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Multifamily Housing Program
Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

MULTIFAMILY HOUSING PROGRAM

Acquisition/Rehabilitation NOFA October 18, 1999

REGULATORY AGREEMENT

LOAN NUMBER 99-MHP-

This Regulatory Agreement (the "Agreement") dated _____, is made and entered into by and between the Department of Housing and Community Development, a public agency of the State of California (the "Department"), and _____ (the "Borrower").

RECITALS:

- A. Borrower has applied to the Department for a loan (the "Loan") for the development 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 Department has conditionally agreed to provide the Loan under the Multifamily Housing Program (the "Program") pursuant to chapter 6.7 of part 2 of division 31 of the Health and Safety Code.
- B. As required by the Program, Borrower and the Department have entered into that Standard Agreement, numbered 99-MHP-_____, and dated _____, 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 a form approved by the Department:
1. A promissory note 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 securing the Note and naming the Department as beneficiary and the Borrower as trustor, 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. A development agreement with the Department specifying the use and disbursement of the proceeds of the Loan and describing and regulating the development and construction of the Development (the "Development Agreement").
 4. Such other documents and instruments as the Department may reasonably require.
- D. The Standard Agreement, the Note, the Deed of Trust, the Development Agreement, and such other documents and instruments as are reasonably required by the Department 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 Regulatory 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 requirements of the Program.

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 of a leasehold interest in the Property and owner of all improvements now and hereafter located thereon.
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 Program statutes, which include by reference definitions found in chapter 2 of part 1 of division 1 of the Health and Safety Code (commencing with § 50050).

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

- a. "Assisted Unit" means a residential unit in the Development, the construction, acquisition or rehabilitation of which is assisted by the Loan and which is to be occupied by an Eligible Household as provided in this Agreement.
 - b. "Fiscal Year" for the Development means the annual period commencing on _____ and concluding on the _____ each year.
 - c. "Eligible Household" means households meeting the income limits and other Program criteria for occupancy of Assisted Units in accordance with this Agreement and any other agreement regulating the use or occupancy of Assisted Units.
 - d. "Initial Operating Year" means 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 the Fiscal Year.
 - e. "Net Cash Flow" means all Operating Income of the Development less the amounts paid there from as allowed in clauses (1) through (6) of subparagraph b. of paragraph 21 hereof.
 - f. "Nonassisted Unit" means a residential unit in the Development that is not designated as an Assisted Unit.
4. Compliance with Program Requirements. The Borrower agrees that at all times its actions regarding the Development and the use of funds provided under the Development Agreement shall be in conformity with all requirements of the Program including the requirements of the Loan Documents, this Agreement, the above-referenced statutes and the policies and procedures of the Department pertaining thereto. The Borrower acknowledges that it is familiar with the above-referenced Program requirements and has access to professional advice to the extent necessary to enable the Borrower to fully comply with the Program requirements. Borrower specifically covenants to perform its obligations under the Standard Agreement, the Development Agreement and the Note.
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 anniversary of the date of recordation of this Agreement pursuant to paragraph 31 hereof regardless of any prepayment of the Loan or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the Department pursuant to the terms of this Agreement or extended by the mutual consent of the parties hereto.

6. Assisted Units, Restricted Units and Special Needs Populations 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 Special Needs Populations Units and supportive services, if any, as set forth in Exhibit B, Part II. For Developments with Special Needs Populations Units, Borrower shall file and maintain with the Department a supportive services plan detailing the services and programs to be provided to the tenants with special needs. The supportive services plan shall be subject to the review and approval of the Department. Unless otherwise approved by the Department, the supportive services set forth in the plan shall be consistent with the supportive services set forth in Borrower's application for the Program Loan.

7. Tenant Selection Procedures. Borrower shall rent Assisted Units in the Development to Eligible Households in accordance with a tenant selection plan, which shall be part of the Management Plan approved by and on file with the Department pursuant to paragraph 13 of this Agreement. Such tenant selection plan shall:

- a. detail actions to be taken by Borrower to affirmatively market all units in a manner, which ensures equal access to all persons in any category protected by federal, state or local law governing discrimination, and without regard to any other 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 and their right to appeal this determination pursuant to the appeal and grievance procedure in the Management Plan;
 - f. require maintenance of a waiting list of eligible applicants and that such waiting list be made available to prospective tenants upon request;
 - g. specify procedures for obtaining information regarding prospective tenants' income as necessary to certify that such income does not exceed income limit limitations; and
 - h. be made available to prospective tenants upon request.
8. Non-Discrimination. Borrower shall not discriminate against any prospective tenant on the basis of race, color, religion, sex, age, disability, familial status, national origin, sexual orientation 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 special needs households is permitted where the housing is intended to benefit those targeted groups, 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 contain such provisions as are required by the Program. Such rental agreement shall, inter alia, provide for good cause eviction, appeal and grievance procedures, and a requirement that 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 Assisted Units and Nonassisted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change shall become effective

