

**FREE RECORDING IN  
ACCORDANCE WITH CALIFORNIA  
GOVERNMENT CODE SECTION  
27383**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Portfolio Reinvestment Program  
Department of Housing and  
Community Development  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
\_\_-PRP-\_\_

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
PORTFOLIO REINVESTMENT PROGRAM  
SENIOR REGULATORY AGREEMENT  
(Affordability Restrictions)**

LOAN NUMBER \_\_\_\_ - PRP - \_\_\_\_

This Senior Regulatory Agreement (Affordability Restrictions) (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 new rehabilitation loan and restructuring of that certain loan number \_\_\_\_\_ (the “Original Loan”) from the \_\_\_\_\_ Program (“Original Program”) together as (the “Loan”)] [a new loan (the “Loan”) in addition to that certain loan number \_\_\_\_\_ (the “Original Loan”) from the HOME Investment Partnerships Program (“HOME”)] for the continued affordability of a Rental Housing Development 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 the real property described in Exhibit A hereto (the “Property”). The

Original Loan [will be restructured] [will remain on the Development] in accordance with chapter 5.5 of part 2 of division 31 of the California Health and Safety Code commencing with section 50606 (the "Portfolio Reinvestment Program" or "PRP"), the Portfolio Reinvestment Program Notice of Funding Availability and Guidelines (the "Guidelines"), and provisions incorporated from the Multifamily Housing Program ("MHP") Guidelines ("MHP Guidelines") effective June 19, 2019 and the Uniform Multifamily Regulations ("UMR"), California Code of Regulations, title 25, division 1, chapter 7, subchapter 4, section 7300 et seq. and section 8300 et seq. respectively effective November 15, 2017 as subsequently amended and in effect from time to time (the "Regulations") [into a restructured loan the "Loan"]. The obligations imposed on the Borrower by the PRP, the Guidelines, the MHP Guidelines, the Regulations, and the Department's policies and procedures are collectively referred to herein as the "Portfolio Reinvestment Program Requirements" or "PRP Requirements".

- B. The Housing Authority of the City of Oakland, a public body, corporate and politic (the "Housing Authority"), is joining this agreement solely to encumber its fee interest in the Development, in favor of the Department to secure performance of the Borrower under the Agreement. [ Optional / Situational ]
- C. The Original Loan was evidenced by a promissory note in the amount of \$ \_\_\_\_\_ (the "Original Note") secured by a deed of trust recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of \_\_\_\_\_ County (the "Original Deed of Trust"). The Original Loan was also subject to a regulatory agreement recorded on even date therewith in the Official Records of \_\_\_\_\_ County as Instrument No. \_\_\_\_\_ (the "Original Regulatory Agreement"). The expiration date of the Original Regulatory Agreement is \_\_\_\_\_ ("Original Regulatory Agreement Expiration Date"). As of the date of Note (as described below) approximately \$ \_\_\_\_\_ of interest has accrued on the Original Note.

In accordance with the PRP Requirements, Borrower and the Department have entered into that Standard Agreement, numbered \_\_\_\_\_-PRP-\_\_\_\_\_, and dated \_\_\_\_\_, regarding the Development and governing the terms of the Loan (the "Standard Agreement"). All terms of the Standard Agreement, including all Special Conditions, are incorporated by reference into this Agreement.

- D. As required by the Program and in addition to this Agreement, Borrower has executed or will execute each of the following documents in a form approved by the Department:

1. A promissory note evidencing the Loan specifying, inter alia, the principal amount thereof, the interest accrued on the Original Note and accruing thereon and the terms of repayment thereof (the "Note").
  2. A deed of trust, assignment of rents, security agreement, and fixture filing 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; provided, however, this Agreement shall be senior to and have priority over the Deed of Trust.
  3. The Department's customary regulatory agreement regulating and restricting the occupancy, rents, operation, ownership and management of the Development and Property in compliance with Program Requirements and recorded or to be recorded against the Property (the "Junior Regulatory Agreement").
  4. Such other documents and instruments as the Department may reasonably require.
- E. The Note, the Deed of Trust, the Junior Regulatory Agreement, this Agreement and such other documents and instruments as are reasonably required by the Department are collectively referred to herein as the "Loan Documents." NOTE: All terms of the Standard Agreement including all special conditions are incorporated into this Agreement notwithstanding that the term of the Standard Agreement may be less than the term of the Department Regulatory Agreement.
- F. The conventional loan encumbering the Property ("Conventional Loan") [is from a party related to Borrower or one or more of its constituent members or partners][is not fully amortizing and matures prior to the maturity date of the Note]. As a result and according to the Program Requirements, the affordability restrictions of the Junior Regulatory Agreement executed and recorded against the Property must be senior to the Conventional Loan. Furthermore, this Agreement, which repeats and contains such affordability restrictions, and the Junior Regulatory Agreement shall both be executed in connection with the closing of the Loan, but this Agreement shall be senior to the Conventional Loan in lien priority and the Junior Regulatory Agreement shall be subordinate to the Conventional Loan.
- G. 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 and intent of this Agreement is to regulate and restrict the occupancy and rents of the Development and the Property, and to otherwise set forth the continuing senior

