

EXHIBIT D**MHP GENERAL TERMS AND CONDITIONS****1. Effective Date, Commencement of Work and Completion Dates**

This Agreement is effective upon the date of the Department representative's signature on page one of the fully executed Standard Agreement, STD 213. The Sponsor agrees that development of the Affordable Housing Development has not commenced as of the submission deadline for applications set forth in the NOFA. The Sponsor agrees that the Work shall be completed as specified in this Agreement, and is subject to the specified Agreement expiration date, unless a written request for an extension is submitted and approved by the Department in writing within ninety (90) days prior to the termination date of the Agreement. Any extension to the termination date shall require an amendment to this Agreement executed by all parties.

2. Termination

The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days' notice in writing to the Sponsor. Cause shall consist of violations by the Sponsor of any terms and/or special conditions of this Agreement, including but not limited to:

- A. Failure of the Loan to close on or before the Loan closing deadline as stated under "Timing" in these MHP General Terms and Conditions.
- B. Failure of the Sponsor to satisfy in a timely manner each of the conditions set forth in these MHP General Terms and Conditions, the Special Conditions set forth in Exhibit E of this Agreement, and the Award Letter.
- C. Determination by the Department that:
 - 1) any material fact or representation made or furnished to the Department by the Sponsor in connection with the Application shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue; or,
 - 2) the Sponsor shall have concealed any material fact from the Department related to the Application or the Development.
- D. Filing of a petition by Sponsor, or any affiliate or general partner of Sponsor, for relief under the Bankruptcy Code; the filing of any pleading or answer by Sponsor, or any affiliate or general partner of Sponsor, in any involuntary proceeding under the Bankruptcy Code; a general assignment by Sponsor, or

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- any affiliate or general partner of Sponsor, for the benefit of creditors; or the filing of an application for the appointment of a receiver, trustee, custodian or liquidator for Sponsor or any of its property, or for any affiliate or general partner of Sponsor or any of its property.
- E. Failure of Sponsor, or any general partner of Sponsor, to effect a full dismissal of any involuntary petition under the Bankruptcy Code that is filed against Sponsor, or any general partner of Sponsor, or that in any way restrains or limits Sponsor, any general partner of Sponsor, or the Department regarding the MHP Loan or the Development, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or thirty (30) days after the date of filing of such involuntary petition.
 - F. Attachment, levy, execution, or other judicial seizure of any portion of the Development, or any substantial portion of the other assets of Sponsor, or any general partner of Sponsor, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.
 - G. Pendency of any proceeding challenging the legal existence or authority of Sponsor, or any general partner of Sponsor, or any proceeding challenging the legality of the Development.
 - H. Failure of Sponsor to close the Department-approved construction financing on or before the date indicated under "Timing" in these MHP General Terms and Conditions.

3. Timing

- A. The Sponsor shall close the construction financing approved by the Department and commence construction of the Development in accordance with the development schedule or Performance Milestones set forth in the Project Report, or as extended by the Department pursuant to the requirements of Exhibit A, Section 6. Upon the Department's request, the Sponsor shall promptly provide evidence of recorded deeds of trust for all construction financing, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, and the Development is receiving low-income housing tax credits, evidence must be submitted that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred.
- B. This Agreement shall expire on the date specified in this Agreement.

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EXHIBIT D**4. Disputes**

In the event of a conflict between this Agreement and any Sponsor- or Borrower-controlled documents, this Agreement and the Program Requirements are applicable and will be enforced, notwithstanding the Department's prior and preliminary review of any such documents at the time of construction loan closing.

5. Consent

The parties agree that wherever the consent or approval of the Department or the Sponsor is **required under this Agreement, such consent or approval will not be unreasonably withheld, conditioned, or delayed**, unless the same is specified as being in that party's sole and absolute discretion or other words of similar import.