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

10. Rents.

- a. The Department shall establish initial rents for Assisted Units in the Development in accordance with the following:
 - (1) At the time of the initial occupancy of an Assisted Unit, rent shall be charged in an amount not to exceed the lesser of (a) the maximum amount allowed by the California Tax Credit Allocation Committee ("TCAC") for the appropriate unit type and household size, tenant income category and area in which the Development is located; or (b) the amount conforming to the rent and income limits submitted with Borrower's application for the Loan and approved by the Department. Utility allowances shall be determined and applied in accordance with TCAC regulations.
 - (2) As used in this paragraph 10, "rent" does not include any payment to a Borrower under Section 8 of the United States Housing Act of 1937 or any comparable federal or state rental assistance program.
- b. After the Initial Operating Year, rents for Assisted Units may be adjusted no more often than annually. The amount and method of adjustment for Assisted Units shall be in accordance with TCAC regulations and procedures.

11. Security Deposits.

- a. Security deposits shall be required of tenants only in accordance with applicable law and subject to the requirements of this paragraph 11.
- b. Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Development in an interest bearing trust account with a depository insured by an agency of the federal government or a comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

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 Management Plan and in accordance with TCAC regulations and procedures.
- b. If an Assisted Unit is subject to state or federal rules governing low-income housing tax credits, the provisions of those rules regarding continued occupancy by formerly Eligible Households shall apply.
- c. At the time of recertification, if a household occupying an Assisted Unit no longer meets the tenant occupancy requirements set forth in TCAC regulations and procedures, Borrower shall require the household to move to the next available appropriately-sized Nonassisted Unit in the Development.

13. Management and Maintenance.

- a. Borrower is specifically responsible for all maintenance, repair, and management functions, 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 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 below.
- b. Borrower is responsible for operating the Development in accordance with the Management Plan developed by the Borrower as required by the Program, and which is approved by and on file with the Department (the "Management Plan"). All amendments to the Management 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 proper 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 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.

14. Nonassisted Units and Common Areas.

- a. Borrower shall establish and implement a rent structure and operations budget for Nonassisted Units and, if applicable, non-residential space, which ensures the fiscal integrity of the Development. Borrower shall estimate all income and expenses attributable to the Nonassisted Units and, if applicable, non-residential space, in the annual operating budget described in paragraph 16 herein, and shall report all income and expenses attributable to Nonassisted Units in the annual report described in paragraph 18 herein.
- b. Borrower shall operate, maintain and repair both Assisted and Nonassisted Units equally without regard to their designation as Assisted Units or Nonassisted Units.
- c. Tenant selection practices for Nonassisted Units shall comply with local, state and federal anti-discrimination laws.

15. Hazard and Liability Insurance.

- a. 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 insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Department.
- b. Insurance proceeds and condemnation awards for any loss to or taking of the Development or the Property, or any portion thereof, shall be applied or utilized as provided in the Deed of Trust.

16. Annual Operating Budget.

- a. Borrower shall operate the Development and expend operating income in accordance with the initial operating budget approved by and on file with the Department, for the Initial Operating Year. Such budget shall show all anticipated income, debt service, expenses for management, operations and maintenance and amounts payable to reserves for the Initial Operating Year.
 - b. No later than sixty (60) days prior to the end of each Fiscal Year, the Borrower shall submit to the Department for its approval 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 Fiscal Year, amounts payable to reserves, and proposed rent adjustments. This report shall also detail in narrative form any current or anticipated issues, which are expected to impact the proposed annual operating budget.
 - c. If the Development contains either Nonassisted Units or commercial space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between Assisted Units, Nonassisted Units and commercial space. The allocation method used for each budget line item shall be subject to Department approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Development.
17. Monthly/Quarterly Reports. During the Initial Operating Year, the Borrower shall submit to the Department quarterly reports to monitor the Borrower's compliance with this Agreement. The reports shall include:
- 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 lower-income 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 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.

18. 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 contain such information as required by the Department.
- b. As part of the annual report, the Borrower shall submit an independent audit of the Development prepared in accordance with generally accepted auditing standards by a certified public accountant.