“Affordability Provisions”, as contemplated by sections 8310(f) and 8315(d) of the Regulations, applicable to the Development and Property, in compliance with the Program Requirements.

**NOW, THEREFORE**, 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. **[Or substitute one of the following as appropriate.]**

Property. Borrower is the owner of a leasehold interest in the Property and the owner of a fee interest in all improvements now or hereafter located thereon.

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. **[Modify as appropriate.]**

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Junior Regulatory Agreement, and by the Guidelines, MHP Guidelines, and the Regulations (where there is a conflict between the Guidelines, the MHP Guidelines, and the Regulations, the terms in the Guidelines shall prevail).
4. Compliance with Program Requirements. Borrower agrees at all times to comply with the terms of this Agreement and acknowledges that it has access to professional advice to the extent necessary to enable the Borrower to comply with the same.
5. Term of Agreement. This Agreement shall commence on the date hereof and remain in full force and effect and shall apply to the Development through and including the including the \_\_\_\_\_ ( ) (minimum 30 for small projects or 55 years for all others) anniversary of the date of recordation of this Agreement hereof regardless of any prepayment or payoff of the Loan or sale, assignment, transfer or conveyance of the Development or the Property, unless terminated earlier by the Department or extended by the mutual consent of the parties.
6. Assisted Units and Restricted 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 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 Target Population Units and Supportive Housing Units or Special Needs Population Units, if any, as set forth in Exhibit B. Payment of Supportive Services Costs is addressed in Section 8314 of the Regulations and, as necessary, Exhibit C of this Agreement.
  - e. Borrower shall (if applicable) implement Housing First Practices, consistent with the core components set forth in the Welfare and Institutions Code Section 8255(b).
  - f. Borrower shall establish policies and procedures to prevent evictions and to facilitate reasonable accommodation policies.
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, in accordance with California Health and Safety Code Section 50736 and Government Code Section 65863;
  - 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 and of their right to appeal this determination;
  - 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;
  - j. specify procedures for obtaining statistical information for identifying the status of tenants as either elderly or veteran;
  - k. other provisions necessary to assure compliance with the requirements of PRP; and
  - l. be made subject to periodic review and updates at the request of the Department.
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 elderly and other target groups is permitted where the housing is intended to benefit those target 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 forms and addenda of which shall be subject to prior written approval by the Department and be consistent with the PRP

Requirements. Such rental agreement and addenda shall, inter alia, provide for good cause eviction, reference the Department-approved appeal and grievance procedures set forth in the Management Plan, and require the tenant to annually recertify household income and size.

- b. The Borrower shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the PRP 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. Rental or occupancy agreements for any Assisted Unit shall comply with the Regulation Section 8307. Sponsor must ensure that the rental agreement and addenda for Assisted Units are consistent with Housing First principals and policies (if applicable).

10. Assisted Unit Rents.

- a. At the first regularly scheduled Rent increase after recordation of this Agreement, Borrower shall charge Rents for the Assisted Units in the Development in accordance with paragraph 10(d) and (e) below.

For Units receiving HUD Section 8 or other similar rental assistance, the rules of the rental assistance program pertaining to Rent increases will prevail for as long as the rental assistance remains in place. Changes in the tenant contribution amounts may occur more often than annually as required by the rental assistance program.

- b. Rents for Assisted Units may be adjusted no more often than every twelve (12) months. Any Rent increase requires prior written approval by the Department.
- c. Projects with an Original HCD Loan that requires formula-based Rents will be converted to AMI-based Rents and income limits.
- d. Maximum Rent Levels
  - (1) Rents for Units occupied after the Date of Application Acceptance, may be adjusted to the maximum levels indicated in the Unit Mix Chart 2 in Exhibit B of this Agreement in accordance with the Guidelines.

e. Rent Increases and Notification Requirements.