PRE-CONSTRUCTION LOAN REQUIREMENTS

Unless otherwise approved in writing by the Department, the following conditions require compliance prior to the close of the construction loan(s) for the Development:

6. Site Control

The Sponsor shall have 100 percent (100%) control of the land at time of application and through permanent loan closing, and such control shall not be contingent on the approval of any other party. The status and nature of the Sponsor's title and interest in the Property shall be subject to the Department's approval. Site control may be evidenced by one of the following:

- A. Fee title;
- B. A leasehold interest on the Property with provisions that enable the lessee to make improvements on and encumber the Property provided that the terms and conditions of any proposed lease shall permit compliance, prior to loan closing, with all Program Requirements;
- C. An enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the Notice of Funding Availability (NOFA);
- D. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency;

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- E. A right of way or easement, which is either perpetual, or of sufficient duration to meet Program Requirements, and which allows the applicant and/or developer to access, improve, occupy, use, maintain, repair, and alter the property underlying the right of way or easement;
- F. An executed encroachment permit for construction of improvements or facilities within the public right of way or on public land;
- G. An executed agreement with a public agency that gives the Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties;
- H. A land sales contract or other enforceable agreement for the acquisition of the property; or,
- I. Other forms of site control that give the Department assurance (equivalent to A-H above) that the applicant or developer will be able to complete the Development and all housing designated in the Application in a timely manner and in accordance with all of the Program Requirements.

If the Sponsor's interest in the Property is a leasehold, the lease must provide adequate security for the Program Loan and must comply with UMR Section 8316. The Sponsor shall provide a copy of the ground lease for the Department's legal review and approval. The lessor and lessee will be required to sign the Department's standard lease rider, unless the lessor agrees to sign the Program Loan documents as required by the Department and encumber all its interest in the Property. Where the lessee and the lessor are affiliated or related parties, both the lessee and the lessor must execute the Program Loan documents in order to encumber both the leasehold and fee interests in the Property.

7. Title Report

The Sponsor shall provide a current title report for the Property on which the Development is located. If the Sponsor's interest in the Property is leasehold, then the Sponsor shall provide a current title report for the leasehold interest and the fee interest.

8. Site Inspection

The Department reserves the right, upon reasonable notice, to inspect the Development site and any structures or other improvements thereon to determine whether the Development site complies with this Agreement and the Program Requirements. If the Department reasonably determines that the site does not comply with this Agreement or

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the Program Requirements, the Department reserves the right to rescind the award and the Loan.

9. Adaptability and Accessibility

The Sponsor and the Development shall comply with all applicable federal, state and local laws regarding adaptability and accessibility in the design, construction and rehabilitation of residential projects for persons with disabilities.

10. Physical Needs Assessment

If the Development involves rehabilitation of existing units, the Sponsor shall provide a post-rehabilitation physical needs assessment acceptable to the Department, in accordance with instructions provided by the Department.

11. Reserve Study

Upon request by the Department, Sponsor shall provide an independent, third-party replacement reserve study acceptable to the Department.

12. Development Budget

Unless otherwise approved in writing by the Department, prior to the close of any construction financing, the Sponsor shall provide to the Department for its review and approval, a copy of the construction lender(s)' approved development budget.

13. Reasonable Development Costs

Sponsor shall provide to the Department evidence that total development costs are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third-party verification of costs, evidence of the competitive bidding of major trades and real estate appraisals. Where the Development is a component of a larger development, the Sponsor shall submit to the Department for its approval, a development cost sharing breakdown for the entire development which covers all development costs for each of the individual components of the entire development and includes a discrete development budget for the Development consistent with the budget in the Application and Project Report. Eligible costs for Developments are limited to costs as specified in Section 7304 (a) & (b) of the MHP Guidelines.

EXHIBIT D**14. Cost Savings**

If, upon completion of the Development, the total development funding sources exceed the total development costs, the Department will share costs in accordance with UMR Section 8313.1.

