

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
PORTFOLIO REINVESTMENT PROGRAM**

REGULATORY AGREEMENT

LOAN NUMBER __-PRP-__

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

RECITALS:

- A. Borrower has applied to the Department for [a new rehabilitation loan and restructuring of that certain loan number _____ (the "Original Loan") from the _____ Program ("Original Program") together (the "Loan")] [a new loan (the "Loan") in addition to that certain loan number _____ (the "Original Loan") from the HOME Investment Partnerships Program ("HOME")] for the continued affordability of a Rental Housing Development located at _____, California, consisting of a total of _____ rental units (the "Development"), of which _____ Assisted Units are to be occupied by Eligible Households as provided in this Agreement. The Development is located on the real property described in Exhibit A hereto (the "Property"). The Original Loan [will be restructured] [will remain on the Development] in accordance with chapter 5.5 of part 2 of division 31 of the California Health and Safety Code

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

- B. The Original Loan was evidenced by a promissory note in the amount of \$ _____ (the "Original Note") secured by a deed of trust recorded on _____ as Instrument No. _____ in the Official Records of _____ County (the "Original Deed of Trust"). The Original Loan was also subject to a regulatory agreement recorded on even date therewith in the Official Records of _____ County as Instrument No. _____ (the "Original Regulatory Agreement"). The expiration date of the Original Regulatory Agreement is _____ ("Original Regulatory Agreement Expiration Date"). As of the date of Note (as described below) approximately \$ _____ of interest has accrued on the Original Note.
- C. In accordance with the PRP Requirements, Borrower and the Department have entered into that Standard Agreement, numbered _____-PRP-_____, and dated _____, regarding the Development and governing the terms of the Loan (the "Standard Agreement"). All terms of the Standard Agreement, including all Special Conditions, are incorporated by reference into this Agreement.
- D. Also as required by the PRP and in addition to the Standard Agreement, Borrower has executed or will execute each of the following documents in a form approved by the Department:
1. A promissory note evidencing the Loan specifying, *inter alia*, the principal amount thereof, the interest accrued on the Original Note and accruing thereon and the terms of repayment thereof (the "Note").
 2. A deed of trust, assignment of rents, security agreement, and fixture filing securing the Note, and the performance under this Agreement, and naming the Department as beneficiary and the Borrower as trustor and recorded or to be recorded against the Property (the "Deed of Trust"). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department.

3. Such other documents and instruments as the Department may reasonably require.
- E. The Standard Agreement, the Note, the Deed of Trust, this Agreement and such other documents and instruments as are reasonably required by the Department are collectively referred to herein as the "Loan Documents."
- F. Upon execution, acknowledgement, and recordation of the Loan Documents as required, the Original Note, Original Deed of Trust, and Original Regulatory Agreement will be superseded by the Loan Documents and shall have no further effect.
- G. As further consideration for the Loan and in furtherance of the purposes of the Portfolio Reinvestment 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 PRP 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 Guidelines, MHP Guidelines, and the Regulations (where there is a conflict between the Guidelines, the MHP Guidelines, and the Regulations, the terms in the Guidelines shall prevail).

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” or “PRP Assisted Unit” shall mean a residential unit that is used as a primary residence by its occupants, subject to the PRP’s Rent and/or occupancy restrictions, as provided herein.
- b. “Date of Application Acceptance” shall mean, _____, the date the Department confirmed receipt of Borrower’s complete application on Department forms, in an official letter from the Department, for restructuring of the Original Loan.
- c. “Eligible Household(s)” means households whose incomes do not exceed 60 percent of AMI (or 80 percent of AMI in counties where 100 percent of AMI under the current Multifamily Tax Subsidy Project (MTSP) Income Limits is equal to the current statewide non-metro median income as shown in the PRP application form), calculated in accordance with the regulations and procedures governing the low-income housing tax credit program, as administered by the California Tax Credit Allocation Committee (“TCAC”), or other lower income limits agreed to by a Project Sponsor and the Department. In non-Special Needs Population projects, household income will be calculated on the basis of Units in accordance with TCAC rules and procedures (The rules and procedures set forth in 25 California Code of Regulations (CCR) Section 6932 *et. seq.* do not apply). In Special Needs Populations Projects, household income may be calculated on the basis of bedrooms within a single-family house and bedrooms within an apartment Unit, provided all Project Units are located on the same parcel or on contiguous parcels and the bedrooms are: (1) occupied by a single individual who is a member of a Special Needs Populations, or an individual member of a Special Needs Populations and his or her relatives or caretaker and (2) subject to an individual rental or occupancy agreement. In transitional Special Needs Populations Projects, household income may be calculated on the basis of each occupant of each bedroom provided all Project Units are located on the same parcel or on contiguous parcels and no more than two unrelated persons are occupying a bedroom.
- d. “Existing Tenant” or “Existing Household” shall mean a tenant or household residing at the Development on the Date of Application Acceptance.
- e. “Fiscal Integrity” shall mean that the total Operating Income plus funds released pursuant to this Agreement from the operating reserve account is sufficient to: (1) pay all current Operating Expenses; (2) pay all current debt service (excluding deferred interest); (3) fully fund all reserve accounts (other than the operating reserve account) established pursuant to this Agreement. The ability to pay any or all of the permitted annual Distributions shall not be considered in determining Fiscal Integrity.

- f. "Fiscal Year" for the Development shall mean the annual period commencing on _____ and concluding on _____ each year.
- g. "Household Income" shall mean income of the household occupying an Assisted Unit as calculated in accordance with rules and procedures adopted by the California Tax Credit Allocation Committee ("TCAC"), including TCAC requirements for determining the placed in service date.
- h. "Housing First" has the same meaning as in Welfare and Institutions Code Section 8255, including all of the core components listed therein.
- i. "Initial Operating Year" shall mean initial period of operation of the Development under the Loan beginning at the time of recordation of this Agreement and ending the last day of the Fiscal Year for the Development.
- j. "Monitoring Fee" shall mean payment(s) to the Department for monitoring as specified in Exhibit C hereto.
- k. "Net Cash Flow" shall mean all annual Operating Income of the Development less the amounts paid therefrom as allowed in clauses (1) through (8) of subparagraph b. of paragraph 20 hereof.
- l. "New Tenants" shall mean a tenant or household residing at the Development after the Date of Application Acceptance.
- m. "Rent" shall mean the same as "Gross Rent", as defined in the Internal Revenue Code (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an Assisted Unit, and a utility allowance established in accordance with TCAC requirements. For units assisted under the United States Housing and Urban Development Department ("HUD") Section 8 or similar rental subsidy programs, Rent includes only the tenant contribution portion of the contract rent.
- n. "Residual Receipts" shall mean the 50 percent share of Net Cash Flow if available, which shall be paid by the Borrower to the Department on an annual basis as payment on the Program Loan as calculated by section 20.b.(9) and section 22 hereof. The Department may agree to share the Residual Receipts with other public agency lenders, as specified in Exhibit C. Only public agency lenders can receive Residual Receipts.
- o. "Special Needs Population Units" shall mean Assisted Units restricted to certain groups as described in Section 7301(r) of the MHP Regulations, that may not meet all of the qualifications required to occupy Supportive Housing Units, who

still need services linked to their housing, such as disabled households who are not homeless.