- (1) Rent increases for Existing Tenants for those projects with an Original HCD Loan that required formula-based rents as identified in the "Unit Mix Chart 1" in Exhibit B of this Agreement, must meet all the following:
  - (a) Rent increases shall not be greater than necessary to ensure the financial feasibility of the project.
  - (b) Rents shall not exceed 50% of the household's actual income. This requirement shall be applied using maximum rent levels and household incomes as of the Date of Application Acceptance.
  - (c) For Existing Tenants with incomes not exceeding 35 percent AMI, rent increases shall be limited to 5 percent per year, until the rents reach the levels set in the maximum rent levels in Unit Mix Chart 2 in Exhibit B.
  - (d) For Existing Tenants with incomes exceeding 35 percent AMI, increases shall be limited to 10 percent per year, until the rents reach the levels set in the maximum rent levels Unit Mix Chart 2 in Exhibit B.
  - (e) Once the maximum rent levels according to the Unit Mix Chart 2 in Exhibit B have been achieved by Existing Tenants and new tenants, income limits and rents shall be calculated consistent with the calculation methodology of MHP.
  - (f) Up until the time Existing Tenants have achieved the maximum rent levels as noted in Unit Mix Chart 2 in Exhibit B, Borrower shall provide an annual accounting to the department for compliance with Health and Safety Code section 50561 (c) and (e) at the time of SRI (as defined below) submittal
  - (g) Rent increases may be further restricted by other funding sources, other state, or local law(s) in which case the most restrictive requirements shall apply.
  - (h) This section 10(e)(1) shall not apply to projects whose Original Loan is from the HOME Investment Partnership Program

("HOME").

- (2) Rent increases for Existing Tenants in those projects with an Original HCD Loan with AMI-Based Rents are subject to the Unit Mix Chart 2 in Exhibit B of this Agreement. 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 MHP Guidelines Section 7312(c).
- (3) Notification.
  - (a) In Non-HOME projects with formula-based Rents, the project Sponsor shall provide tenants with the following notifications:
    - (i) Notice six months prior to the scheduled Rent increase with an estimate of the amount of the increase.
    - (ii) Notice 90 days prior to the actual Rent increase with the exact amount of the new Rent.
  - (b) In projects whose Original HCD loan required AMI-based rents, Notice must be provided in accordance with State law.
  - (c) Rent notices may be further governed by other funding sources, other state, or local law(s), in which case the most restrictive requirements will apply.
- f. Rents for Vacant and Vacated Units for projects with formula based rents only
  - (1) After Existing Tenants residing in any Assisted Unit have vacated their units at the time of the Date of Application Acceptance, or for any Assisted Units that are vacant at the time of the Date of Application Acceptance, Rents for those vacated units may be increased in accordance with the Unit Mix Chart 2 in Exhibit B.
- g. Maximum Rents Achieved
  - (1) Once the maximum rent levels according to the Unit Mix Chart 2 in Exhibit B have been achieved by Existing Tenants and New Tenants, income limits and rents shall be calculated consistent with the calculation methodology of MHP.

- (2) Up until the time Existing Tenants have achieved the maximum rent levels as noted above in f(1), Borrower shall provide an annual accounting to the department for compliance with PRP Requirements at the time of SRI (as defined below) submittal.

h. Over-Income Tenants

- (1) Existing Tenants with household incomes that exceed 80 percent of AMI will be required to pay 30 percent of their actual household income for Rent after proper noticing is provided to the tenant as required in subsection section (e) above.
- (2) Tenants who move into an Assisted Unit after the Date of Application Acceptance and whose incomes increase to more than 60 percent of AMI in an annual income recertification conducted after the recordation of this Agreement, shall be required to pay 30 percent of their actual household income for Rent after proper noticing is provided to the tenant as required in subsection section (e) above.

i. Project-Based Rental Assistance

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. However, Rents 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 Multifamily Housing Program.

11. Certification of Tenant Income and Household Size.

- a. 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.

- b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the designated AMI level pursuant to Paragraph 10 of this Agreement, and, to the extent a rent increase for the household is permitted by the Department, 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 30%, 50% and 60% of AMI, if the income of a household occupying a Unit designated as a 30% Unit increases to 48% of AMI, the Borrower must redesignate the household's Unit as a Unit at the 50% AMI level, and submit a request to the Department, pursuant to Paragraph 15 of this Agreement, to increase the tenant's Rent to the level applicable to Units at the 50% AMI level, and designate the next available comparable Unit as a Unit at the 30% AMI income level to restore the Unit Mix Chart as outlined in Exhibit B of this Agreement. Similarly, if the income of an Existing Household occupying a Unit designated as a 60% Unit exceeds to 80% of AMI, the Rent for that Unit can be increased to 30% of actual household income. If there are any non-Assisted Units in the project, a non-Assisted Unit should be redesignated as a 60% AMI Unit, and the Unit occupied by the over-income household should be redesignated as a non-Assisted Unit. If all Units are Assisted Units, the Unit shall remain designated as a 60% AMI Unit, but will be temporarily non-compliant with the 60% AMI Rent limit until the Unit is vacated by the over-income household.