15. Sponsor Control of Development

Sponsor shall provide evidence satisfactory to the Department that the appropriate legal entity (i.e., the legal entity which submitted the Application as an applicant or a joint applicant, which demonstrated compliance with Section 7303 of the MHP Guidelines as part of that Application, and which received an Award Letter) has and will retain full and continuing control of the development, construction, ownership and management of the Development. The Sponsor shall demonstrate this control either by acting as the Ultimate Borrower, or by showing, to the Department's satisfaction in its sole and absolute discretion, that the Sponsor controls the Ultimate Borrower in accordance with UMR Section 8313.2. The Sponsor's failure to demonstrate compliance with UMR Section 8313.2 may result in significant delay or cancellation of the Loan.

The Department's Sponsor Operating Guaranty shall be executed by the legal entity which demonstrated compliance with Section 7303 of the MHP Guidelines as part of the Application.

16. Limited Partnership Agreement (LPA)

If the Borrower is a limited partnership, the Department neither approves nor disapproves the LPA, but may require changes if necessary to ensure that the Sponsor has sufficient control of the limited partnership entity, and that the term of the LPA is equal to or greater than the term of the Department's Loan documents. In the event of any conflict between the LPA and the Department's Loan documents, this Agreement, the Department's Loan documents, and the Program Requirements shall control.

17. Relocation Plan

If there is or will be any residential or commercial displacement directly or indirectly caused by the Development, the Sponsor shall provide a relocation plan to the Department for review. The relocation plan must comply with the requirements of state law (Gov. Code, § 7260 et seq.) and the regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.). The Development budget shall include enough funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department. If the Development will not cause any displacement, the Sponsor must provide corroborating documentation to the Department for approval.

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If there is federal funding of the Development, the Sponsor shall comply with federal Uniform Relocation Act requirements to the extent applicable.

18. Architect Contract

The Sponsor shall enter into a contract with an architect to provide professional services for the Development. The contract shall require an architect to supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in paragraph 32 of these MHP General Terms and Conditions.

19. Appraisals

If the property for the Development is being purchased, the Sponsor shall provide an appraisal acceptable to the Department of the as-is value of the property, prepared by a qualified, licensed appraiser.

20. Non-Department Financing

The Sponsor shall qualify for and obtain the financial assistance, loans and grants described in the Application for both the construction and permanent periods. Final terms and conditions of the non-Department financing must substantially conform to the terms and conditions of the Sponsor's Program Loan Application. The terms and conditions of all financing shall be subject to the Department's review and approval.

21. Senior Loan Terms and Disclosures

The terms of loans in a lien position senior to the Program Loan must comply with all the underwriting standards of UMR Sections 8310 and 8315.

No subordination may limit the Department's remedies and all subordinations must comply with UMR Section 8315.

Balloon payments are not allowed on senior debt, except as provided pursuant to UMR section 8310. Senior loans are prohibited from including call option language in the terms of the loan or bond documents other than is reasonable in case of default, nor may Sponsor be required to remarket bonds prior to expiration of the senior loan. Financial instruments on senior loans (including but not limited to swaps, collars, and interest rate hedges) must extend for the full term of the senior loan and cannot be required to be renewed or extended prior to the end of the full term.

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Sponsors must obtain an interest rate cap on any interest rate that is not fixed for the full term of the senior loan. The interest rate at the cap must not jeopardize project feasibility. Interest rate resets, renewals, extensions of letters of credit, or other senior loan provisions, must not require the Sponsor to re-qualify.

All payments, lender fees, bond fees, issuer fees, trustee fees, letter of credit fees, swaps fees, hedge fees, enhancement fees, credit facility and liquidity fees, and other fees, charges and costs, in addition to principal and interest payments, must be fully disclosed to the Department in the loan closing transaction summary and in the operating budget.

The Department's lien shall not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Development unless the Department's regulatory agreement or similar instrument, which includes the provisions of UMR Section 8310(f), is recorded senior to the lender's documents.