- p. “Supportive Housing Units” shall mean Assisted Units offered as permanent housing linked to supportive services where occupancy is restricted to Eligible Households that (1) are homeless or at risk of homelessness; (2) include a disabled adult; and (3) meet all other requirements of Section 7341(a) of the MHP Regulations.
 - q. “Sponsor” shall mean, notwithstanding the definition in the Guidelines, the legal entity or combination of legal entities relied upon by the Department for experience and capacity and which the Department expects to establish and maintain control over the Development. Where a Borrower has multiple layers in its organizational structure, the requirements of UMR 8313.2 must be met. The Sponsor for this Development is _____.
 - r. “Target Population Units” shall mean Assisted Units restricted to certain groups, such as disabled households, elderly households, or other specific groups with unique housing needs as determined by the Department (“Target Populations”). Target Population Units, where applicable, may include Special Needs Population Units and/or Supportive Housing Units as defined below.
 - s. “Unit” shall mean a residential unit that is used as a primary residence by its occupants, including efficiency units and residential hotel units.
4. Compliance with PRP Requirements. The Borrower agrees that at all times its actions regarding the Development and the use of funds provided under the Loan shall be in conformity with all PRP Requirements, including the requirements of this Agreement and the other Loan Documents. The Borrower acknowledges that it is familiar with the PRP Requirements and has access to professional advice to the extent necessary to enable the Borrower to fully comply with the PRP Requirements.
5. Term of Agreement. This Agreement shall commence on the date of its recordation and remain in full force and effect and shall apply to the Development through and including the _____ () (minimum 30 years for small projects or 55 years for all others) anniversary of the date of recordation of this Agreement pursuant to paragraph 33 hereof regardless of any prepayment of the Loan or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the Department or extended by the mutual consent of the parties. Notwithstanding the above, this Agreement shall not expire, even following payment in part or in full of the Department Loan, without the express written consent of the Department; where the Department’s written consent through

recording of termination of this Agreement, is in its sole discretion and at its election.

6. Assisted Units and Restricted Units

- a. For the full term of this Agreement, Borrower shall provide within the Development, the number, type and size of Assisted Units set forth in Exhibit B attached hereto and incorporated herein.
- b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
- c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Borrower may change the designation of a particular Unit from Assisted Unit to non-Assisted Unit, and vice versa, over time.
- d. Borrower shall comply with all the requirements for Target Population Units and Supportive Housing Units or Special Needs Population Units, if any, as set forth in Exhibit B. Payment of Supportive Services Costs is addressed in Section 8314 of the Regulations and, as necessary, Exhibit C of this Agreement.
- e. Borrower shall (if applicable) implement Housing First Practices, consistent with the core components set forth in the Welfare and Institutions Code Section 8255(b).
- f. Borrower shall establish policies and procedures to prevent evictions and to facilitate reasonable accommodation policies.

7. Tenant Selection Procedures. Borrower shall rent Assisted Units in the Development to Eligible Households in accordance with the Management Plan developed by the Borrower and approved by and on file with the Department (the "Management Plan") pursuant to paragraph 13 of this Agreement. The Management Plan shall:

- a. detail actions to be taken by Borrower to affirmatively market all Units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor, in accordance with California Health and Safety Code Section 50736 and Government Code Section 65863;

- b. specify reasonable criteria for determination of tenant eligibility, including household size;
 - c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Department;
 - d. require eligible applicants to be notified of eligibility and, based on turnover history, when a Unit may be available;
 - e. require ineligible applicants to be notified of the reason for their ineligibility and of their right to appeal this determination;
 - f. specify procedures through which applicants deemed to be ineligible may appeal this determination;
 - g. require maintenance of a waiting list of eligible applicants;
 - h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations;
 - i. be made available to prospective tenants upon request;
 - j. specify procedures for obtaining statistical information for identifying the status of tenants as either elderly or veteran;
 - k. other provisions necessary to assure compliance with the requirements of PRP; and
 - l. be made subject to periodic review and updates at the request of the Department.
8. Non-Discrimination. Borrower shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code Section 12920 including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing. The restriction of housing to elderly and other target groups is permitted where the housing is intended to benefit those target groups in compliance with applicable law, and only with prior approval of the selection criteria by the Department.
9. Rental Agreement, Grievance and Occupancy Procedures.

- a. Each Eligible Household selected to occupy an Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Borrower, the forms and addenda of which shall be subject to prior written approval by the Department and be consistent with the PRP Requirements. Such rental agreement and addenda shall, inter alia, provide for good cause eviction, reference the Department-approved appeal and grievance procedures set forth in the Management Plan, and require the tenant to annually recertify household income and size.
- b. The Borrower shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the PRP Requirements and shall not distinguish or discriminate between Restricted Units and non-Restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall become effective no less than thirty (30) days after giving written notice thereof to each household in the Development. Rental or occupancy agreements for any Assisted Unit shall comply with the Regulation Section 8307. Sponsor must ensure that the rental agreement and addenda for Assisted Units are consistent with Housing First principals and policies (if applicable).

10. Assisted Unit Rents.

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

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

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

Chart 2 in Exhibit B of this Agreement in accordance with the Guidelines.

e. Rent Increases and Notification Requirements.

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

- (h) This section 10(e)(1) shall not apply to projects whose Original Loan is from the HOME Investment Partnership Program (“HOME”).
- (2) Rent increases for Existing Tenants in those projects with an Original HCD Loan with AMI-Based Rents are subject to the Unit Mix Chart 2 in Exhibit B of this Agreement. After the Initial Operating Year, Rents for Assisted Units may be adjusted no more often than every twelve (12) months. The amount and method of adjustment for Assisted Units shall be in accordance with MHP Guidelines Section 7312(c).
- (3) Notification.
 - (a) In Non-HOME projects with formula-based Rents, the project Sponsor shall provide tenants with the following notifications:
 - (i) Notice six months prior to the scheduled Rent increase with an estimate of the amount of the increase.
 - (ii) Notice 90 days prior to the actual Rent increase with the exact amount of the new Rent.
 - (b) In projects whose Original HCD loan required AMI-based rents, Notice must be provided in accordance with State law.
 - (c) Rent notices may be further governed by other funding sources, other state, or local law(s), in which case the most restrictive requirements will apply.
- f. Rents for Vacant and Vacated Units for projects with formula based rents only
 - (1) After Existing Tenants residing in any Assisted Unit have vacated their units at the time of the Date of Application Acceptance, or for any Assisted Units that are vacant at the time of the Date of Application Acceptance, Rents for those vacated units may be increased in accordance with the Unit Mix Chart 2 in Exhibit B.
- g. Maximum Rents Achieved
 - (1) Once the maximum rent levels according to the Unit Mix Chart 2 in Exhibit B have been achieved by Existing Tenants and New Tenants, income limits and rents shall be calculated consistent with the calculation methodology of MHP.

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

h. Over-Income Tenants

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

i. Project-Based Rental Assistance

Units in the Development covered by project-based rental assistance, if any, are described in Exhibit C. For such Units:

- (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and
- (2) If the project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. However, Rents shall not in any event be increased to an amount in excess of thirty percent (30%) of fifty percent (50%) of area median income, adjusted by bedroom number in accordance with the Multifamily Housing Program.

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

annual operating budget and Schedule of Rental Income as described in paragraph 15 herein and shall report all income and expenses attributable to non-Assisted Units and Commercial Space/use in the annual report described in paragraph 17 herein.

12. Certification of Tenant Income and Household Size.

- a. The income and household size of all households occupying Assisted Units shall be certified by the Borrower prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the LIHTC.
- b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the designated AMI level pursuant to Paragraph 10 of this Agreement, and, to the extent a rent increase for the household is permitted by the Department, the Borrower shall:
 - (1) redesignate the tenant's Unit as a Unit at the higher income level;
 - (2) increase the tenant's Rent to the level applicable to Units at the higher income level; and
 - (3) designate the next available comparable Unit as a Unit at the income level originally applicable to the household until the Unit mix required by this Agreement is achieved. A Unit shall be deemed "comparable" if it has the same number of bedrooms as the original Unit.

For example, in a Development where the income limits utilized to qualify new tenants are 30%, 50% and 60% of AMI, if the income of a household occupying a Unit designated as a 30% Unit increases to 48% of AMI, the Borrower must redesignate the household's Unit as a Unit at the 50% AMI level, and submit a request to the Department, pursuant to Paragraph 15 of this Agreement, to increase the tenant's Rent to the level applicable to Units at the 50% AMI level, and designate the next available comparable Unit as a Unit at the 30% AMI income level to restore the Unit Mix Chart as outlined in Exhibit B of this Agreement. Similarly, if the income of an Existing Household occupying a Unit designated as a 60% Unit exceeds to 80% of AMI, the Rent for that Unit can be increased to 30% of actual household income. If there are any non-Assisted Unit in the project, a non-Assisted Units should be redesignated as a 60% AMI Unit, and the Unit occupied by the over-income household should be redesignated as a non-Assisted Unit. If all Units are Assisted Units, the Unit shall remain designated as a 60%

AMI Unit, but will be temporarily non-compliant with the 60% AMI Rent limit until the Unit is vacated by the over-income household.