19. Required Reserves. Borrower shall establish, fund and maintain operating and replacement reserve accounts in accordance with, and subject to the terms of Required Reserves as set forth in Exhibit C, Special Conditions.

20. 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 Department inspection and audit.

21. 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 shall be disbursed, applied, or reserved and set aside for payment when due, in the following priority, to the extent available:
 - (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

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;
- (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 that 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 expenses incurred to cover operating costs, 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;
- (5) Deposits to required reserve accounts;
- (6) Distributions, in accordance with paragraph 22 of this Agreement.

Net Cash Flow shall be distributed in accordance with paragraph 23 hereto. The Borrower may depart from the foregoing priorities of payment only upon the express written approval of the Department.

22. Distributions.

- a. Distributions from the operation of the Development are governed by the applicable provisions set forth in Exhibit C hereto.
- b. Any additional services for the Development, the payment of which is not to be included as distributions, shall be set forth in said Exhibit C. The specific amounts of such payments shall be set forth in the annual operating budget and included in the annual reports.
- c. Borrower may not accumulate distributions from year to year. Borrower may deposit all or a portion of the amount available for distributions and permitted hereunder in a given year into a project account for distribution in subsequent years. Such future distributions shall not reduce the otherwise permitted distribution in those subsequent years.

- d. Borrower may receive or make distributions for a particular Fiscal Year, including distributions from an accumulated distributions account only: (1) upon Department approval of the annual report submitted for that year; (2) upon determination by the Department that the Borrower is in full compliance with all Program requirements; (3) upon prior written approval by the Department of the amount of the distributions; and (4) if all currently required debt service and operating expenses have been paid and all required reserves are properly funded.
- e. Distributions attributed to commercial space, as shown in approved annual operating budgets and annual reports, shall not be subject to limits pursuant to this paragraph.
- f. No distribution shall be made to or by Borrower to any person or entity having a beneficial interest in Borrower in the following circumstances:
 - (1) When written notice of default has been issued by an entity with an equitable or beneficial interest in the Development; or
 - (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.

23. Net Cash Flow Distribution.

- a. Net Cash Flow attributable to those portions of the Development other than any commercial space therein shall be distributed as set forth in Exhibit C hereto.
- b. Net Cash Flow attributed to commercial space, as shown in annual operating budgets and annual reports approved by the Department, may be distributed to or on behalf of Borrower.

24. Department Review and Inspections.

- a. At any time during the term of this Agreement, the Department or its designee may enter and inspect the Property and the Development and inspect all accounting records pertaining to the construction, development or operation of the entire Development. Upon request by the Department, the Borrower shall notify occupants of upcoming inspections of their units in accordance with state law.
- b. The Department may perform or cause to be performed audits of any and all phases of the Borrower's activities related to the Development. At the

Department's request, the Borrower shall provide, at Borrower's expense, an audit of the financial condition of the Development certified by an independent certified public accountant.

- d. The Department may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement and the Standard Agreement. The Borrower shall promptly provide such information.

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

- a. Except with the prior written approval of the Department, Borrower shall not:
 - (1) Make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or the Development or of any of its interest in either of them;
 - (2) Substantially add to, remodel, remove, reconstruct, or demolish any part of the Development;
 - (3) Permit the use of the Development for any purpose other than that permitted by this Agreement;
 - (4) Incur any liability or obligation in connection with the Development, other than for current operating, management and maintenance costs, nor 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 Development provided that the Department may permit refinancing or additional financing secured by the Development to the extent necessary to maintain or improve the Development's fiscal integrity, or to maintain affordable rents as set forth by TCAC;
 - (5) Enter into any contract relating to rehabilitating or managing the Development;
 - (6) Enter into any lease for more than a single rental unit, a ground lease of the Property or any interest therein, except for the rental of commercial space in the Development; or
 - (7) If the Borrower or its successor in interest is a partnership, discharge or replace any general partner or amend, modify or add to its partnership agreement, or amend, modify or add to the

organizational documents of the general partner; except that it may transfer limited partnership interests without such approval.

- b. The Department shall approve a sale, transfer or conveyance provided that all of the following conditions are met:
 - (1) The transferor Borrower is in compliance with this Agreement or the sale, transfer or conveyance 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 and the Program;
 - (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 all Program requirements; and
 - (4) No term of the sale, transfer or conveyance shall jeopardize the Department's security or the transferee's ability to comply with all Program requirements.
- c. The Department may grant its approval for a sale, transfer or conveyance 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 Program requirements. Such conditions may include the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow, the recapture of syndication proceeds, or such other conditions as may be necessary to ensure compliance with the Program requirements.