22. Environmental Conditions

The Sponsor shall provide a Phase I Environmental Site Assessment ("ESA") for the Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Development is affected by any recognized environmental conditions. In the event the Phase I ESA indicates evidence of recognized environmental conditions and the Sponsor desires to proceed with the Development, the Sponsor shall provide the Department with a Phase II report and such further reports as required by the Department in form acceptable to the Department. Any remediation work to be performed shall be subject to Department approval. The Sponsor shall also provide an asbestos assessment and a lead-based paint report for the Department's approval if the Development involves rehabilitation or demolition of existing improvements.

23. Article XXXIV

All Developments shall comply with Article XXXIV, section 1 of the California Constitution ("Article XXXIV"), as clarified by the Public Housing Election Implementation Law (Health & Safety Code, §§ 37000 – 37002). Prior to construction loan closing, the Sponsor shall submit documentation which shows, to the Department's satisfaction, that the Development complies with or is exempt from Article XXXIV.

24. Supportive Services Plan

For Developments serving Special Needs populations, including Supportive Housing and/or providing Supportive Services to the general tenant population, the Sponsor shall provide the Department with a supportive services plan for review and approval by

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the Department. Such plan shall meet all Program requirements as set forth under Section 7324 (d)(13) of the MHP Guidelines.

CONSTRUCTION PHASE REQUIREMENTS**25. Construction Phase Information**

If requested by the Department, the Sponsor shall provide the Department with information during the construction period, including, but not limited to, all change orders and modifications to the construction documents; all inspection reports prepared by the Development architect and other consultants; and all information relative to Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions. Upon written notice to Sponsor, Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not rejected in writing within ten (10) business days of receipt by the Department. Sponsor shall not authorize or approve any change orders rejected by the Department.

26. Inspection

The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Development. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner. The Department shall have no affirmative duty to inspect the Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department, shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Sponsor, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Development.

27. Updated Information

Sponsor shall provide the Department with updated documentation to reflect any change in the information previously provided relating to the Program Loan, including updated sources and uses and income information. All changes shall be subject to Department approval. However, if the Development is changed in any way as to make it

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ineligible under Section 7302 of the MHP Guidelines, then the Program Loan commitment will be cancelled, and all Program Loan funds awarded to the Sponsor shall be disencumbered.

28. **Evidence of Existence of Application Selection Criteria**

Upon request, Sponsor shall provide the Department with documentary evidence of the Development amenities, services, improvements, features and characteristics which were proposed in the Application, awarded points during the Department's application rating process, and identified in the Project Report.

29. **Signage**

Sponsor shall place signs on the construction site for the Work stating that the Department is providing financing through the MHP Program in an appropriate location(s), typeface and size containing the following message:

PROJECT NAME: DEVELOPMENT NAME

**THIS PROJECT HAS BEEN MADE POSSIBLE
BY FINANCING FROM**

**MULTIFAMILY HOUSING PROGRAM
THROUGH THE
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders, the Department acknowledgment and logo shall also be displayed in a similar size and layout. Copies of the Department logo can be obtained by contacting the Department Contract Manager.

Upon installation of the sign, the Sponsor shall submit a digital photograph thereof to the Department to verify compliance with these signage requirements.

30. **Photographs**

The Sponsor will provide the Department, upon request, with copies of any photographs that may be taken of the Development by or on behalf of the Sponsor or the Development's architect. The Sponsor will provide an acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department.

EXHIBIT D**COMPLETION OF CONSTRUCTION****31. Relocation Plan Implementation Report**

The Sponsor shall provide a report, in a form acceptable to the Department, detailing its actions in implementing its relocation plan.

32. Architect Certification

Where required by the Department, the Sponsor shall cause the Development architect(s) or other appropriate professional to certify to the Department, in form acceptable to the Department, that all construction is completed in accordance with the "as-built" plans and specifications and in compliance with all applicable federal, state and local laws relating to disabled accessibility.