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

- c. If at the time of recertification a tenant household's income exceeds the income limit designated for the household's Unit, but does not exceed the limit for a higher income level applicable to new tenants, the Sponsor may request to increase the household's Rent to an amount not exceeding the Rent limit applicable to the household's income level at the time of recertification. For purposes of this subsection, income levels shall not be limited to those applicable to new tenants and shall consist of five percent increments of AMI. Continuing with the example described in the subsection (b), the income levels utilized to establish Rent limits upon recertification would be 20%, 25%, 30%, 35%, etc. A household occupying a Unit in this Development with a 20% limit whose income, upon recertification, had increased to 32% of AMI could have their Rent increased to the Rent level applicable to the 35% income level.

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

13. Management, Maintenance, and Relocation.

- a. Borrower is responsible for all maintenance, repair, and management functions, relating to the Development and the Property, including without limitation, the following: selection of tenants; recertification of family income and size; evictions; provision of any required supportive services; 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 state and 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. All amendments to this plan require prior written approval of the Department.
- c. Borrower may, with the prior written approval of the Department, contract with a management agent for the performance of the services or duties required in subparagraphs a. and b. of this paragraph 13. However, such an arrangement does not relieve the Borrower of responsibility for proper

performance of these duties. Such selection of the management agent and the management contract shall be subject to prior written approval by the Department and shall contain a provision allowing the Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Department, and notice to the Borrower thereof, that the contractor performing the functions required in subparagraphs a. and b. has failed to operate the Development in accordance with this Agreement and the approved Management Plan, the Borrower shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Department approval, for continuing performance of the functions required in subparagraphs a. and b.

- d. Upon a determination by the Department, and notice to the Borrower thereof, that the Borrower has failed to operate the Property, including the Development in accordance with this Agreement and the approved Management Plan, the Department may require the Borrower to contract with a qualified management agent to operate the Development and Property, or to make such other arrangements as the Department deems necessary to ensure performance of the functions and obligations required in subparagraphs a. and b.
- e. Borrower shall operate, maintain, and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.
- f. Eligible households displaced because of rehabilitation shall be accorded first priority in occupying comparable units in the Development from which they were displaced, subsequent to rehabilitation. Tenants of rental housing developments repaired with assistance provided through this PRP who are temporarily or permanently displaced as a result of rehabilitation or other repair work, shall be entitled to relocation benefit pursuant to, subject to the requirements of Section 7260 of the Government Code. Borrowers of assisted rental housing developments shall be responsible for providing the benefits and assistance.

14. Hazard and Liability Insurance and Condemnation.

- a. The Borrower shall at all times keep the Property, including 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 in the Department Deed of Trust and in the Insurance Guidelines and Insurance Guidelines Checklist, as may be amended from time to time, posted on the Department's website. All

insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Department.

- b. The Department must be named on applicable insurance policies covering all sites of the Development and Property. The Department must receive evidence of insurance coverage that satisfied Regulations Section 8303(b)(5), as determined by the Department in its reasonable discretion.
- c. In the event of any fire or other casualty to the Development, Property, or eminent domain proceedings resulting in condemnation of the]Development, Property or any part thereof, Borrower shall have the right to rebuild the Development, and to use all available insurance or condemnation proceeds therefore, provided that, as determined by the Department in its sole discretion, (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Development in a manner that provides adequate security to the Department for repayment of the Loan or if such proceeds are insufficient, then Borrower shall have funded any deficiency, (b) the Department shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material breach or default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Development and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Department for repayment of the remaining balance of the Loan.

15. Annual Operating Budget and Schedule of Rental Income (SRI).

- a. For the Initial Operating Year, Borrower shall operate the Development and expend Operating Income in accordance with the initial operating budget and Schedule of Rental Income (SRI), which were approved by and on file with the Department prior to loan closing. Such budget shall show all anticipated Operating Income including Commercial Space or Use, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year. Such SRI shall set forth the rent, which will identify each tenant household (by a unique identification or other method of household or tenant identification that is acceptable to the Department other than the tenant name and social security number), as well as the following information in connection with each tenant household: size, income, current rent, and proposed rent adjustments (including utility allowances, if applicable). Such SRI shall provide estimated income for Assisted Units, non-Assisted Units, and Commercial Space or use.

- 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 and SRI on forms provided by the Department. The proposed annual operating budget and SRI, together, shall set forth the Borrower's estimates for the upcoming year of Operating Income, Operating Expenses and debt service, amounts payable to reserves, and proposed Rent adjustments. Annual operating budgets and rent adjustments are subject to approval by the Department. No rent adjustments may be implemented without the Department's advance written approval.
 - 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 among Assisted Units, Restricted Units, non-Restricted 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. a report that identifies the current and proposed rents for all Assisted Units;
 - f. usage of PRP capitalized operating subsidy reserve funds (if any);
 - g. for the first 10 years subsequent to the recordation of the PRP rehabilitation loan documents, provide a certification that no tax credits, tax-exempt bond funds, or federal grants or loans with interest rates below the applicable

federal rate have been used in this Development since the PRP permanent loan closing.

- h. (if applicable) a report identifying all Assisted Units restricted for Supportive Housing and/or Special Needs Populations, and providing information regarding units and tenants receiving Supportive Housing Services (including the provision of and costs for such services); and
- i. other information as required by the Department to accurately monitor Borrower's performance hereunder, including any notices required for compliance with Preservation Notice Law and all information required by the United States Department of the Treasury, which administers the federal funds allocated to PRP.

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, annual report, or SRI approval process. Upon such notification, Borrower shall continue to submit the periodic reports in accordance with the Department's requests.

17. Annual Report and Audit.

- a. Borrower shall file an annual report with the Department no later than ninety (90) days after the end of each Fiscal Year for the Development. The report shall be in such form and contain such information as required by the Department.
- b. As part of the annual report, the Borrower shall submit an audit of the Development prepared by an independent certified public accountant in accordance with Department audit requirements, as specified in the most current edition of the Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing," and such other specific PRP Requirements as determined by the Department.
- c. The report must specifically identify the number of units rented to elderly persons as required in the annual report form provided by the Department. The report must also specifically identify the number of units rented to military veterans and include other relevant information as required by the Department. Additionally, the Borrower must submit a report identifying all Assisted Units restricted for Supportive Housing and/or Special Needs Populations, and providing information regarding units and tenants receiving Supportive Housing Services (including the provision of and costs of such services) if applicable.

- d. Pursuant to Section 8314(g) of the UMR, if the Borrower is paying Supportive Services Costs as Operating Expenses, the Department may require annual reporting on group activities, individualized services, costs of services and salaries of providers, and related matters.
18. Required Reserves. Borrower shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Borrower, earn interest, and, unless otherwise approved in writing by the Department, be insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. Withdrawals from the reserve accounts shall require prior written approval of the Department. Should the Department fail to take action on a request for a withdrawal from a reserve account within thirty (30) days of documented receipt of the request, that request will be deemed approved.
- a. Replacement Reserve Account. Commencing no later than the date of recordation of this Agreement, Borrower shall establish a segregated replacement reserve account. The replacement reserve, in the amount set forth in Exhibit C, shall either:
- 1) be funded annually from Operating Income, development sources, or a combination of Operating Income and development sources, or
 - 2) capitalized at permanent loan conversion with an initial deposit deposited into the Development's general operating account or subaccount no later than sixty (60) days from the date of recordation of this Agreement and disbursed to Borrower. The amount of the minimum annual deposit may be adjusted, as allowed by the Department, in its sole discretion. If allowed, the adjustment shall be based on the results of a property condition assessment (PCA) with reserve analysis, performed by an independent third party at the Borrower's expense as requested by the Department or as based on other reliable indicators of the need for replacement reserve funds over the 20 years of operations, after such request is made by the Department. The Department may periodically adjust the frequency of required deposits to the replacement reserve based on the results of a PCA with reserve analysis or other reliable indicators, or necessity. In no event shall this reserve be used to fund limited partner exit cost in violation of Section 8309 of the UMR.
- b. Operating Reserve Account. Borrower shall establish an operating reserve account or sub-account within the Development's general operating account no later than sixty (60) days from the date of recordation of this Agreement. Borrower shall fund the operating reserve account with an initial deposit in an amount as specified in Exhibit C, and through monthly deposits from Operating Income in amounts as specified in Exhibit C or in approved annual operating budgets. Borrower shall fully replace any

withdrawals from the operating reserve account using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, Supportive Services Costs (when not paid as part of operating costs as may be specified in Exhibit C) or Distributions. The amount of the minimum annual deposit shall be adjusted, upon satisfaction of the requirements of Section 8308(d) of the UMR. In no event shall the Operating Reserve be used to fund limited partner exit costs, except for amounts in excess of the balance required by the Department pursuant to Section 8308 of the UMR.