26. 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 Standard Agreement, Development Agreement and the Note, the Department shall give written notice to Borrower as provided in paragraph 36, 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 thirty (30) days, 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 and use the same and the reserve funds for the operation and maintenance of the Development.
 - (2) Take possession of the Development and bring any action necessary to enforce any rights of the Borrower growing out of the operation of the Development, and operate the Development 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 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 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 provides 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) Seek such other appropriate remedies as may be available under the law.
- 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 the Agreement, the Department may seek the return of such overcharge to the affected household.
- c. The remedies of the Department hereunder and under any other instrument providing for or evidencing the financial assistance provided for the Development by the Department are cumulative, 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.

27. Assignment of Department's 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.
28. Amendment. This Agreement shall not be altered or amended except by written agreement, executed between or among all the parties.
29. 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.
30. 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. The term "Borrower" as used herein shall include and apply to any person or entity succeeding to the proprietary and possessory interests of Borrower in the Development.
31. 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 subject Property in the official records of the county in which the Development is situated.
32. Indemnification and Waiver.
 - a. 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 Loan Documents;

- (3) Any failure at any time of any of Borrower's representations or warranties to be 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 hazardous substances, as defined in the Standard Agreement, 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 of ten percent (10%) per annum. The duty of the Borrower to indemnify and save harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Borrower 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 subcontractor; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from 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.

- 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.
33. 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.

34. 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.
35. 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 California Codes, unless specifically indicated otherwise.
36. 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 indicated 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.
37. Attorney's Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorney's fees as determined by the trier of fact in that forum.
38. 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.
39. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C.
40. 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.

41. Exhibits: The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

- a. Exhibit A, Legal Description of the Property;
- b. Exhibit B, Unit Designations and Rent Schedules; and
- c. Exhibit C, Special Conditions.

IN WITNESS WHEREOF, the parties hereto execute and enter into this Regulatory 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: _____
NADINE FORD, Manager
Multifamily Section

Mailing Address:

Department of Housing and
Community Development
Monitoring and Management Br.
P.O. Box 952054
Sacramento, CA 94252-2054
Attn: MHP Program Manager

Principal Place of Business:

Multifamily Housing Program
Department of Housing and
Community Development
1800 Third Street
Sacramento, CA 95814

BORROWER:

By: _____
[Original Signature]

Name: _____

Title: _____

Date: _____

Mailing Address:

Principal Place of Business:

EXHIBIT A TO REGULATORY AGREEMENT (Cont'd)

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B TO REGULATORY AGREEMENT

I. UNIT DESIGNATIONS AND RENT SCHEDULE

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

During the Initial Operating Year, and unless the Department has approved in writing an alternate schedule, Borrower shall charge rents for Assisted Units that do not exceed Rents set forth in the schedule below.

The rents shown below for the Assisted Units subject to this Agreement are equal to or less than maximum rent limits allowed by TCAC for the respective unit type, household size and tenant income category.

The Department may approve an increase above the Assisted Unit rents shown below based on an adjustment to reflect the percentage increase in area median income limits issued by the Department and in effect as of the date of filing the Notice of Completion for the Development.

Household Income Limits

	\$	\$	\$		
<u>Rent Schedule, Assisted</u>					
<u>Type</u>	<u>Assisted</u>	<u>Assisted</u>	<u>Assisted</u>	<u>Total</u>	<u>Total No. Assisted</u>
	(no. & amount)	(no. & amount)	(no. & amount)		
Studio	@ \$	@ \$	@ \$	\$	
1 Bdrm	@ \$	@ \$	@ \$	\$	
2 Bdrm	@ \$	@ \$	@ \$	\$	
3 Bdrm	@ \$	@ \$	@ \$	\$	
4 Bdrm	@ \$	@ \$	@ \$	\$	
TOTAL	___ units	___ units	___ units	\$_____	___ units

Plus: ___ managers' unit(s); [] assisted or [] nonassisted

TOTAL Assisted Units:

TOTAL Nonassisted Units:

TOTAL UNITS:

Units restricted to occupancy by elderly households: _____

Units restricted to occupancy by special needs households: _____

II. SPECIAL NEEDS POPULATIONS PROJECT 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.

Exemption From Property Taxes: Borrower agrees to take all actions necessary to qualify the Development for the maximum exemption from property taxes pursuant to applicable provisions of section 214 of the Revenue and Taxation Code. Such actions may include, but are not limited to the following:

1. Modifying, adding to or deleting from, the articles of incorporation, bylaws or other organizational documents of Borrower or of the managing general partner of Borrower.
2. Applying for nonprofit, tax-exempt status to the appropriate state or federal agency.
3. Providing the certifications and assurances required by section 214 of the Revenue and Taxation Code.
4. Complying with the procedures and requirements imposed by local government agencies as a condition of receiving the property tax exemption.