33. Cost Certification

At the request of the Department, the Sponsor shall submit a Development cost certification audited by an independent certified public accountant in accordance with the requirements of the Department and Tax Credit Allocation Committee (TCAC), if applicable. The Sponsor (and the developer or builder if there is an identity of interest with the Sponsor) shall keep and maintain records of all construction costs incurred under the construction contract and make such records available for review by the Department.

34. Recorded Notice of Completion

The Sponsor shall provide the Department with a certified copy of any Notice of Completion for the Development recorded in the county in which the Development is located.

PROGRAM LOAN CLOSING REQUIREMENTS

The Department shall not be obligated to close or fund the Program Loan unless the Sponsor has complied with and satisfied the Program Requirements and all the terms and conditions of this Agreement, all in a manner satisfactory to the Department in its sole and absolute discretion, on or before the earlier of the Program Loan closing, the Program Loan closing deadline, or such earlier time, all as indicated herein.

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EXHIBIT D**35. Development Construction**

The Development shall be constructed in compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required.

36. Title Insurance

The Sponsor shall provide an updated title report and an ALTA As-Built Survey acceptable to the Department. The Sponsor shall provide a pro forma ALTA lender's policy of title insurance if requested by the Department. The Sponsor shall ensure the issuance to the Department of an ALTA lender's policy of title insurance. The condition of title, insurer, liability amount, form of policy and endorsements shall be subject to the approval of the Department. Such endorsements shall include, but not be limited to, a CLTA endorsement 100.2-06, and may include, but shall not be limited to, CLTA endorsements 105, 110.9 and 116 (modified for apartments) or their ALTA equivalents. The policy shall insure that the Sponsor holds good and marketable fee simple title (or leasehold, if approved by Department) and that the Department holds a fee mortgage (or leasehold) lien on the Development, free and clear of all encumbrances, encroachments, other interests and exceptions to title other than as shall have been previously approved in writing by the Department. The Department's deed of trust and regulatory agreement and the other loans indicated under "Permanent Funding" in the Application shall have the lien priority as indicated in the Application and approved by the Department.

37. Sponsor's Status

The Sponsor shall provide the Department with copies of all organizational documents, including, but not limited to, partnership agreements, operating agreements, corporate documents, and related documents and agreements, as required by the Department. As of the date of the Program Loan closing, the Borrower shall be a duly organized and validly existing limited or general partnership, corporation, limited liability company, nonprofit public benefit corporation, or other valid legal entity under California law. The Sponsor or Sponsor-controlled Borrower has and shall have the authority to enter into the Program Loan and related Loan documents.

38. Compliance with California's Prevailing Wage Law

This Development may be subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). The Sponsor is urged to seek professional legal advice about the law's requirements. Prior to closing the Program Loan, the Department will require a certification of compliance with California's prevailing wage law. The certification must verify that prevailing wages have been or will be paid (if such payment is required by

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law), and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Sponsor.

39. Insurance

The Sponsor shall obtain and maintain for the term of the Program Loan hazard and liability insurance for the Development in accordance with the Department's requirements, including flood insurance, if applicable. The Department shall be named as a loss payee or an additional insured on all such policies. Such policies also shall provide for notice to the Department in the event of any lapse of coverage and in the event of any claim thereunder. The Sponsor shall provide evidence satisfactory to the Department of compliance with these insurance requirements.

40. Program Loan Documents

The Sponsor shall enter into this Standard Agreement with the Department, which shall govern the encumbrance of the Program Loan funds. In addition, the Sponsor shall enter into a regulatory agreement with the Department, which will govern the use, operation and occupancy of the Development. The regulatory agreement will provide for, among other things, the imposition of certain low-income occupancy requirements, the regulation of rents on the low-income units, audits and other financial controls, reserve requirements, management oversight by the Department, and compliance with federal and state laws. In addition to the regulatory agreement, the Loan shall be evidenced by a promissory note and secured by a deed of trust. The regulatory agreement shall be recorded prior to the Department's deed of trust. The Sponsor shall execute and enter into additional agreements and documents, as the Department may deem reasonable and necessary to meet the Program requirements and the terms and conditions of this Agreement. The Sponsor Operating Guaranty must be executed in accordance with paragraph 15 of this Agreement to provide the Department with assurance that the Sponsor has the resources and experience to develop, own and manage the Development.

