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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

DOWNTOWN REBOUND PROGRAM

REGULATORY AGREEMENT

LOAN NUMBER 00-DRP-_____

This Regulatory Agreement (the "Agreement") dated _____, 200 , 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 Downtown Rebound Program pursuant to Chapter 18 of Part 2 of Division 31 of the Health and Safety Code commencing with section 50898 (the "Program") and the Notice of Funding Availability (the "NOFA") issued November 8, 2000. The units within the Development designated as Assisted Units shall be governed by the Multifamily Housing Program Guidelines dated August 28, 2000, and any amendments thereto (the "Guidelines"). The obligations imposed on the Borrower by the Program, the Guidelines, any regulations governing the Program adopted by the Department and the

Department's policies and procedures are collectively referred to herein as the "Program Requirements."

- B. As required by the Program, Borrower and the Department have entered into that Standard Agreement, numbered _____, and dated _____, 200 , regarding the Development and governing the terms of the Loan (the "Standard Agreement").
- C. Also as required by the Program and in addition to the Standard Agreement, Borrower has executed or will execute each of the following documents in form approved by the Department:
1. A 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, and recorded or to be recorded against the Property (the "Deed of Trust"). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department.
 3. A development agreement setting forth the Program requirements as they may relate to the 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, this 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 Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program Requirements.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.

2. Property. Borrower is the owner in fee of the Property and all improvements now and hereafter located thereon.

[Or substitute one of the following as appropriate.]

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

Property. The Property is owned in fee by _____ a _____ (the "Public Agency"). Borrower has an agreement with the Public Agency for construction and operation of the improvements located on the Property. **[Modify as appropriate.]**

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the 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 section 50050, and the definitions included in the Program Requirements.

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 Unit that is affordable to a lower income household as a result of a loan provided pursuant to the Program, as specified in this Agreement.
- b. "Fiscal Year" for the Development shall mean the annual period commencing on _____ and concluding on _____ each year.
- c. "Market Restricted Unit" means any non-Assisted unit that is designated for initial occupancy by households earning no more than one hundred fifty percent (150%) of the area median income.
- d. "Net Cash Flow" shall mean all Operating Income of the Development less the amounts paid therefrom as allowed in clauses (1) through (6) of subparagraph b. of Paragraph 20 hereof.
- e. "Non-assisted Unit" means a Dwelling Unit that is not designated as an Assisted Unit.
- f. "Non-restricted Unit" means a Dwelling Unit that is not a Restricted Unit.
- g. "Operating Income" means all income generated in connection with operation of the rental housing development including rental income for Assisted, Non-assisted and Market Restricted Units, rental income for Commercial Space, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, related to the rental housing development. "Operating Income" does not include security and

equipment deposits, payments for supportive services, or tax benefits received by the Borrower.

- h. "Restricted Unit" means any Assisted Unit and any Unit that is subject to rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include units subject to a California Tax Credit Allocation Committee ("TCAC") Regulatory Agreement and all Units subject to similar long-term, low-income restrictions imposed by other public agencies.
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 Standard Agreement shall be in conformity with all Program Requirements, including the requirements of this Agreement and the other Loan Documents. The Borrower acknowledges that it is familiar with the Program Requirements and has access to professional advice to the extent necessary to enable the Borrower to fully comply with the Program Requirements.
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 twentieth (20th) anniversary of the date of recordation of the certificate of occupancy after the completion of construction of the Development regardless of any prepayment of the Loan or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the Department or extended by the mutual consent of the parties.
6. Assisted Units, Restricted Units and Market Restricted Units.
 - a. For the full term of this Agreement, Borrower shall provide within the Development, the number, type and size of Assisted Units and Market Restricted Units set forth in Exhibit B attached hereto and incorporated herein.
 - b. Restricted Units shall not differ substantially in size or amenity level from Non-restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from Non-restricted Units.
 - c. Within the limits of subparagraph b., above, and subject to the requirements of subparagraph a., above, Borrower may change the designation of a particular unit from Assisted Unit to Non-assisted Unit, and vice versa, over time.
 - d. Market Restricted Units shall be initially rented only to households earning no more than one hundred and fifty percent (150%) of the area median

income. Unless otherwise indicated in the Special Conditions, Exhibit C hereto, rents in Market Restricted Units shall not be increased for a period of twelve (12) months after occupancy by the initial tenant. Each Market Restricted Unit shall become a Non-restricted Unit twelve (12) months after initial occupancy of the Unit.