- 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. In no event shall these other reserves (such as a rental subsidy ‘transition reserve’) be used to fund limited partner exist costs.
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. Income from commercial space or commercial use of the property shall be considered part of the Operating Income, and revenue from all such income must be used in accordance with subparagraph (b) below. Commercial space leases and subleases must be at market rate and any tenant allowed to sublease must pass through to Borrower 100% of the market rate rent, except for expenses approved by the Department
 - 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 and Property, 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 and Property in connection with utilities, real estate taxes and assessments, and liability, fire. Flood (if applicable at any time during the full term of this Agreement) and other hazard insurance premiums;
- (3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, including Monitoring Fee, required on loans, including the Loan (regardless of any pre-payment or repayment thereof), 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 allowed by paragraphs 21 and 22, and as specified in Exhibit C, hereto;
- (4) all other incurred Operating Expenses, including the fee of the managing agent, Supportive Services Costs that are allowed by other public agency lenders to be paid as operating costs and that are approved by the Department, 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) deferred Developer Fee (referred to as "Priority Deferred Developer Fee" and noted in Exhibit C of this Agreement);
- (7) asset management, partnership management and similar fees, including fees paid to investors in such amounts in compliance with Section 8314(a)(1)(B) of the UMR and as specified in Exhibit C;
- (8) Supportive Services Costs that other public agency lenders do not allow to be paid as operating costs, up to the limits set forth in Section 8314(e) and (f) of the UMR and as identified in Exhibit C; and

- (9) On an equal priority basis: (A) Distributions, in accordance with paragraph 21 of this Agreement and (B) Residual Receipts, in accordance with paragraph 22 of this Agreement. The Development's Net Cash Flow, if any, is applied solely to Distributions and Residual Receipts. Borrower Distributions may be considered the source of the "Non-priority Deferred Developer Fee" noted in Exhibit C.

The withdrawals permitted under subparagraph 20 (b) (6), (7), (8) and (9) shall also be subject to the restrictions of paragraph 18 (b) above.

The Borrower may depart from the foregoing priorities of payment at paragraph 20(b)(1) – (b)(5) only upon the express prior written approval of the Department. Net Cash Flow shall be distributed in accordance with subparagraph 20(b)(9) above and paragraphs 21 and 22 hereto.

21. Distributions.

- a. Pursuant to Section 8314(a)(2) of the UMR, Borrower will receive annual Distributions equal to fifty percent (50%) of available Net Cash Flow. The term "Distributions" is defined in Section 8301(h) of the UMR. As provided by Section 8314(a)(2)(B) of the UMR, the Department may agree to lower the amount of the borrower's Distributions in order to be consistent with the terms of other public agency loans or leases. Any such adjustment to the Borrower's Distribution will be specified in Exhibit C of this Agreement. If the Development generates insufficient cash flow to permit payment of Distributions in a particular year, Distributions in future years shall not be accrued, or increased to cover the lack of Distributions in prior years.
- b. Borrower may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future distributions shall not reduce the otherwise permitted Distributions in those subsequent years.
- c. Distributions shall be permitted and payable 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 PRP Requirements. Thereafter, the Department will determine the allowable Distributions amount.
- d. No Distributions, deferred Developer Fee, asset management fees, partnership management fee and similar fees shall be made in the following circumstances:

- (1) when written notice of default has been issued by any entity, including the Department, with an equitable or beneficial interest in the Property, or any portion thereof;
- (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 Property, or any portion thereof;
- (3) if all currently required debt service, including mandatory payments on the Loan, Monitoring Fee, and Operating Expenses have not been paid; or
- (4) if the replacement reserve account, operating reserve account or any other required reserve account is not fully funded pursuant to Sections 8308 and 8309 of the UMR and this Agreement.

22. Use of Net Cash Flow and Residual Receipts.

- a. Pursuant to Section 8314(a)(2) of the UMR, the Department will, on an annual basis, receive Residual Receipts equal to fifty percent (50%) of available Net Cash Flow. The Department will apply the Residual Receipts to payments of the Loan. Pursuant to Section 8314(a)(2)(A) of the UMR, the Department may agree to share the Residual Receipts with other public agency lenders that have loans which are secured by liens on the Property. Pursuant to Section 8314(a)(2) of the UMR, any such split of Residual Receipts shall be proportional to the agencies' respective amounts of "total government assistance," as the term is defined in Section 8315(c)(3) of the UMR. The Department and each public agency lender will apply its share of Residual Receipts in accordance with the terms of its respective financing. Exhibit C details the "total government assistance" and the allocation, if any, of Residual Receipts among public agency lenders.
- b. Upon payment in full of the loans payable from Net Cash flow as set forth in Exhibit C including such public agency loan(s) and the Loan, all Net Cash Flow shall be used to reduce rents in Assisted Units or used for other purposes related to the Development as approved by the Department.
- c. The required loan payment of .42 percent per annum of the PRP Loan as specified in Exhibit C of this Agreement, which is the Department's annual monitoring fee, is due every year for the full term of this Agreement, regardless of any pre-payment or repayment on the PRP Loan. This

payment obligation is secured by the PRP Deed of Trust and is subject to the power of sale therein.

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 above, and at the Department's request, the Borrower shall provide, at Borrower's expense, an 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. In accordance with Section 8314(g) of the UMR, if the Borrower is paying Supportive Services Costs as Operating Expenses, the Department will require the Borrower to maintain records of group activities, individualized services, and referrals at an onsite location, and to make such records available for Department inspection.
- d. The Department may request any other information that it deems necessary to monitor compliance with the PRP Requirements and the requirements set forth in this Agreement. The Borrower shall promptly provide such information.

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

- a. Except with the Department's express prior written approval¹, 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 all or any part of the Development;

¹ Written approval is determined by the Department in its sole discretion.

- (3) permit the use of the Property or 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 Property or 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;
- (7) if the Borrower or its successor in interest is a limited partnership or limited liability company, discharge or replace any general partner or amend, modify or add to its partnership agreement or operating agreement, or amend, modify or add to the organizational documents of the general partner or manager; except that it may transfer limited partner interests without such approval. The withdrawal, removal, and/or replacement of a general partner of the partnership pursuant to the terms of the partnership agreement shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan, provided that any required substitute general partner is reasonably acceptable to the Department, which shall provide prior written approval, and is selected with reasonable promptness. Likewise, the same applies to the withdrawal, removal, and/or replacement of a manager of the limited liability company pursuant to the terms of the operating agreement; or
- (8) pay down or pay off the Loan prior to maturity, the approval of which is in the sole discretion of the Department and subject to the conditions deemed necessary to ensure compliance with the Program requirements, including, but not limited to:
 - (A) Deferring reconveyance of the PRP deed of trust until the term of this Agreement has expired and

(B) Continued payment of the PRP Monitoring Fee as described herein.

