in each case without the prior written approval of the Department, which may be withheld or conditioned in its sole discretion.

25. Violation of Agreement by Borrower.

- a. In the event of the Borrower's breach, violation or default in the performance of any covenant, agreement or obligation of the Borrower set forth in this Agreement including, but not limited to, Borrower's covenant to perform its obligations under the Loan Documents, the Department shall give the Borrower written notice in the manner specified in paragraph 38 of this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than the applicable time to cure as stated in paragraph 26 of this Agreement, the Department may declare a default hereunder and may take any one or more of the following actions:
  - (1) Collect all Rents and income in connection with the operation of the Development or Property and use the same and the reserve funds for the operation and maintenance of the Development.
  - (2) Take possession of the Development and Property and bring any action necessary to enforce any rights of the Borrower growing out of the operation thereof, and operate the Development and Property in accordance with the terms of this Agreement until such time as the Department, in its sole discretion, shall determine that the Borrower is again in a position to operate the Development and Property in accordance with the terms of this Agreement.

- (3) Apply to any court, state or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development and Property in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Borrower that the injury to the Department arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Department, in light of the purposes and requirements of the Program, would be impossible to ascertain.
  - (4) Accelerate all amounts, including outstanding principal and interest, due under the terms of the Loan Documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note and other Loan Documents provide that the Department may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.
  - (5) Exercise such other rights and seek such other appropriate remedies as may be available under the law, this Agreement, the other Loan Documents or otherwise.
- b. In the event that the breach or violation involves charging tenants Rent or other charges in excess of those permitted under this Agreement, the Department may demand the return of such excess Rents or other charges to the affected households. If legal action is necessary to enforce the provisions of this Agreement, the Department may seek the return of such overcharges to the affected households.
  - c. All of the remedies of the Department hereunder and under the other Loan Documents are distinct, cumulative and non-exclusive, and may be exercised concurrently, independently or successively, at the Department's election in its sole discretion, to the maximum extent permitted by law. The exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Department of any one or more of its other remedies.
  - d. The tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement, and shall have such rights and remedies to enforce the Program Requirements of this Agreement as may be available to third party beneficiaries under the law.



26. Time to Cure.

- a. If a monetary event of default occurs under the terms of any of the Loan Documents (including this Agreement), prior to exercising any remedies thereunder the Department shall give Borrower written notice of such default. Borrower shall have a period of fifteen (15) calendar days after such notice is given within which to cure the default prior to exercise of remedies by the Department under the Loan Documents.
- b. If a non-monetary event of default occurs under the terms of any of the Loan Documents other than this Agreement, the applicable cure periods shall be as set forth therein. If a non-monetary event of default occurs under this Agreement, prior to exercising any remedies thereunder, the Department shall give Borrower written notice of such default. If the default is reasonably capable of being cured within fifteen (15) calendar days, as determined by the Department in its sole discretion, Borrower shall have such 15-day period to effect a cure prior to exercise of remedies by the Department under the Loan Documents. If the default is such that it is not reasonably capable of being cured within such 15-day period, as determined by the Department in its sole discretion, and if Borrower: (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is determined by the Department, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by the Department. If Borrower or its successor in interest is a limited partnership, if Borrower fails to take corrective action or to cure the default within such a specified time, the Department shall give Borrower written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner, subject to all requirements, limitation and conditions set forth elsewhere in this Agreement, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. Notwithstanding the foregoing, in no event or circumstance: (1) shall the Department be precluded from exercising any of its rights and remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default; or (2) shall the cure period exceed ninety (90) calendar days after the first notice of default is given.

27. Property Tax Exemption. To the extent the property tax exemption provisions of section 214 of the Revenue and Taxation Code are applicable to the Borrower and the Development, Borrower shall take all actions necessary to qualify the

Development for the maximum exemption from property taxes available pursuant to said section 214 of the Revenue and Taxation Code. Such actions may include, but are not limited to the following:

- a. Modify, add to or delete from the partnership agreement, operating agreement, articles of incorporation, bylaws or other organizational documents of Borrower or of Borrower's Control Person;
- b. Apply for nonprofit, tax-exempt status to the appropriate state or federal agency;
- c. Provide the certifications and assurances required by section 214 of the Revenue and Taxation Code; and
- d. Comply with the procedures and requirements imposed by local government agencies as a condition of receiving the property tax exemption.