7. Tenant Selection Procedures.

- a. Borrower shall rent Assisted Units in the Development to Eligible Households in accordance with the Management Plan approved by and on file with the Department pursuant to Paragraph 13 of this Agreement. Such plan shall:
- (1) detail actions to be taken by Borrower to affirmatively market all units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor;
 - (2) specify reasonable criteria for determination of tenant eligibility, including household size;
 - (3) require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Department;
 - (4) require eligible applicants to be notified of eligibility and, based on turnover history, when a unit may be available;
 - (5) require ineligible applicants to be notified of the reason for their ineligibility;
 - (6) specify procedures through which applicants deemed to be ineligible may appeal this determination;
 - (7) require maintenance of a waiting list of eligible applicants;
 - (8) specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income level limitations; and
 - (9) be made available to prospective tenants upon request.
- b. Market Restricted Units shall be rented to households in accordance with paragraph 6.d., above.

8. Non-Discrimination. Borrower shall not discriminate against any tenant or prospective tenant on the basis of sex, sexual orientation, race, color, religion, ancestry, national origin, disability, marital status, familial status, source of income, 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 in compliance with applicable law, and only with prior approval of the selection criteria by the Department.

9. Rental Agreement and Occupancy Procedures.
 - a. Each household selected to occupy an Assisted Unit or a Market Restricted Unit in the Development shall enter into a written rental or occupancy agreement with the Borrower, the form of which shall be subject to approval by the Department and be consistent with the Program Requirements. For Assisted Units, the rental agreement shall, inter alia, provide for good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.

 - b. The Borrower may establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the Program Requirements and shall not distinguish or discriminate between Restricted Units and Non-restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall become effective no less than thirty (30) days after giving written notice thereof to each household in the Development.

10. Assisted Unit Rents.
 - a. For the Initial Operating Year, Borrower shall charge Rents for the Assisted Units in the Development in accordance with Exhibit B hereto.

 - b. After the Initial Operating Year, Rents for Assisted Units may be adjusted no more often than every twelve (12) months. The amount and method of adjustment for Assisted Units shall be in accordance with the Low Income Housing Tax Credit Program (LIHTC). The adjusted rent amount shall not exceed the amount published by the Department for the applicable unit size and income limit, as shown in Exhibit B.

 - c. Notwithstanding the previous subparagraph, Rents for Assisted Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted more often than annually, as required by the respective rental assistance program.

- d. Units in the Development covered by project-based rental assistance, if any, are described in Exhibit C. For such units:
 - (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and
 - (2) If the project-based rental assistance is terminated, rents for units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. In addition, rents for units designated in Exhibit C as restricted to households with incomes not exceeding a percentage of State Median Income ("SMI") shall not in any event be increased to an amount in excess of thirty percent (30%) of fifty percent (50%) of area median income, adjusted by bedroom size in accordance with the requirements of LIHTC.

11. Rents for Non-assisted Units and Commercial Space.

Borrower shall establish and implement a rent structure and operations budget for Non-assisted Units and/or Commercial Space, as applicable, which ensures the Fiscal Integrity of the Development. Rent for Market Restricted Units shall be in compliance with Exhibit B hereto. Borrower shall estimate all income and expenses attributable to the Non-assisted Units and, if applicable, Commercial Space, in the annual operating budget described in Paragraph 15 herein, and shall report all income and expenses attributable to Non-assisted Units and Commercial Space in the annual report described in Paragraph 17 herein.

12. Certification of Tenant Income and Household Size.

- a. The income and household size of all households occupying Assisted Units and Market Restricted Units shall be certified by the Borrower prior to initial occupancy and the income and household size of all households occupying Assisted Units shall be recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with the applicable rules, regulations and procedures governing LIHTC.
- b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the income limit designation for the Assisted Unit, the household will be subject to LIHTC requirements regarding over-income occupancy, except that Assisted Units designated in Exhibit B hereto as restricted to households with incomes not exceeding a specified percentage of SMI shall be subject to the following:

- (1) If the household's income exceeds the income limit designation for the Assisted Unit by more than ten percent (10%) of SMI, but remains below the income limit for "lower income households" as defined by Health and Safety Code section 50079.5, the Borrower shall increase the household's rent to the level applicable to other households in the Development with similar incomes, and shall designate the next available comparable Assisted Unit as a Unit restricted for occupancy by households at the income limit formerly applicable to the first Unit, thereby restoring the Assisted Unit allocation set forth in said Exhibit B.
- (2) If the household's income exceeds the income limit for "lower income households," the Borrower shall increase the household's Rent to the level for a comparable Non-assisted Unit for a household of similar income, and designate the next available comparable Unit as an Assisted Unit and either:
 - (A) the Unit shall be designated as a Non-assisted Unit, if the Development contains such Units; or
 - (B) the lease for the Unit shall terminate one year following the recertification date, if the Development does not contain Non-assisted Units and the household fails to provide the Borrower evidence that the household's income has declined to a level below the income limit for "lower income households."