- b. The Department may, in its sole discretion and at its election, approve a sale, transfer or conveyance of the Property or Development provided all of the following conditions are met (and may approve a refinance if conditions 1, 4, and 5 are met):
- (1) The transferor Borrower (or Borrower, as applicable) is in compliance with this Agreement or the sale, transfer, conveyance, or refinance will result in the cure of any existing violations of this Agreement.
 - (2) The transferee Borrower agrees to assume all obligations of the transferor Borrower pursuant to this Agreement, the other Loan Documents and the PRP Requirements.
 - (3) The transferee Borrower demonstrates to the Department's satisfaction that it has the ability to own and operate the Property, including the Development in full compliance with this Agreement and the PRP Requirements.
 - (4) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the Department's security or the transferee Borrower's (or Borrowers, as applicable) ability to comply with all PRP Requirements.
 - (5) The Department will not approve any cash out payment to the selling party or to any party related to or affiliated with the selling party. Neither the Sponsor nor the Borrower may cash out its equity prior to the termination of this Agreement. Deferred developer fee, and seller carry back loans, cannot be cashed out from the proceeds of a sale, transfer, conveyance or refinance.
- c. Additionally, the Department may in its sole discretion and at its election, grant its approval for a sale, transfer, conveyance, or refinance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Development, to protect the Department's security, or to ensure compliance with PRP Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.
- d. If Borrower or its successor in interest is a limited partnership, the execution and delivery of the purchase option and right of first refusal agreement

described in the partnership agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder, provided that such purchase option, rights of first refusal and similar rights are and remain subordinate to this Agreement and all the documents securing the Loan. Any requisite consent of the Department to (a) the exercise of said purchase option and right of first refusal agreement by the Development Sponsor identified therein, and to (b) the assumption without penalty of Loan obligations by the Development Sponsor and the release of Borrower from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from either the Borrower or the Sponsor, or both, in form(s) provided by the Department. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default under the Loan Documents or accelerate maturity of the Loan.

- e. If Borrower or its successor in interest is a limited partnership and the purchase option and right of first refusal agreement described in the partnership agreement is not exercised and the Development or Property is sold subject to low-income housing use restrictions contained in this Agreement, the requisite consent of the Department to said sale, and to the assumption without penalty of Loan obligations by the purchaser and the release of Borrower from such obligations, shall not be unreasonably withheld, but may be conditioned upon, among other requirements, the execution of an operating guaranty from the Borrower or the Sponsor, or both, in form(s) provided by the Department.
- f. 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 38 of this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than the applicable time to cure as stated in paragraph 26 of this Agreement, the Department may declare a default hereunder and may take any one or more of the following actions:

- (1) Collect all Rents and income in connection with the operation of the Development and use the same and the reserve funds for the operation and maintenance of the Development.
 - (2) Take possession either directly or through a receiver, of the Property, including the Development and bring any action necessary to enforce any rights of the Borrower arising from the operation of the Property, including 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 and/or for the appointment of a receiver to take over and operate the Property, including 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 PRP, would be impossible to ascertain.
 - (4) Accelerate all amounts, including outstanding principal and interest, due under the terms of the Loan Documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note provides that the Department may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.
 - (5) Seek such other appropriate remedies as may be available under the law.
- b. In the event that the breach or violation involves charging tenants Rent or other charges in excess of those permitted under this Agreement, the Department may demand the return of such excess Rents or other charges to the affected households. If legal action is necessary to enforce the provisions of this Agreement, the Department may seek the return of such overcharges to the affected 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.

- d. Each of the tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement and shall have such rights and remedies to enforce the PRP Requirements of this Agreement as may be available to third party beneficiaries under the law.

26. Time to Cure.

- a. If a monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder the Department shall give Borrower written notice of such default. The Department may, in its sole discretion, choose to exercise any or all of its remedies under the Loan Documents, or otherwise seek or pursue remedies in equity or at law in the event of such a default. Borrower shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by the Department under the Loan Documents, or such longer period of time as may be specified in the Loan Documents.
- b. If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, the Department shall give Borrower written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, as determined by the Department in its sole discretion, the Department may, in its sole discretion, allow Borrower to have all or a portion of such period to effect a cure prior to exercise of remedies at law or in equity, by the Department under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Department in its sole discretion, or such longer period if so specified, and if Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is determined by the Department, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by the Department. If Borrower or its successor in interest is a limited partnership, and if Borrower fails to take corrective action or to cure the default within such a specified time, the Department shall give Borrower written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall the Department be precluded from exercising remedies if its security becomes

or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in the Loan Documents.

27. Property Tax Exemption. To the extent the property tax exemption provisions of section 214 of the Revenue and Taxation Code are applicable to the Borrower and the Development, Borrower shall take all actions necessary to qualify the Development for the maximum exemption from property taxes available pursuant to said section 214 of the Revenue and Taxation Code. Such actions may include, but are not limited to the following:
- a. Modify, add to or delete from the articles of incorporation, bylaws or other organizational documents of Borrower or of the managing general partner of Borrower;
 - b. Apply for nonprofit, tax-exempt status to the appropriate state or federal agency;
 - c. Provide the certifications and assurances required by section 214 of the Revenue and Taxation Code; and
 - d. Comply with the procedures and requirements imposed by local government agencies as a condition of receiving the property tax exemption.
28. Controlling Agreement.
- a. Borrower specifically agrees and acknowledges that, notwithstanding any internal accounting procedures or provisions pertaining to the use of payments, reserves, Operating Income, and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement and the PRP Requirements shall control as to the use of all Operating Income from the Development.
 - b. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the other Loan Documents, the terms of this Agreement shall control.
29. Assignment of Department Rights. The Department retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Borrower's duties and obligations hereunder. In addition, the Department may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

30. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties.
31. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
32. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transfers, successors in interest and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Department. 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 Property, including the Development.
33. Recording Agreement. This Agreement and all amendments hereto, shall be executed by each of the parties. This Agreement, or, where approved by the Department in writing, a memorandum thereof, shall be recorded against the Property in the official records of the county in which the Development is situated, superior to the lien of the Deed of Trust, and shall run with the Property.
34. Indemnification and Waiver.
- a. Borrower agrees to indemnify the Department and its appointees, agents, employees and officers against, and holds the Department and its appointees, 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 material inaccuracies or false representations or warranty by Borrower, made at any time; (4) any act or omission by Borrower, any of Borrower's contractors, subcontractors, material suppliers, engineers, architects or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development or the Property; 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. Borrower's duty to indemnify and save harmless includes the duties

to defend as set forth in section 2778 of the Civil Code. Borrower shall defend, indemnify and hold harmless the Department and its appointees, agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence, and whether such is active or passive, primary or secondary on the part of the Department, the Borrower or their respective appointees, agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to defend, 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 defend, indemnify, and hold harmless the Department shall survive the term of this Agreement, the release and cancellation of the Note, and the reconveyance or partial reconveyance of the Deed of Trust. In the event HUD acquires title to the Development, this indemnification provision will not apply to HUD.

b. The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Department or its appointees, agents, officers or employees.

(a) The Borrower expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Civil Code Section 1542 provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

35. No Waiver. No waiver by the Department of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder.
36. Captions. 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.
37. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
38. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by

certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

39. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.
40. Department's Approval Etc. Except as otherwise provided, whenever this Agreement or any of the other Loan Documents requires the approval, consent, or other determination by the Department, the Department shall act reasonably and in good faith.
41. Compliance with IRC Section 42(h)(6)(E)(ii). Borrower agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an Existing Tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.
42. Tax Credits, Private Activity Bonds, and Recycled Bonds. The Borrower agrees that it will not use tax credits, private activity bonds, and recycled bonds, to fund the Project for a minimum of ten (10) years after the PRP Loan Documents are recorded.
43. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
44. Counterparts. This Agreement may be signed by the different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement. Borrower must sign this Agreement (and all other associated Department Loan Documents) in the presence of an escrow officer for _____ Title Company or a mobile notary approved by _____ and under the control of said title company.
45. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property;

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

Exhibit C: Special Conditions.