28. Controlling Agreement.

- a. Borrower specifically agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement and the Program Requirements shall control as to the use of the funds provided under the Standard Agreement and all Operating Income from the Development.
- b. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the other Loan Documents, the terms of this Agreement shall control.

29. Assignment of Department Rights. The Department retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Borrower's duties and obligations hereunder. In addition, the Department may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

30. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties hereto.

31. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
32. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transfers, successors in interest and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Department, in its sole discretion. The term "Borrower" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary or possessory interest of Borrower in the Development.
33. Recording Agreement. This Agreement, and all amendments hereto, shall be executed by each of the parties. This Agreement, or, where approved by the Department in writing, a memorandum thereof, shall be recorded against the Property in the official records of the county in which the Development is situated, prior and superior to the lien of the Deed of Trust.
34. Indemnification and Waiver.
- a. Borrower agrees to indemnify and defend the Department and its agents, employees, officers, successors and assigns (collectively, the **"Indemnified Parties"**) against, and holds the Department and other Indemnified Parties harmless from, any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description which are threatened or asserted against, or suffered or incurred by, the Department or any other Indemnified Party as a direct or indirect consequence of: (1) the making of the Loan to the Borrower; (2) Borrower's failure to perform any obligations as and when required by this Agreement or any of the other Loan Documents; (3) any failure at any time of any of Borrower's representations or warranties to be materially true and correct; (4) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the Development, or the design, construction, management, maintenance, repair or operation thereof; (5) any failure of the Property or the Development to comply with all applicable laws, statutes, rules, regulations or orders, including without limitation the Program Requirements, now or hereafter applicable thereto, or (6) the presence of any environmental conditions at the Development or on the Property. Borrower shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date

the indebtedness arises until paid at the rate equal to the lesser of: (i) ten percent (10%) per annum, compounded annually, or (ii) the maximum rate permitted by law. Borrower's duty to indemnify, defend and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Borrower shall indemnify, defend and hold harmless the Department and the other Indemnified Parties as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department or such other Indemnified Parties, the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify, defend and hold harmless hereunder shall not extend to liability to the extent arising from the gross negligence or willful misconduct of the Department. Borrower's duty to indemnify, defend and hold harmless the Department and other Indemnified Parties shall survive the term of this Agreement, the release, repayment and/or cancellation of the Note, and the reconveyance or partial reconveyance of the Deed of Trust. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

- b. The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. The Borrower expressly waives the protections of section 1542 of the Civil Code in relation to and in connection with subparagraphs 34a. and b. above, and the waivers, releases, agreements and other undertakings by Borrower thereunder. Said section 1542 provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

- 35. No Waiver. No waiver by the Department of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder.
- 36. Captions / Construction. The captions and headings of the paragraphs used in this Agreement are inserted only as a matter of convenience and for ease of reference and in no way define, interpret, limit or describe the scope or the intent of the provisions hereof. Any rule of construction to the effect that ambiguities are to be construed against the drafting party (including, without limitation,

California Civil Code Section 1654) shall not apply in interpreting this Agreement or the other Loan Documents and are hereby waived by Borrower. Borrower acknowledges and agrees that it has been represented by its own independent legal counsel in connection with the negotiation, drafting, and execution of this Agreement and the other Loan Documents and has had the same explained to it by such counsel, and fully understands the same.

37. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
38. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.
39. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.
40. Department's Approval, Etc. Except where expressly provided otherwise, whenever this Agreement requires the approval, consent, or other determination by the Department, the Department shall act reasonably and in good faith.
41. Compliance with IRC Section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.