13. Management and Maintenance.

- a. Borrower is 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 all Residential Units, common areas and Commercial Space in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan described below.
- b. Borrower is responsible for operating the Development in accordance with the management plan developed by the Borrower and 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., above. 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., above, 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., above.
- e. Borrower shall operate, maintain and repair both Restricted and Non-restricted Units equally without regard to their designation as Restricted Units or Non-restricted Units.

14. Hazard and Liability Insurance.

- 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.

15. Annual Operating Budget.

- a. For the Initial Operating Year, Borrower shall operate the Development and expend Operating Income in accordance with the initial operating budget approved by and on file with the Department. Such budget shall

show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year.

- b. No later than sixty (60) days prior to the beginning of each subsequent Fiscal Year of the Development, the Borrower shall submit to the Department a proposed annual operating budget on a form provided by the Department. The proposed annual operating budget shall set forth the Borrower's estimate of Operating Income, Operating Expenses and debt service for the upcoming year, amounts payable to reserves, and proposed Rent adjustments.
 - c. If the Development contains either Non-assisted Units or Commercial Space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between Assisted Units, Non-assisted 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.
16. Periodic Reports. During the Initial Operating Year, Borrower shall submit to the Department such periodic reports as deemed necessary by the Department to monitor the Borrower's compliance with this Agreement. The reports may include, but are not limited to:
- a. An income and expense statement for the reporting period.
 - b. A summary of the occupancy of the Development, indicating the number and type of Units reserved for Eligible Households, the number of vacant Units, and the number of evictions completed or in process.
 - c. A report on maintenance or other issues anticipated to impact the current budget needs of the Development.
 - d. Information on the status of waiting lists for the Assisted Units, including the number of households on lists for different Unit sizes and by income group.
 - e. Other information as required by the Department to accurately monitor Borrower's performance hereunder.

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

17. Annual Report and Audit.

- a. Borrower shall file an annual report with the Department no later than ninety (90) days after the end of each Fiscal Year for the Development. The report shall be in such form and contain such information as required by the Department.
- b. As part of the annual report, the Borrower shall submit an audit of the Development prepared in accordance with generally accepted auditing standards by an independent certified public accountant. The Department may require the audit to be accompanied by a supplemental report prepared in accordance with Department requirements.

18. Required Reserves.

Borrower shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Borrower, earn interest, and unless otherwise approved in writing by the Department, insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account:

- a. **Replacement Reserve Account.** Commencing no later than the date funds are disbursed pursuant to the Loan Documents, Borrower shall establish a segregated replacement reserve account. Borrower shall make monthly deposits from Operating Income to the replacement reserve account in the amount set forth in Exhibit C. Borrower shall also deposit any development funds designated for replacement reserves into this account, including those identified in Exhibit C. All withdrawals from the replacement reserve account shall be subject to the prior written approval of the Department. The amount of the minimum monthly deposit may be adjusted, as determined by the Department, in its sole discretion, based on a physical needs assessment or reserve study performed by an independent third party at the Borrower's expense as requested by the Department or as based on another reasonable indicator of future reserve needs.
- b. **Operating Reserve Account.** If shown in Exhibit C, Borrower shall establish an operating reserve account or sub-account within the Development's general operating account no later than sixty (60) days from the date of recordation of this Agreement. Borrower shall fund the operating reserve account with an initial deposit in an amount as specified in Exhibit C, and through monthly deposits from Operating Income in amounts as specified in Exhibit C or in approved annual operating

budgets. Borrower shall not be required to make monthly deposits to the operating reserve account at any time the current balance of the operating reserve account exceeds the gross operating income of the Development for the previous twelve (12) months. All withdrawals from this account shall require prior written Department approval.