Exhibit D: PRP Capitalized Operating Subsidy Reserve Agreement

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

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

DEPARTMENT:

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

By: _____
Hasmik Mnatsakanyan, Manager
Transactions Unit

Mailing Address:

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

Principal Place of Business:

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

BORROWER:

[NAME, TYPE OF ENTITY]

By: _____
Name: _____
Title: _____

Mailing Address:

Principal Place of Business:

EXHIBIT A TO REGULATORY AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

Sample | Draft

EXHIBIT B TO REGULATORY AGREEMENT

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

I. UNIT DESIGNATION AND RENT SCHEDULE

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

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

Unit Mix Chart 1 (Existing Tenant):

EXISTING TENANT UNIT MIX CHART INSERT HERE

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

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

Unit Mix Chart 2:

UNIT MIX CHART 2 INSERT HERE

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

II. SUPPORTIVE HOUSING UNIT REQUIREMENTS

1. For the full term of this Agreement, Borrower shall restrict occupancy of _____ Units within the Development as Supportive Housing Units to be occupied by Eligible Households which are both (1) homeless or at risk of homelessness and (2) include a disabled adult.
2. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision: ----- [list services here] -----

3. No later than ninety (90) days after the end of each Fiscal Year for the Development, Borrower shall submit for Department review and approval a report on the Supportive Housing Units households in the Development. This report shall be on a form provided by the Department and shall include a listing of the number and type of Supportive Housing Units residents, a description of the supportive services provided to them, and such other matters as the Department may require.
4. Furthermore, Borrower and Sponsor may be required to collect data and enter the local Homeless Management Information System mandated by the Assembly Bill No. 977 (Chapter 397, 2021 Cal. Stat.).

III. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

1. For the full term of this Agreement, Borrower shall restrict occupancy of _____ units within the Development to the following Special Needs Population or Populations: -----[list SNPs]-----
2. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision:

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

Sample | Draft

EXHIBIT C TO REGULATORY AGREEMENT
Special Conditions

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

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

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

Rent Source	Rent Subsidy Program and Component	Bedroom Type	No. of Units	Subsidy Term	Amount of Annual Assistance	Is the subsidy renewable?
Oakland Housing Authority	Project Based Section 8			20 years	\$447,720.00	Yes
Total					\$447,720.00	

Units in the Development covered by project-based rental assistance, if any, are described above. For such Units:

- (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and
- (2) If the project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. However, Rents shall not in any event be increased to an amount in excess of thirty percent (30%) of fifty percent (50%) of area median income, adjusted by bedroom number in accordance with the requirements of the LIHTC.

II. Required Reserves (paragraph 18).

Replacement Reserves (paragraph 18.a).^{2,3}

² The Department defers to the reserve requirements of direct federal loan or grant programs, including Native American Housing Assistance and Self Determination Act programs for the term of the loan or grant program. However, upon termination of such programs, reserve requirements will revert to the Department's requirement. [use footnote only if HCD defers to such federal loan or grant programs, delete otherwise]

³ The annual deposit of \$_____ will be held and controlled by CalHFA. The initial capitalized portion of \$_____ will be placed by Borrower in a separate account pursuant to the Department's regulations and

Annual Deposit Amount⁴: \$ _____.
 based on a physical needs assessment dated _____.
 based on \$500 times number of units
 based on a direct federal loan or grant program.
 based on CalHFA requirements
 Initial Capitalization Amount: \$ _____
 Date of Initial Capitalization Amount Deposit: Close of Escrow
 Withdrawals Require Prior Department Approval: Yes

Operating Reserve (paragraph 18.b).

[Monthly] [Annual] Deposit Amount:	\$ _____ per [month] [year]
Initial Capitalization Amount:	\$ _____
Date of Deposit:	Close of Escrow or _____ ?
Withdrawals Require Prior Department Approval?	Yes
[As applicable – delete if unnecessary]	Include into calculation for Fiscal Integrity?

Other Reserves (paragraph 18.c). If applicable, approved transition reserve account established to prevent tenant displacement resulting from the termination of rent subsidies. [Delete tables if N/A]

[Options: Capitalized Replacement Reserve; HCD Held Monitoring Fee Reserve]

Name:	<i>HCD Held Monitoring Fee Reserve</i>
Total Amount:	\$ _____
Note	HCD holds the funds and will administer disbursements

requirements. When CalHFA no longer controls and actively manages the reserves, the CalHFA controlled balance will be combined with the capitalized reserve account and subject to the Department's regulations and requirements. **[alternate reserve footnote for projects jointly funded with CalHFA when HCD defers to CalHFA, delete otherwise]**

⁴ The first annual deposit amount shall be prorated from the close of escrow to the end of the Fiscal Year (defined in section 3.f.).

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

III. Project Construction Loan(s); approximate amount in its respective lien positions:

1. Citibank \$8.7 MIL
2. LA CDC \$4 MIL
3. HCD
4. LACDC CDBG \$330K
5. GP Sponsor Loan \$385

IV. Project Permanent Loan(s); approximate amount in its respective lien positions:

1. Citibank DOJ Loan \$750K
2. Seller Loan \$ \$1.3 MIL

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

During construction period commencing on the date of this Agreement:

Lender:	
Initial Principal Amount:	Not to Exceed \$
Payment Amount:	Not to Exceed \$
Term to Maturity:	months
Lien Position:	
Interest Rate:	Not to exceed _____

[Delete table if N/A]

Lender:	California Department of Housing and Community Development -- PRP
Initial Principal Amount:	\$

Payment Amount (including future adjustments, caps and balloons):	Monitoring Fee as described below; Interest is deferred for full term of loan.
Term to Maturity:	years
Lien Position:	
Interest Rate:	3% simple

Permanent loan period after payoff of construction loan:

Lender:	
Initial Principal Amount:	\$
Payment Amount (including future adjustments, caps and balloons):	\$
Term to Maturity:	years
Lien Position:	
Interest Rate:	Not to exceed %

Lender:	California Department of Housing and Community Development -- PRP
Initial Principal Amount:	\$
Annual Required Payment Amount (including future adjustments, caps and balloons):	Monitoring Fee as described below of \$ _____; Remaining Interest is deferrable for full term of loan.
Term to Maturity:	years
Lien Position:	
Interest Rate:	3% simple

[Delete table if N/A]

Lender:	
Initial Principal Amount:	\$

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

VI. Department Monitoring Fee to be made Prior to Determination of Net Cash Flow (paragraph 20b.(3)).

The Borrower shall pay the Department Monitoring Fee as indicated below (also notated in the PRP Promissory Note paragraph 2(e)).

Annual Monitoring Fee:

Annual Amount for PRP Rehabilitation Loan and its start date.	<p>The initial monitoring fee is \$_____ per year. This annual payment will continue for the entire term of this Agreement, regardless of any prepayment or payoff of the PRP Loan or restructuring or re-syndication of the project and must be paid to the Department every year commencing on the last day of the Initial Operating Year.</p> <p>Commencing on the thirtieth (30th) anniversary of the last day of the Initial Operating Year, the monitoring fee shall be payable in an amount equal to the lesser of: (1) the full amount of the initial monitoring fee as described above; or (2) the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Project for compliance with the requirements of the Program.</p>
Start Date and Amount of any required Annual Payments of the Original Program	[If there are any original program loans that require a monitoring fee, how much is it]
	[Include any deferral language and cash flow payment specific language or "N/A" as applicable]

VII. Deferred Developer Fee (paragraph 20.b.).

Priority Deferred Developer Fee (paragraph 20.b.(6)): The Department-approved Deferred Developer Fee from paragraph 20.b.(6) is \$_____.

Non-priority Deferred Developer Fee (paragraph 20.b.(9)): The Department-approved Deferred Developer Fee payable from Borrower's Distributions [paragraph 20.b.(9)] is approximately \$_____.

Note: The total Developer Fee pursuant to UMR 8312, is received by the Sponsor/Borrower in the following three ways: (1) from development funding sources at close of escrow of the Department PRP Loan, (2) from deferred developer fee in the form of income from project operations pursuant to paragraph 20.b.(6) and (3) deferred developer fee in the form of distributions pursuant to paragraph 20.b.(9).

The portion of the developer fee from development funding sources at close of escrow of the Department PRP Loan is \$_____.

Any interest on deferred Developer Fee shall only be paid from Borrower's Distribution.

VIII. Asset management, partnership management and similar fees (paragraph 20.b.7).

The Department approved initial asset management, partnership management and similar fees including fees paid to investors in paragraph 20.b.7 is \$_____[to be filled in by AMC depending on what year the project is closing]_____and shall increase at the rate of 3.5% for each subsequent year. Furthermore, unpaid asset management, partnership management and similar fees including fees paid to investors, may be accrued for a period not to exceed three project fiscal years following the year during which they are earned. Moreover, if any portion of a fee owing in a particular fiscal year is not paid in full during that year, the balance of such fee may be paid within the next three year period.