This paragraph 12(b) shall not apply to Existing Households until the Existing Household meets the requirements of paragraph 10(g)(1) above.

- 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 request to 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 AMI. 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 AMI could have their Rent increased to the Rent level applicable to the 35% income level.

This paragraph 12(c) shall not apply to Existing Households until the Existing Household meets the requirements of paragraph Section 10(g)(1) above.

- d. At any time and from time to time during the term of this Agreement, the Department or its designee may, upon reasonable notice to Borrower and accompanied by a representative of Borrower, enter and inspect the physical premises of the Development and the Property and inspect and copy all accounting records pertaining to the Development's or Property's compliance with the covenants and agreements set forth in this Agreement. Upon request by the Department, the Borrower shall notify occupants of upcoming inspections of their Units in accordance with state law.
  - e. At any time and from time to time during the term of this Agreement, the Department or its designee may request any other information, data or records related to the Development or the Property that it reasonably deems necessary to monitor compliance with the requirements set forth in this Agreement. The Borrower shall promptly provide such information, data and/or records, to the Department, and allow the Department and/or its designees to review, inspect and make copies of the same.
12. Management. Borrower shall be responsible for the operation and maintenance of the Development and the Property in a manner consistent with this Agreement.
13. Periodic Reports. Borrower shall submit to the Department such periodic reports as deemed necessary by the Department to monitor the Borrower's compliance with the affordability provisions of this Agreement.
14. 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, the Department shall give the Borrower written notice in the

manner specified in 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 reasonable satisfaction of the Department pursuant to paragraph 15 below, the Department may declare a default hereunder and may, as its exclusive remedy pursuant to this Agreement or applicable law, apply to a court of applicable jurisdiction to seek Equitable Relief (as defined below). As defined herein, "Equitable Relief" shall mean seeking, applying for, pursuing and obtaining any one or more of the following:

- (1) An order for specific performance enforcing the covenants, agreements and obligations of the Borrower set forth herein, and in connection therewith, Borrower acknowledges and agrees that the injury to the Department arising from a failure or default under 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;
  - (2) A temporary restraining order, preliminary injunction or permanent injunction with respect to or against the breach or violation of the covenants, agreements and obligations set forth herein;
  - (3) Declaratory relief;
  - (4) Conducting a department investigation or holding a Department hearing to determine whether or what action, if any, is appropriate with respect to the project; and/or
  - (5) Seeking the payment and/or reimbursement of any and all court costs, attorneys' fees, witness fees and the like incurred by the Department in pursuing any or all of the foregoing.
- b. The Equitable Relief remedies of the Department referenced above are cumulative and non-exclusive, and 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 hereunder. The Department hereby waives the right to seek any other remedy here-under for breach, violation or default of any of the covenants set forth in this Agreement; provided, however, notwithstanding the foregoing or any other provision of this Agreement:

- (1) The limitations of rights to Equitable Relief as provided above shall apply solely and exclusively to breaches, defaults and violations of this Agreement only;
- (2) The limitations on remedies set forth herein shall not limit what causes of action may be plead, but shall circumscribe the relief available thereunder;
- (3) The limitations set forth herein do not apply to the Junior Regulatory Agreement, or any of the other Loan Documents, or other actions at law that are not brought as a contract cause of action premised on this Agreement;
- (4) Nothing contained herein shall restrict a court of competent jurisdiction from providing, on its own motion, any other remedial relief or orders with respect to any breach, violation or default of the terms of this Agreement in addition to that contemplated by subsections (1),(2),(3),(4) and (5) of subparagraph a. of this paragraph.
- (5) The tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement, and shall have such rights to seek Equitable Relief as set forth above as may be available to third party beneficiaries under the law.

15. Time to Cure. If a breach, violation or default occurs with respect to the covenants set forth in this Agreement, prior to exercising the exclusive remedy described in paragraph 14 thereunder, the Department shall give Borrower written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of the Department's remedy. If the default is such that it is not reasonably capable of being cured within such 30-day period 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, not to exceed an additional 180 days to cure the default prior to exercise of the remedy 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 who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.