41. Restrictions on Transfer and Change of Ownership

The Sponsor shall not, without the prior written approval of the Department:

- A. sell, transfer, convey, encumber, hypothecate or pledge any of the Development or the Development property, or any portion or interest in either of them;
- B. discharge or replace any general or managing partner if Sponsor is a partnership, or amend, modify or add to its partnership agreement (except that

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the Sponsor may sell or transfer limited partnership interests without the Department's approval);

- C. change the manager(s) if Sponsor is a limited liability company, or amend, modify or add to its operating agreement or management structure;
- D. wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation; or
- E. change the organizational structure of the Sponsor.

42. Rental Subsidy Contract

The Sponsor shall provide the Department with full and complete copies of all contracts regarding rental subsidies to be provided to tenants in the Development.

43. Substitution of Rent or Social Service Subsidy

Sponsor may substitute a source of funding for a rent or social service subsidy so long as it is acceptable to the Department. The amount, terms and conditions of the new source of funding must provide an equivalent or greater level of rent or social service subsidy to the Development.

44. Final Certificate of Occupancy

The Sponsor shall provide a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

45. Environmental Conditions Remedial Work

All remedial work on recognized environmental conditions shall be completed prior to loan closing. The Sponsor shall provide the Department with an environmental update/operations and maintenance plan if remedial work was required with evidence of lead-based paint and/or asbestos-containing materials remediation if applicable.

46. Reserve Accounts

The Sponsor shall establish and maintain reserve accounts as required by the Department and as further described in the regulatory agreement. All withdrawals shall require prior written approval from the Department, as provided in the regulatory agreement.

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EXHIBIT D**47. Operating Reserve Account**

The Sponsor shall fund an operating reserve account in accordance with UMR Section 8308. The specific amount of the Operating Reserve Account shall be set forth in the regulatory agreement.

48. Replacement Reserve Account

The Sponsor shall establish a replacement reserve account in accordance with UMR Section 8309. The replacement reserve account shall be funded by monthly deposits from operating income, or a combination of operating income and development sources, as indicated in the regulatory agreement. The amount of the monthly deposits may be adjusted, as determined by the Department, in its sole and absolute discretion, based on reserve studies performed by an independent third party at the Sponsor's expense as requested by the Department or as based on other reliable indicators of future reserve needs.

49. Capitalized Reserve Accounts

If Program funds are used to fund a reserve account, the Department shall disburse such funds in a manner to ensure the proper funding of the reserve. The proceeds of the Program Loan may be used to capitalize only operating and replacement reserve accounts and amounts required by UMR Sections 8308 and 8309.

50. CalHFA and HUD Funded Projects

Projects subject to the HUD Section 811 and 202 programs or receiving a permanent loan from CalHFA shall not be subject to Program reserve requirements during the time such projects are regulated by HUD or CalHFA and the Sponsor complies with the applicable CalHFA or HUD reserve requirements.

51. Asset Management and Compliance Requirements

The Sponsor shall obtain the Loan Closing Checklist in the course of closing the MHP Loan, and must submit all documents required, for the Department's approval, including, but not limited to, the following (in a format provided or approved by the Department):

- A. a proposal for management agent with management agent's qualifications attached;
- B. a management contract;

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- C. a management plan;
- D. a template residential tenant lease;
- E. an initial-year operating budget and Schedule of Rental Income (SRI); and
- F. property hazard and liability insurance in accordance with the Program Requirements.