IX. Supportive Services Costs (see paragraphs 20.b.4. and/or 20.b.8).

The Department allows Supportive Services Costs to be paid as operating costs. If another funding source does not allow Supportive Services Costs to be paid as operating costs, then the Department shall allow Department-approved Supportive Services Costs to be paid from Operating Cash Flow after asset management, partnership management and similar fees, and Priority Deferred Developer Fee, but before Distributions. Such approved costs shall be calculated annually by the Department up to the maximum amount allowed by Section 8314(e) and (f) of the Regulations. If Supportive Services

Costs are not fully paid from Operating Cash Flow, those unfunded costs shall not accrue to any subsequent fiscal year.

The Department-approved Supportive Services Costs from paragraph 20.b.4 or paragraph 20.b.8 total \$_____. This amount is calculated in accordance with Section 8314(e) and (f) of the Regulations, and it shall increase at the rate of 2.5 percent per year. In the event that such services are provided to more or fewer units during a given fiscal year, the Department will consider modifying the allowable amount of the previously approved Supportive Services Costs based on the approved Supportive Service Plan during its review of the project’s annual report and audit and may request documentation or reports as necessary to complete this review. The Department may request further documentation or reports as necessary to justify modification of such costs.

X. Use of Net Cash Flow (paragraph 22).

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

Residual Receipts shall be allocated only among the following Department approved public agency lenders in the percentages noted below. Each agency shall use its allocated amount to pay down its secured loan. **No other lenders can receive or share in the use of Residual Receipts.**

No Residual Receipts (Net Cash Flow) are payable during construction period. Net Cash Flow, if any, accumulated after rent up but before Perm Conversion (which shall be reported as Income from Operations in the form Cost Certification submitted to the Department) shall be applied towards construction costs.

Lender:	California Department of Housing and Community Development -- PRP
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	% [how much of cash flow goes to each original program/PRP loan. For HOME – they have their own (would show up as a separate loan below)]
Term to Maturity:	years
Lien Position:	
Interest Rate:	3%

Lender:	
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	years
Lien Position:	
Interest Rate:	
“total government assistance” per UMR Section 8315(c)(3)	Clarify what assistance is used to calculate this percentage and include any COSR awards, grants, ground lease, etc.

Lender:	
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	years
Lien Position:	
Interest Rate:	
“total government assistance” per UMR Section 8315(c)(3)	Clarify what assistance is used to calculate this percentage and include any COSR awards, grants, ground lease, etc.

XI. Other Project Specific Terms and Special Conditions. [Project Specific Special Conditions – insert/delete as applicable]]

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

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

The Department's failure to provide a duplicate copy will not be a breach by the Department, nor will it impair the Department's foreclosure or other remedies in any way.

Enumeration of Remedies. The failure to describe or enumerate all Department remedies for any defaults does not limit the Department's use of any remedies at its disposal.

Compliance with Department Requirements. The Borrower acknowledges that all partners of the Borrower, including the limited partner(s), have been provided copies of the Loan Documents and that the Borrower is authorized pursuant to the _____ --- Amended and Restated Agreement of Limited Partnership -----
_____ dated on or about the date hereof (the "LPA") to enter into the HCD Loan and comply with the obligations imposed by the HCD Loan Documents. The Borrower acknowledges and agrees that it is obligated to comply with the terms and conditions of the HCD Loan Documents.

The Borrower must ensure that the Borrower's General Partner acting on behalf of the Borrower obtains any and all consents required under the LPA to perform the duties in subsections (A), (H), (I), and (K) of the BOE Property Tax Rule 140.1(a)(10). Failure of the Borrower's General Partner to obtain such consent, as specified within the LPA to perform any act required by the HCD's Loan Documents, does not excuse or relieve the Borrower from its obligations under the HCD Loan Documents. Nothing in the LPA or this paragraph limits HCD's remedies including declaring a default under any of the HCD Loan Documents.

Term. The Term of this Agreement is the term defined in paragraph 5 of this Agreement; and such Term will not expire prior to such term, even following payment in full of the Department Loan, without the express written consent of the Department.

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

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

Limited Partner Exit. No Development funds, including reserves, nor any operating reserves except in accordance with section 8309(g) of the Regulations, may be used to fund the purchase of or to acquire a limited partner share.

Income from Commercial Space. All income generated in connection with the operation of the Rental Housing Development, including, but not limited to Rental Income for Commercial Space and commercial use, shall be included in Operating Income. For purposes hereof, "Rental Income for Commercial Space" shall be equal to the annual rental income earned by Borrower pursuant to any lease of the Commercial Space and the annual rental income earned by any tenant, any assignee, transferee or subtenant of a tenant, and any assignee, transferee or subtenant of any such assignee or subtenant of a tenant.

Most Restrictive Department Requirements. [add if there are multiple HCD program awards]

The Department has conditionally agreed to provide Borrower the following financing for the development of the Development:

- a. the Loan under the AHSC Program, in an amount not to exceed \$1,250,000; and
- b. a loan under the Transit-Oriented Development ("TOD") program, in an amount not to exceed \$1,000,000.00.

The Development is governed by the requirements of the PRP Requirements. To the extent that the requirements of the PRP Requirements conflict, the Department will monitor to the most restrictive requirements.

[if applicable otherwise delete]

Existing Household Third-Party Beneficiary Rights.

Existing Households shall retain the following third-party beneficiary rights:

[Insert any 3rd party beneficiary rights that appear in the original regulatory agreement.]

EXHIBIT D TO REGULATORY AGREEMENT
PRP Capitalized Operating Subsidy Reserve Agreement
“COSR Agreement” or “COSRA”

1. COSR Forgivable Loan Amount. In connection with the PRP Loan, the Borrower has applied for a COSR (as defined below) for the purpose of subsidizing Operating Expenses of some or all the PRP Assisted Units within the funded Rental Housing Development or funding reserve accounts. The Department has agreed to provide this COSR in the amount of _____ Dollars (\$_____.00) (the “PRP COSR”), which has been awarded as a forgivable loan in addition to the PRP Loan amount. subject to the provisions of this Agreement and the PRP Loan Documents.
2. Initial Disbursement. The Initial Disbursement (defined below) of the COSR shall not be made until all the conditions as specified in Section 9 of this Exhibit D are satisfied.
3. Project Details.
- (a) This Development is a:
- Rental Housing Development of five or more Units
- (b) This Development is a:
- Mixed Population, which includes units not assisted by PRP (“non-Assisted Units”)
- Single population, in which 100% of the units are Assisted Units and assisted by the PRP COSR
- (c) This Development has:
- ____ Total Units
____ Total PRP Assisted Units
- (d) Other Project-Based Operating or Rental Subsidies (as defined below):
- Yes
 No,
 If yes, description:

4. Definitions.

- (a) “Annual Bifurcated Audit” is an independent annual audit prepared by a certified public accountant in accordance with current audit requirements for PRP published on the Department’s website which distinguishes between the actual annual income and expenses for the PRP Assisted Units and the other Project units including Commercial Space in order to determine, among other things, the amount of any operating deficit specifically attributable to the PRP Assisted Units.
- (b) “Business Day” means Monday through Friday excluding state and federal holidays.
- (c) “Capitalized Operating Subsidy Reserve (“COSR”)” means an account held by the State of California to cover shortfalls in Unit income available for payment of approved Operating Expenses attributable to PRP Assisted Units pursuant to the requirements of the Guidelines, the terms of this Agreement, and the terms of the Loan Documents. Funds shall be used for the purpose of supplementing Development income for the payment of approved Operating Expenses associated with PRP Assisted Units that will receive COSR disbursements. 7
- (d) “Certificate of Occupancy” shall mean a certificate, or equivalent, issued by a local building department to the Borrower that indicates that the Development has met all local code requirements and is ready for occupancy.
- (e) “Completion Date” shall mean either: (i) the date the Development receives its Certificate of Occupancy for new construction; or (ii) records the Notice of Completion form, or its equivalent, for acquisition-rehabilitation projects; or (iii) the PRP Loan Closing Date.
- (f) “COSR Disbursement” shall mean the annual disbursement after any Initial Disbursement by the Department from the COSR to the Project, based on the requirements of Guidelines, this Agreement and the Loan Documents.
- (g) “Initial Disbursement” shall mean the first (1st) disbursement of funds from the COSR following the PRP Loan Document recordation date.
- (h) “Loan Closing Date” shall mean the date the Department’s Deed of Trust and Regulatory Agreement for this Project are recorded against the property.
- (i) “Operating Expense” shall have the same meaning as set forth in Section 101 of the Program Guidelines.
- (j) “Operating income” shall have the same meaning as set forth in Section 25 CCR 8301.
- (k) “Other Project-Based Operating or Rental Subsidies” shall mean all committed project-based operating or rental subsidies other than the PRP COSR, including but not limited to project-based Section 8 of the United States Housing Act (42 USC Section 1437f), as amended (“Section 8”), other government or private foundation-based subsidies, including those committed by the County, or any additional capitalized operating subsidy reserves funded with sources other than PRP funds.
- (l) “Tenant-Based Rental Subsidies” shall mean all individual tenant-based rental subsidies including but not limited to individual Section 8 vouchers.