42. Merger. No merger shall as a result of Department acquiring any estate in, or any other lien on or interest in, the Property or the Development, or any portion thereof, unless Department expressly consents to a merger in writing.
43. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
44. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property;

Exhibit B: Unit Designation and Rent Schedule and requirements for Supportive Housing Units or Special Needs Population Units; and

Exhibit C: Special Conditions.

**[Signatures of the Borrower and the Department follow on page 25 of this Regulatory Agreement. The remainder of this page is intentionally left blank.]**

**IN WITNESS WHEREOF**, the parties hereby execute and enter into this Agreement as of the date first set forth above and agree to be bound hereby:

**DEPARTMENT:**

**Department of Housing and Community Development**, a public agency of the State of California

**Mailing Address:**

Department of Housing and Community Development  
Asset Management and Compliance  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: Closings Manager

By: \_\_\_\_\_, Closings Manager

**Principal Place of Business:**

Department of Housing and Community Development  
Asset Management and Compliance  
2020 West El Camino Avenue  
Sacramento, CA 95833

**BORROWER:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Original Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Mailing Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Principal Place of Business:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A TO REGULATORY AGREEMENT**  
**LEGAL DESCRIPTION OF THE PROPERTY**

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## EXHIBIT B TO REGULATORY AGREEMENT

### I. UNIT DESIGNATIONS AND RENT SCHEDULE

Borrower shall comply with Rent provisions of all regulatory agreements regulating the Property.

The Initial Operating Year ends at the end of the initial Fiscal Year, which is: \_\_\_\_\_, 20\_\_.

During the Initial Operating Year:

- A. Borrower shall charge Rents for Assisted Units that do not exceed Rents set forth in the schedule below; and
- B. Borrower shall charge Rents for Units other than Assisted Units in amounts not less than the amounts shown herein.

After the Initial Operating Year, Rents may be increased in accordance with paragraph 10 of this Agreement.

**Unit Mix:**

No. of Bedrooms	VHHP Assisted Units	Restricted (including Assisted)	non-Restricted Units	Total Units	Rent	Utility Allowance	Net Rent (gross – util. allw.)	Annual Net Rent	Income Limit	
									%	SMI
									%	AMI
									%	AMI
									%	SMI
									%	AMI
									%	AMI
									%	AMI
									%	SMI
									%	AMI
									%	AMI
						0				Market Rate
						0				Mngr.
Totals										

The above Unit Mix chart is based on the following:

Maximum Gross Rent is as stated in the *[insert year]* HERA *[or non-HERA]* VHHP Income, Rent and Loan Limits.

Income Limit is as stated in the *[insert year]* HERA *[or non-HERA]* VHHP Income Rent and Loan Limits.

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## II. SUPPORTIVE HOUSING UNITS REQUIREMENTS

- A. For the full term of this Agreement, Borrower shall restrict occupancy of \_\_\_\_\_ Units within the Development as Supportive Housing Units to be occupied by Eligible Households which are both (1) homeless or at risk of homelessness and (2) include a disabled adult.
- 
- B. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision:
- C. No later than ninety (90) days after the end of each Fiscal Year for the Development, Borrower shall submit for Department review and approval a report on the Supportive Housing Units households in the Development. This report shall be on a form provided by the Department, and shall include a listing of the number and type of Supportive Housing Units residents, a description of the supportive services provided to them, and such other matters as the Department may require.
-

### III. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

A. For the full term of this Agreement, Borrower shall restrict occupancy of \_\_\_\_\_ units within the Development to the following Special Needs Population or Populations:

- 

B. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision:

C. No later than ninety (90) days after the end of each Fiscal Year for the Development, Borrower shall submit for Department review and approval a report on the Special Needs Population households in the Development. This report shall be on a form provided by the Department, and shall include a listing of the number and type of Special Needs Population residents, a description of the supportive services provided to them, and such other matters as the Department may require.

-

**EXHIBIT C TO REGULATORY AGREEMENT**  
**Special Conditions**

In the event of any inconsistencies or conflicts between these Special Conditions and the terms of this Agreement or any of the other Loan Documents, the terms of these Special Conditions shall control.