Prior to close of the Program Loan, the Sponsor shall obtain the Department's review and approval of the above-mentioned items A. through F. and any additional documents required by the Department.

Furthermore, the Sponsor shall be provided links to HCD's Asset Management and Compliance Web page, which, in conjunction with the regulatory agreement, sets forth the obligations and requirements for the use, operation and occupancy of the Development. The Department may amend such requirements from time to time and will note such amendments on the Web page.

52. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance

Sponsor shall develop and implement an affirmative fair housing marketing plan satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and informational efforts to those who are least likely to know about and apply for assisted units in the Development. Sponsor is encouraged to refer to HUD's guidelines for Affirmative Fair Housing Marketing Plans. Sponsor shall comply with all state and federal fair housing laws. At the Department's election, Sponsor must submit an attorney's opinion acceptable to the Department describing the intended occupancy restrictions and how they comply with the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53) and the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws.

53. Identification of Elderly and Veteran Units

If applicable, Sponsor must submit a report that specifically identifies the number of units rented to the elderly. The report must also specifically identify the number of units rented to military veterans.

EXHIBIT D**54. TCAC and Other Regulatory Agreements**

The Sponsor shall provide the Department with a copy of the TCAC regulatory agreement if the Development budget includes tax credits, and any other regulatory agreements pertaining to the Development.

55. Property Tax Exemption

Unless expressly waived in writing by the Department, Sponsor shall provide evidence of eligibility for property tax exemption for the Development and a copy of the tax exemption application to the local tax assessor(s).

56. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Sponsor agrees to comply with all state and federal laws, rules, guidelines and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Development, the Sponsor, its contractors or subcontractors, and any Loan activity.

57. Change of Conditions

The Department reserves the right to re-underwrite the Development based on new information or funding sources. Particular attention will be paid to the continued feasibility of the Development and the maintenance of the security position of the Program Loan. If the new information demonstrates a reduction or elimination of financing gap being addressed by the Program Loan, the Department will reduce the amount of the Loan award accordingly. If the Department has underwritten the Program Loan pursuant to California Housing Finance Agency (CalHFA) or Department of Housing and Urban Development (HUD) requirements and the Development subsequently does not utilize the CalHFA or HUD financing, the Program Loan will be re-underwritten by the Department pursuant to Program Requirements. In the event the Department determines the Development is no longer financially feasible, the award and any Loan commitment issued by the Department may be revoked.

58. Investor Commitments

If the Development will be receiving an allocation of tax credits from TCAC, the Sponsor shall provide the Department with a copy of all tax credit investor commitments, including referenced financial projections and any amendments.

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EXHIBIT D**59. Restricted Units**

All units designated in the Application and approved by the Department as restricted units, but that are not also assisted units, shall be restricted on a long-term basis by a public agency at the income and rent levels shown in the Application. Similarly, all units designated in the Application as restricted units, but that are not also assisted units, shall be restricted on a long-term basis by a public agency to the designated target population.

60. Asset Management Fees

Asset management, partnership management, and similar fees shall be in compliance with UMR Section 8314(a)(1)(B).

61. Sponsor Representations

- A. Sponsor represents and warrants that as of the date of this Agreement, the Sponsor is a duly organized and validly existing entity under California law and the person signing this Agreement on behalf of Sponsor has the authority to act on behalf of and to bind the Sponsor in accordance with the terms of this Agreement.
- B. Sponsor represents and warrants that as of the date of the Program Loan closing, the Borrower may be a duly organized and validly existing limited partnership under California law and that such limited partnership will have the authority to enter into the Program Loan and related Loan documents.
- C. Sponsor further represents and warrants that as of the date of the Program Loan closing, the person(s) executing the Program Loan documents will have full authority to act on behalf of and to bind the Sponsor in accordance with the terms of those documents.

62. Survival of Obligations

The obligations of the Sponsor as set forth in this Agreement shall survive the Program Loan closing, and the Sponsor shall continue to cooperate with the Department and perform acts and provide documents as provided herein.