- c. Other Reserve Accounts. Borrower certifies that Exhibit C hereto contains a complete listing of all reserve accounts established or to be established for the Development. All withdrawals from these accounts shall require prior written Department approval, except as specifically noted in Exhibit C.

19. Accounting Records. In a manner subject to Department approval, Borrower shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. All records and books relating to this system shall be retained for not less than seven (7) years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the Department or its representative.

20. Use of Income from Operations.

- a. The Borrower, or Borrower's management agent, shall promptly deposit all Operating Income in a segregated account established in the Borrower's name exclusively for the Development and insured by an agency of the federal government or other comparable federal insurance program.
- b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement, and the approved annual operating budget, and 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 premiums;

- (3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, including the Loan, which are secured by liens on the Property which have been approved by the Department, payments on which are to be made prior to the determination of Net Cash Flow, as specified in Exhibit C, hereto;
- (4) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the Department;
- (5) deposits to required reserve accounts;
- (6) Distributions, in accordance with Paragraph 21 of this Agreement.

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

21. Distributions.

- a. As long as the overall Development debt service coverage ratio is maintained at or above 1.10:1, and unless otherwise specified in the Special Conditions, Exhibit C hereto, there is no limit as to the annual amount of Distributions.
- b. Borrower may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future distributions shall not reduce the otherwise permitted Distributions in those subsequent years.
- c. Distributions shall be permitted for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Borrower submits a complete annual report and operating budget and the Department determines that the report and budget demonstrate compliance with all Program Requirements.
- d. No Distributions shall be made to the Borrower or 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 any entity, including the Department, with an equitable or beneficial interest in the Development;

- (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;
 - (3) if all currently required debt service, including mandatory payments on the Loan, and Operating Expenses have not been paid;
 - (4) if the replacement reserves account or any other required reserve account is not fully funded pursuant to this Agreement.
- e. Any additional services for the Development, the payment for which are not to be included as Distributions, shall be set forth in Exhibit C hereto. The specific amounts of such payments shall be set forth in the annual budget and included in the annual reports.
 - f. Distributions attributed to Commercial Space and Non-restricted Units, as shown in approved annual operating budgets and annual reports, shall not be subject to the limits of this paragraph 21, provided the overall Development debt service coverage ratio is maintained at or above 1.10:1.

22. Use of Net Cash Flow.

- a. As long as the overall Development debt service coverage ratio is maintained at or above 1.10:1, Net Cash Flow attributable to those portions of the Development other than any Non-restricted Units or Commercial Space shall be applied to payment of interest, principal, impounds fees and charges, if any, on loans which are secured by liens on the Property, including the Loan, which have been approved by the Department and which are to be paid from Net Cash Flow in the amounts, proportion and in accordance with the terms specified in Exhibit C hereto. Upon payment in full of the loans payable from Net Cash Flow as set forth in Exhibit C, all Net Cash Flow shall be paid to the Department as excess cash, used to reduce rents in Assisted Units, or used for other purposes related to the Development as approved by the Department.
- b. Net Cash Flow attributed to Non-restricted Units and Commercial Space, as shown in annual operating budgets and annual reports approved by the Department, may be distributed to or on behalf of Borrower.

23. Department Review and Inspections.

- a. At any time during the term of this Agreement, the Department or its designee may enter and inspect the physical premises and inspect all

accounting records pertaining to the construction, development or operation of the entire Development. Upon request by the Department, the Borrower shall notify occupants of upcoming inspections of their Units in accordance with state law.

- b. In addition to the annual audit required in Paragraph 17, and at the Department's request, the Borrower shall provide, at Borrower's expense, a special audit of the Development certified by an independent certified public accountant. The Department may also perform or cause to be performed audits of any and all phases of the Borrower's activities related to the Development.
- c. The Department may request any other information that it deems necessary to monitor compliance with the Program Requirements and the requirements set forth in this Agreement and the Standard Agreement. The Borrower shall promptly provide such information.

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

- a. Except with the 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 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 Property or Development, other than for current Operating Expenses, 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 Property provided that the Department may permit refinancing or additional financing secured by the Property to the extent necessary to maintain or improve the Development's Fiscal Integrity, or to maintain affordable Rents;
 - (5) enter into any contract relating to rehabilitating or managing the Development;

- (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 of the Property or Development provided 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, the other Loan Documents and the Program Requirements;
 - (3) the transferee Borrower demonstrates to the Department's satisfaction that it has the ability to own and operate the Development in full compliance with this Agreement and the Program Requirements; and
 - (4) any terms of the sale, transfer or conveyance shall not jeopardize the Department's security or the transferee Borrower's ability to comply with all Program Requirements.
- c. The Department may grant its approval for a sale, transfer or conveyance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Development or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.
- d. The Borrower agrees that if it is organized as a partnership or other legal entity, Borrower shall not dissolve the partnership or other legal entity prior to the expiration of the term of this Agreement, without the prior written approval of the Department.