Requirements for project-based Rental Assistance (paragraph 10.d).

The following Units shall be covered by project-based rent subsidies:

No. of Units	Bedrooms	Assistance Program	MHP Income Limit

Required Reserves (paragraph 18).

Replacement Reserves (paragraph 18.a).<sup>1 2</sup>

Annual Deposit Amount<sup>3</sup>: \$  
 based on .006 times \$  
 based on a physical needs assessment  
 based on other formula:  
 Initial Capitalization Amount: \$  
 Withdrawals Require Prior Department Approval: Yes

<sup>1</sup> The Department defers to the reserve requirements of the HUD capital advance grant ("Grant") for the term of the Grant, however upon termination of the Grant, reserve requirements will revert to the Department's requirements. **[use footnote only for HUD-811, delete otherwise]**

<sup>2 2</sup> The annual deposit of \$\_\_\_\_\_ will be held and controlled by CalHFA. The initial capitalized portion of \$\_\_\_\_\_ will be placed by Borrower in a separate account pursuant to the Department's regulations and requirements. When CalHFA no longer controls and actively manages the reserves, the CalHFA controlled balance will be combined with the capitalized reserve account and subject to the Department's regulations and requirements. **[alternate reserve footnote for projects jointly funded with CalHFA, delete otherwise]**

<sup>3</sup> The first annual deposit amount shall be prorated from the close of escrow to the end of the Fiscal Year (defined in section 3.a.).

Operating Reserve (paragraph 18.b).

Deposit Amount:	\$ _____ per month
Initial Capitalization Amount:	\$ _____
Date of Deposit:	[close of escrow or ____?]
Withdrawals Require Prior Department Approval?	YES

Other Reserves (paragraph 18.c). If applicable, approved transition reserve account established to prevent tenant displacement resulting from the termination of rent subsidies.

Name:	
Deposit Amount:	\$ _____ per _____
Initial Capitalization Amount:	
Withdrawals Require Prior Department Approval?	

Name:	
Deposit Amount:	\$ _____ per _____
Initial Capitalization Amount:	
Withdrawals Require Prior Department Approval?	

**[ADD language for Unfunded Transition Reserves; otherwise delete.]**

A transition reserve is not required because the LOSP grant agreement, dated \_\_\_\_\_, (“LOSP Grant Agreement” )does not provide for renewable subsidy after expiration of its fifteen-year term, which concludes on \_\_\_\_\_ (“the LOSP Grant Agreement Termination Date”). For this scenario, the Department has underwritten to ensure project feasibility after the non-renewable LOSP subsidy terminates. The Department has determined project feasibility for the 55 year period pursuant to Health and Safety Code Sections 50675(c), 50675.7(b)(3) and 50675.8(a)(7) by ensuring that after the \$\_\_\_\_\_ LOSP subsidy terminates, the project will remain feasible for the remaining duration of the Department’s loan term based on the following:

1. In order to provide sufficient transition time to prepare for the LOSP subsidy termination, Borrower will cease leasing to new LOSP-subsidized tenants effective \_\_\_\_\_, (or earlier if the Borrower receives notice that the subsidy will be terminated earlier), unless an amendment to such LOSP Grant Agreement is approved, by the City and County of San Francisco Board of Supervisors or to the appropriate devolved budget approval authority, prior to \_\_\_\_\_, to modify the LOSP Grant Agreement Termination Date in order to extend the LOSP subsidy grant term (“LOSP Amendment”). The terms and conditions of the LOSP Amendment must be acceptable to the Department and will be subject to the one-year Subsidy Termination Notice requirements of this special condition the Department’s acceptance will not be unreasonably conditioned, delayed, or denied. Notice to tenants must be given one year prior to the termination of the LOSP Grant Agreement unless such LOSP Amendment is approved prior to \_\_\_\_\_.
2. Borrower shall provide written confirmation to the Department of the status of the LOSP Grant Agreement as of \_\_\_\_\_, as follows:
  - a. If the LOSP Amendment has been approved prior to \_\_\_\_\_, Borrower shall provide written notice to the Department by the earlier of (i) within thirty (30) days of approval of the LOSP Amendment; or (ii) no later than \_\_\_\_\_; or
  - b. If the LOSP Amendment is not approved prior to \_\_\_\_\_, then the Borrower shall provide the Department with notice of the same no later than \_\_\_\_\_.
3. Unless the LOSP Amendment is approved prior to \_\_\_\_\_, units that become vacant, or are leased, on or after \_\_\_\_\_, shall be leased to new tenants at rent and income levels necessary to maintain Fiscal Integrity, as required by the Regulations and determined by the Department. In no event shall rents be increased above the 50% of AMI rent/income limits.
4. Borrower shall provide written notice to all LOSP subsidized tenants one-year prior to the LOSP Grant Agreement Termination Date, notifying the tenants that the LOSP subsidy is ending, and that rents will be increasing at the end of the LOSP Grant Agreement term (“Subsidy Termination Notice”). Borrower will ensure that all LOSP tenants acknowledge receipt of the Subsidy Termination Notice, and will provide tenants with reasonable assistance in locating alternate affordable housing (e.g. housing counseling, lists of subsidized housing, tenant meetings to disseminate information). Notwithstanding the foregoing, Borrower shall not be required to provide the

Subsidy Termination Notice if the LOSP Amendment is approved prior to \_\_\_\_\_.

5. Borrower will actively pursue a new LOSP subsidy contract, or other subsidy contract, to begin immediately after the current LOSP Grant Agreement Termination Date;
6. If Borrower is unable to have a new LOSP subsidy contract in place when the initial LOSP Grant Agreement terminates and is unable to acquire alternative funds to cover the operating deficit, then the Borrower will increase the rents, pursuant to section 10(d)(2) herein, for those previously identified LOSP units (at 20% AMI) (“LOSP Units”) to the level necessary to ensure Fiscal Integrity, as approved by the Department; and
7. The Borrower shall submit a transition plan to the Department which details how the Borrower will meet the requirements itemized above (“Transition Plan”), no later than 90 days, or earlier than 180 days, from the date of issuance of the Subsidy Termination Notice to tenants. The Transition Plan shall be subject to Department review and approval.

**[Remainder of this page is intentionally left blank.]**



Loan Payments to be made Prior to Determination of Net Cash Flow (paragraph 20b.(3)).

Department:	California Department of Housing and Community Development
Initial Principal Amount:	\$
Payment Amount (including future adjustments, caps and balloons):	\$ per year for 30 years (0.42% of principal), then reset based on HCD monitoring costs
Term to Maturity:	55 years
Lien Position:	
Interest Rate:	3% simple

Department:	
Initial Principal Amount:	\$
Payment Amount (including future adjustments, caps and balloons):	\$
Term to Maturity:	years
Lien Position:	
Interest Rate:	%

Deferred Developer Fee (paragraph 20.b.). The Department approved Deferred Developer Fee from paragraph 20.b.(6) is \$\_\_\_\_\_. The Department approved Deferred Developer Fee from paragraph 20.b.(8) is approximately \$\_\_\_\_\_.

Use of Net Cash Flow (paragraph 22 ). Net Cash Flow shall be applied towards payment of the following loans, in the percentages noted:

Department:	California Department of Housing and Community Development
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	55 years
Lien Position:	
Interest Rate:	3%

Department:	
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	Years
Lien Position:	
Interest Rate:	

**[if applicable otherwise delete]**

Limited Partner Cure Rights. Notwithstanding anything to the contrary herein, the Department hereby agrees that any cure of any default offered by the limited partners of the Borrower shall be accepted or rejected on the same basis as if cure was offered by the Borrower. Copies of all notices of default sent hereunder shall be sent to the limited partners of the Borrower at the following address:

(name of equity partner/Financial Institution  
 \_\_\_\_\_ Street or Mailing address  
 City, State Zip Code  
 Attn:

The Department's failure to provide a copy of any such notice to the limited partner(s) as provided above: (1) shall not constitute a breach or default by the Department under this Agreement or any other agreements related to the Development or the Property, and (2) shall in no event, manner or circumstance prohibit, delay, condition, limit, alter, impair or otherwise affect any of the Department's rights or remedies, or the exercise thereof, including exercising all foreclosure rights and remedies, whether with respect to the Borrower or any other persons. Nothing contained herein shall have the effect, or be deemed or interpreted as having the effect, of extending any applicable cure periods.