63. Litigation

If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole and absolute discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this

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Agreement are, and shall be, deemed severable. The Sponsor shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

64. Obligations of Sponsor with Respect to Certain Third-Party Relationships

The Sponsor shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Development with respect to which assistance is being provided under this Agreement. The Sponsor shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Development in accordance with this Agreement.

65. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Sponsor of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

66. Audit/Retention and Inspection

- A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Sponsor shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Sponsor further agrees to maintain such records for a minimum period of four (4) years after final payment under the Agreement, unless a longer period of records retention is stipulated.
- B. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Development. At the Department's request, the Sponsor shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- C. The audit shall be performed by a qualified state, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

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- D. If there are audit findings, the Sponsor shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, will conclude the audit process and notify the Sponsor in writing. If the Department is not in agreement, the Sponsor will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.
- E. If so, directed by the Department upon termination of this Agreement, the Sponsor shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

67. Reporting Requirements

Sponsor shall comply with all reporting requirements set forth in the MHP Guidelines or applicable law, including, without limitation, each and all of those reporting requirements set forth in Section 7325 of the MHP Guidelines, all if, as, and to the fullest extent applicable to the Development.

68. Assignment Prohibited

This Agreement shall not be assigned, in whole or in part, except to the Borrower upon the prior written approval of the Department. The Sponsor and the Borrower are the only beneficiaries of this Agreement. Where the Application indicates that the Development will be owned by a Sponsor-controlled limited partnership, Sponsor may assign this Agreement in whole to such partnership, subject to the Department's written approval of the limited partnership agreement and other organizational documents. Upon such approved assignment, Loan funds that would otherwise be advanced or paid to Sponsor pursuant to the terms of the Agreement shall be advanced or paid to such partnership.

69. Cash Out

No cash-out is permitted, in escrow or otherwise, to the Sponsor, or to any related party thereof (other than for reimbursement of the lower of actual cost or appraised value of land used by the Development) or to the Borrower, including cash-out of equity, deferred developer fee, seller-carry back loan, fees owed by seller to Sponsor, or for any other purpose. Excess funds on close of escrow shall be applied to reserve accounts or shall be applied against the Department loan, in the Department's sole discretion.

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70. Residual Receipts

Only public agencies can receive Residual Receipts.

71. Invalidity of Statute, Regulation or Use

In the event that a state or federal governmental entity, which has the authority to do so, determines that any use of Loan funds contemplated by this Agreement is unlawful or contrary to any applicable provision of federal or state law, this Agreement shall be deemed modified to eliminate such unlawful use or application and/or to add necessary restrictions or requirements. In the event of such determination, the Department shall notify Sponsor, in writing, of the specific modification to this Agreement, which is required by such determination. Sponsor shall have fifteen (15) calendar days after receipt of such notice to terminate this Agreement and return any and all funds advanced including interest earned on such funds. If Sponsor fails to so act within the fifteen (15) day period, the modification shall become part of this Agreement effective on the date of receipt of notice and binding on the parties hereto.

72. Attorney's Fees, Costs

In any action to enforce or relating to this Agreement, the prevailing party shall be entitled to recover from the other party, its costs and expenses including attorney's fees. The term "costs and expenses" as used herein shall include all costs and expenses actually and reasonably incurred, including, but not limited to, attorney's fees; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to section 68093 of the Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage, telephone and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits; and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

73. Governing Law

This Agreement shall be construed with and be governed by the laws of the State of California. All references to codes refer to the California Codes.

EXHIBIT D

74. Integration

This Agreement, together with the Exhibits A-E attached hereto, incorporating references herein, and enclosures herewith, sets forth all of the promises, agreements and understandings to date among the parties hereto with respect to the Loan, and there are no promises, agreements, or understandings, oral or written, express or implied, other than as set forth or incorporated herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

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