16. Assignment of Department Rights. The Department retains the right at its sole discretion to assign all or part of its rights under this Agreement to another governmental entity or agency 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.
17. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties.
18. 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.
19. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transferees, 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. 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.
20. 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, superior to the lien of the Deed of Trust.
21. Indemnification and Waiver.
  - a. The following subparagraph does not apply to any successor in interest to the Property that succeeds to the Borrower as a result of foreclosure upon a loan to Borrower: Borrower agrees to indemnify the Department and its agents, employees and officers against, and holds the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur 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 construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Borrower (but not any successor to Borrower in the ownership of the Property) 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 of ten percent (10%) per annum. Borrower's duty to indemnify and save harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Borrower (but not any successor to Borrower in the ownership of the Property) shall indemnify and hold harmless the Department and its agents, officers and employees 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, the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Borrower's duty to indemnify the Department shall survive the term of this Agreement, the release and 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 subparagraphs a. and b. above. 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.”**

22. 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.

23. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.
24. 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.
25. 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.
26. 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.
27. Department's Approval, Etc. Whenever this Agreement or any of the other Loan Documents requires the approval, consent, or other determination by the Department, the Department shall act reasonably and in good faith unless any such approval or consent is expressly stated as being in the Department's sole discretion.
28. 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.
29. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
30. Construction. Each party hereto acknowledges and agrees that it has had

independent counsel review and participate in the drafting of this Agreement, and it hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation California Civil Code section 1654, to the effect that any ambiguities are to be construed against the drafting party.

31.. 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 \_\_ of these Affordability Restrictions. 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

By: \_\_\_\_\_, Transactions Unit

**Mailing Address:**

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

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

**[All signatures must be acknowledged. The remainder of this page is blank.]**

**EXHIBIT A TO REGULATORY AGREEMENT**

**LEGAL DESCRIPTION OF THE PROPERTY**

Sample / Draft

## EXHIBIT B TO REGULATORY AGREEMENT

### UNIT DESIGNATIONS AND RENT SCHEDULE, AND REQUIREMENTS FOR SUPPORTIVE HOUSING UNITS OR SPECIAL NEEDS POPULATION UNITS

#### I. UNIT DESIGNATION AND RENT SCHEDULE

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

A. At the first regularly scheduled Rent increase after recordation of this Agreement, Borrower shall charge Rents for the Assisted Units of Existing Tenants in accordance with paragraph 10(e) in this Agreement and the below Unit Mix Chart 1 until the maximum rent levels pursuant to Unit Mix Table 2 have been achieved in accordance with paragraph 10(e)(1)(e) in this Agreement. For HOME projects with AMI-based rents, all Assisted Units are governed by Unit Mix Table 2 below.

#### **Unit Mix Chart 1 (Existing Tenant):**

EXISTING TENANT UNIT MIX CHART INSERT HERE

B. For New Tenants and Existing Tenants whose household income has exceeded the maximum allowable under paragraph 10(e)(1)(e) of this Agreement, Borrower shall charge Rents for Assisted Units that do not exceed Rents set forth in the Unit Mix Chart 2 below. Therefore, the Unit Mix Chart 2 will represent the unit mix after Existing Tenant(s) have vacated and those Assisted Units thereafter are replaced with new Eligible Households or when Existing Tenants exceed the maximum household income in accordance with paragraph 10(e)(1)(e) in this Agreement.

For HOME projects with AMI-based rents, Unit Mix chart 1 does not apply.

#### **Unit Mix Chart 2:**

UNIT MIX CHART 2 INSERT HERE

Rents for households who occupy a Unit after the Date of Acceptance shall be subject to the Rent and Income Limits as outlined above and as stated in Paragraph 10(f) of this Agreement.

## II. SUPPORTIVE HOUSING UNIT REQUIREMENTS

1. 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.
2. 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: ----- [list services here] -----  
-----
3. 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.
4. Furthermore, Borrower and Sponsor may be required to collect data and enter the local Homeless Management Information System mandated by the Assembly Bill No. 977 (Chapter 397, 2021 Cal. Stat.).

## III. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

1. For the full term of this Agreement, Borrower shall restrict occupancy of \_\_\_\_\_ units within the Development to the following Special Needs Population or Populations: -----[list SNPs]-----
2. 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:

3. 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.

Sample / Draft

**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.

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

No. of Units	Bedrooms	Assistance Program	AHSC Income Limit

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