25. Violation of Agreement by Borrower.

- a. In the event of the Borrower's breach, violation or default in the performance of any covenant, agreement or obligation of the Borrower set forth in this Agreement including, but not limited to, Borrower's covenant to perform its obligations under the Loan Documents, the Department shall give the Borrower written notice in the manner specified in Paragraph 35 of this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than fifteen (15) 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 respective households. If legal action is necessary to enforce the provisions of this Agreement, the Department may seek the return of such overcharges to the respective households.
- c. The remedies of the Department hereunder and under the other Loan Documents 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.

26. Controlling Agreement.

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.

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

28. Amendment. This Agreement shall not be altered or amended except in writing, 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 legal, equitable, proprietary or possessory interest 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 Property in the official records of the county in which the Development is situated, superior to the lien of the Deed of Trust.

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 other 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 any recognized environmental conditions at the Development or on the Property.

Borrower shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate 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 the gross negligence or willful misconduct of the Department. Borrower's duty to indemnify the Department shall survive the term of this Agreement, the release and cancellation of the Note and the reconveyance or partial reconveyance of the Deed of Trust.

- 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. No Waiver. No waiver by the Department of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder.
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 the 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 set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.
37. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.

38. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.

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

Exhibit A, Legal Description of the Property;

Exhibit B, Unit Designation and Rent Schedule; and

Exhibit C, Special Conditions.

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

DEPARTMENT

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

Mailing Address:
Downtown Rebound Program
Department of Housing and
Community Development
P.O. Box 952054
Sacramento, CA 94252-2054

By: _____
Reed Flory
Program Manager
Downtown Rebound Program

Principal Place of Business:
Downtown Rebound Program
Department of Housing and
Community Development
Sacramento, CA 95814

BORROWER

By: _____
[Original Signature]

Borrower's Address:

Name: _____

Title: _____

Date: _____

EXHIBIT A TO REGULATORY AGREEMENT

LEGAL DESCRIPTION

EXHIBIT B TO REGULATORY AGREEMENT

UNIT DESIGNATIONS AND RENT SCHEDULE

The Initial Operating Year ends at the end of the initial Fiscal Year, which is: _____,200_.

During the Initial Operating Year:

- 1) Borrower shall charge rents for Assisted Units and Market Restricted Units in accordance with the following schedule; and
- 2) Borrower shall charge rents for units other than Assisted Units in amounts not less than the amounts shown herein.

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

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

EXHIBIT C TO REGULATORY AGREEMENT

SPECIAL CONDITIONS

Requirements for Project-Based Rental Assistance (Paragraph 10.d)

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

No. of Units	Bedrooms	Assistance Program	MHP Income Limit

Required Reserves (Paragraph 18)

Replacement Reserves (18.a)

Monthly Deposit Amount: \$
 based on .006 times \$
 based on a physical needs assessment

Initial Capitalization Amount: \$

Operating Reserve (18.b)

Name:
 Funding Source:
 Deposit Amount: \$ per month
 Initial Capitalization
 Amount \$

Other Reserves (18.c)

Name:
 Funding Source:
 Deposit Amount: \$ per
 Withdrawals Require
 Prior Department
 Approval ?

Name:
Funding Source:
Deposit Amount: \$ per
Withdrawals Require
Prior Department
Approval ?

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

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

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

Distributions (Paragraph 21)

The Borrower shall be limited to an annual Distribution in an amount not to exceed the sum of:

Use of Net Cash Flow (Paragraph 22)

Net Cash Flow shall be applied towards payment of the following loans, in the percentages noted:

Lender: California Department of Housing and Community Development
Initial Principal
Amount: \$
Percentage of Net
Cash Flow: %
Term to Maturity: 55 years

Lien Position:
Interest Rate:

Initial Principal
Amount: \$
Percentage of Net
Cash Flow: %
Term to Maturity: years

Lien Position:
Interest Rate:

[Add to Menu of Special Conditions]