Use of Funds Provided Under the Development Agreement and All Operating Income From the Development: In addition to the other terms of this Agreement, the Borrower hereby agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its agreement of partnership or other organizational document, the terms of this Agreement and the Program shall control as to the use of the funds provided under the Development Agreement and all operating income from the Development.

Loans with Payments Prior to Determination of Net Cash Flow (paragraph 21 b. (3)):

Lender: State of California, Department of Housing and Community Development
Amount: \$
Type: MHP
Term: 55 years
Rate: 3%

Lien:

Loans with Payments from Net Cash Flow and Percent of Proceeds (paragraph 23 a. (1))

Lender:

Amount: \$

Type:

Term:

Rate:

Lien:

Percentage:

Lender: State of California, Department of Housing and Community Development

Amount: \$

Type: Deferred

Term: 55 years

Rate: 3% simple interest on the principal per year

Lien:

Percentage:

Distributions (paragraph 22):

1. Borrower shall be limited to an annual distribution in an amount not to exceed the lesser of:
 - a. eight percent (8%) of the annual gross rental income based on the annual report approved by the Department pursuant to paragraph 18; or
 - b. fifty dollars (\$50) per unit per month for each Fiscal Year of the Development.
2. The Borrower may not accumulate distributions from year to year. The 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 distribution in those subsequent years.

3. Distributions shall be permitted 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 for the applicable year. Circumstances under which no distributions shall be made include:
 - a. When written notice of default has been issued by any entity with an equitable or beneficial interest in the Development.
 - b. When the Department determines that the Borrower has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Development.
 - c. If all currently required debt service, including mandatory payments on the Loan, and operating expenses have not been paid.
 - d. If the replacement reserves account or any other reserve accounts are not fully funded pursuant to this Agreement.
4. Distributions attributed to income from commercial space shall not be subject to limits pursuant to this section.

Net Cash Flow Distributions (paragraph 23): Net Cash Flow remaining after payment of distributions shall be applied toward repayment of the loan(s) as indicated above under "Loans with Payments from Net Cash Flow (paragraph 23 a.)" Upon payment in full of the Loan, remaining Net Cash Flow shall be used to reduce rents in Assisted Units or for other purposes related to the Development approved by the Department.

Restrictions on Sale, Encumbrance and Other Acts (paragraph 25): In addition to the restrictions contained in paragraph 25 of this Agreement, the Borrower agrees that, except with the prior written approval of the Department, if Borrower is a partnership or other legal entity, the Borrower shall not dissolve said partnership or other legal entity prior to the expiration of the term of the Loan. Failure of the Borrower to comply with this condition shall constitute a default under the terms of this Agreement.

Required Reserves:

1. Replacement Reserve Account: Commencing no later than the Limited Partner's Third Capital Contribution, or such other date as the Department may designate in writing, the Borrower shall establish a segregated interest-bearing replacement reserve account in the name of the Borrower insured by an agency of the federal government or other comparable federal insurance program. The Borrower shall make monthly deposits from project income to the replacement reserve account in amounts [as specified in the approved Initial Operating Year budget and

subsequent annual budgets] or [equal to \$_____ per month]. Withdrawals shall only be made for capital improvements such as replacing or repairing structural elements, furniture, fixtures or equipment of the Development, which are reasonably required to preserve the Development.

2. Operating Reserve Account: Commencing no later than the end of the second month following the completion of construction or rehabilitation, or such other date as the Department may designate in writing, the Borrower shall establish an operating reserve account or sub account within the Development's general operating account. Upon or prior to initial occupancy of Assisted Units in the Development, Borrower shall fund the operating reserve account in an amount equal to at least [\$_____] or [one percent of total costs of developing and constructing the Development from the amounts reserved therefor in the Final Development Budget as attached to the Development Agreement]. And/or [The Borrower shall make monthly deposits from operating income to the operating reserve account in amounts as specified in the Initial Operating Year budget and subsequent approved annual operating budget.] Borrower may transfer funds from this account only to cover actual operating expenses in excess of the approved budget amount, or to compensate for vacancy and bad debt losses in the approved budget amount.

[Insert applicable Special Conditions.]