***[Insert additional project specific Special Conditions.]***

**ADD language for Unfunded Transition Reserves; Otherwise Delete.**

Paragraph 20(b)(7) Use of Income From Operations. Throughout the term of the LOSP Grant Agreement, the asset management fee, partnership management fee and similar fees combined (the "Asset Management Fee"), shall be \$30,900 for the first Operating Year, and may increase by up to 3.5% annually, paid from Net Cash after the payment of all Operating Expenses, debt service and all Reserve Account deposits have been made per Paragraphs 20.b.1 through 20.b.6. In the event that the Grant Agreement is terminated, the Department may, in its sole discretion, reduce the amount of the Asset Management Fee, to an amount that is not less than \$30,000 annually, with a 3.0% annual increase beginning in the year the Asset Management Fee is reset to \$30,000. No Asset Management Fee shall be paid in any year in which there is a withdrawal from the Operating Reserve, unless such Reserve has been fully replenished. Unpaid Asset Management Fees shall not accrue.

**If there is any conflict between the following special conditions and the Agreement boilerplate, the language conflict will be interpreted in favor of the following special conditions. The failure to describe or enumerate all Department remedies for any defaults does not limit the Department's use of any remedies at its disposal.**

Compliance with Department Requirements. The Borrower acknowledges that all partners of the Borrower, including the limited partners, have been provided copies of the Department Loan Documents and that the Borrower is authorized pursuant to the First Amended and Restated Agreement of Limited Partnership of \_\_\_\_\_ (the "LPA") to enter into the Department Loan and comply with the obligations imposed by the Department Loan Documents. The Borrower acknowledges and agrees that it is obligated to comply with the terms and conditions of the Department Loan Documents.

Failure of the General Partner to obtain consent as specified within the LPA to perform any act required by the Department Loan Documents does not excuse or relieve the Borrower from its obligations under the Department Loan Documents. Nothing in the LPA or this paragraph limits the Department's remedies including declaring a default under any of the Department Loan Documents.

Term. The Term of this Agreement is 55 years; however, such Term will not expire prior to payment in full of the Department Loan.

Definitions. Definitions of terms in any non-Department project or loan document, or any amendment, modification or restatement of any such document, are not binding on the Department including, but not limited to, definitions of “Cash Flow”, “Net Cash Flow”, “Surplus Cash” “Surplus Cash Flow”, “Surplus Cash Distribution”, “Project Expenses”, “Operating Revenue”, “Residual Receipt” and “Annual Operating Expenses.”

Uses of Cash Flow. Neither the LPA nor any other designation of the use of cash flow, in any non-Department Project or loan document, or any amendment, modification or restatement of any such document, is any way binding on the Department. Borrower must comply with UMR 8314 and all other provisions of the UMR’s and this Agreement concerning project income and expenses notwithstanding any contrary requirement by any other party, including any partnership agreements regarding accrual of any asset management or like fees.

Limited Partner Exit. No Development funds, including reserves, may be used to fund the purchase of or to acquire a limited partner share.

Continuity of Reserves. All reserves shall remain with the Development for uses approved by the Department during the term of this Regulatory Agreement notwithstanding the sale or transfer of the Development or the Property, the exercise of the option purchase or right of first refusal under the LPA, or the dissolution of the Borrower organization. Reserves may not be used to pay any taxes (including exit or transfer taxes), ground lease payments, limited partner buyout costs, or repayment of debts to the limited partner.