(m)“Total COSR Award” shall mean the amount of PRP funds awarded to the Project to be used for the COSR as set forth under this Agreement and the Loan Documents.

5. Purpose and Uses of the Capitalized Operating Subsidy Reserve.

- (a) The COSR shall be used to address the operating deficit attributable to the PRP Assisted Units based on the results of an Annual Bifurcated Audit for the Project. The Annual Bifurcated Audit that is prepared by a certified public accountant for the prior operating year is reviewed and approved by the Department in accordance with the requirements noted in this Agreement and the Department’s current audit requirements.
- (b) COSR PRP Assisted Unit revenue includes: Operating Income, Other Project-Based Operating or Rental Subsidies; and/or Other Tenant-Based Rental Subsidies (if applicable) attributable to that PRP Assisted Unit. The amount of the annual disbursement from the COSR (“COSR Disbursement”) is determined by the Department for each Fiscal Year, as set forth in Section 7 below. The Total COSR Award for the PRP Assisted Unit was calculated specifically for the period of time between construction close and December 31, 2026 (see Initial COSR Calculation Worksheet attached as Exhibit A). The Department’s determination of the annual COSR Disbursement amounts may in the Department’s sole and absolute discretion, pay for costs in (c) below, but not for costs in (e) below.
- (c) COSR Disbursements may be used to pay only for the following items below:
 - 1. Approved Operating Expenses in excess of actual project income attributable to the PRP Assisted Units; and
 - 2. Except during the initial rehabilitation construction period, vacancy loss not to exceed ninety (90) days for a tenant who has left the PRP Assisted Unit. This amount shall not exceed eighty (80) percent of the approved Rent for the Assisted Unit. If the Unit is receiving rental assistance, the requirements of the rental subsidy source shall apply.
 - 3. The annual Department monitoring fee equal to 0.42 percent (0.42%) of the Loan in the amount as specified on Exhibit C of the PRP Regulatory Agreement.
- (d) To the extent that funds from the COSR Disbursement, approved pursuant to limits provided under Section 7, remain after the items in paragraph (c) above, have been fully paid for the Fiscal Year, the balance of the annual COSR Disbursement, or a portion thereof, the Department may:
 - 1. Reduce the amount of COSR payments in the subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit attributable to the PRP Assisted Units in the prior year; or

2. Require the Project to return to the Department the amount provided that was in excess of the amount of the operating deficit attributable to the PRP Assisted Units.
- (e) The COSR shall NOT be used to pay:
1. Costs associated with any non-Assisted Units.
 2. Costs associated with any Assisted Units for which the Borrower did not apply for and receive a COSR award.
 3. Ground lease payments.
 4. Sponsor Distributions.
 5. Deposits to reserves beyond those required by the Department as described in Exhibit C of the Regulatory Agreement and the Loan Documents, including reserves required by other Project financing sources.
 6. Supportive services costs not permitted as part of the Project budget under the Department's UMRs.
 7. Except during the initial rehabilitation construction period, vacancy loss beyond ninety (90) days for a tenant who has left the PRP Assisted Unit. Where the vacancy loss is paid through the PRP COSR, this amount shall not exceed eighty percent (80%) of the approved Rent for the Assisted Unit. If the Unit is receiving rental assistance, the requirements of the rental subsidy source shall apply.
 8. Asset management fees or partnership management fees.
 9. Developer fees.
 10. Any costs for or in connection with a limited partner buyout, substitution, or assignment of ownership interest, neither during an operating (fiscal) year nor at any potential restructure or resyndication transaction.
 11. Other costs not approved by the Department.

6. Occupancy and Rent Requirements.

- (a) Borrower is required to rent PRP Assisted Units to PRP eligible tenants in accordance with the tenant selection requirements of the Program Guidelines and the Loan Documents. Borrower is required to obtain documentation that shows compliance with the requirements of the Program Guidelines that tenants renting PRP Assisted Units are PRP Eligible Tenants, and to file that documentation in the PRP Eligible Tenant's file.
- (b) PRP Eligible Tenants renting PRP Assisted Units shall pay Rent in an amount not to exceed the published PRP Rent approved by the Department in accordance with the Area Median Income (the "AMI") designation for that particular Unit as set forth in Exhibit B of this Agreement and the Loan Documents.
- (c) The COSR may provide funds that will allow the Project to continue paying for expenses associated with a vacant PRP Assisted Unit for a period not to

exceed ninety (90) days following the date the PRP Eligible Tenant vacates the PRP Assisted Unit except for vacancies during the initial rehabilitation construction period. The amount provided from the COSR during this period shall not exceed the amount permitted under paragraph 5(c)(2) above and shall also be subject to the annual limit on the COSR distribution provided in Section 7 of this Agreement.

7. Calculation of COSR Disbursements

- (a) The amount of COSR Disbursement shall be based on the difference between (i) the revenue attributable to the PRP Assisted Units and (ii) the vacancies and annual Operating Expenses of the PRP Assisted Units eligible to be paid from the COSR pursuant to Section 5 as determined by the Department. The revenue of a PRP Assisted Unit includes: (1) Operating Income; (2) other income, including but not limited to laundry and vending income, and (3) the amount of Other Project-Based Operating or Rental Subsidies and Other Tenant-Based Rental Subsidies received by the PRP Assisted Unit. Annual COSR disbursements shall be based on the Department's review and approval of the Project's prior year operating deficits attributable to Assisted Units as stated in the Project's Annual Bifurcated Audit that show actual Rent revenue and pro rata share of other revenues related to Assisted Units and the operating expenses attributable to those Assisted Units. These disbursements may be adjusted to reconcile any prior over-disbursed or under-disbursed amounts. The Department may also, in its sole discretion, make other adjustments to the amount of the annual COSR Disbursement as set forth in (b) below.
- (b) If, after review of the Project's Annual Bifurcated Audit, the Department finds that the Project did not need as much from the COSR as it received for that year, the Department may:
1. Provide less in COSR payments in a subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit attributable to the PRP Assisted Units in the prior year; or
 2. Require the Project to return to the Department the amount provided that was in excess of the amount of the operating deficit attributable to the PRP Assisted Units.
- (c) The calculation of the initial COSR Disbursement (Year 1 disbursement, prior to receipt of any bifurcated audit) includes the anticipated Project operating deficit attributable to the PRP Assisted Units based on the Initial COSR Calculation Worksheet located in the last paragraph below. The amount of the initial COSR Disbursement may include amounts to cover operating deficits attributable to the PRP Assisted Units during the initial rent up period, and may include more than one operating year, as determined by the Department in its

sole discretion.

- (d) The COSR Disbursements will be reconciled with actual Operating Expenses at Fiscal Year-end based on the results of the Annual Bifurcated Audit. The Department may also require reconciliation of the COSR Disbursements with actual PRP Operating Expenses more frequently than once per year as the Department determines, in its sole and absolute discretion, to be appropriate.
- (e) The final disbursement may be adjusted to reconcile any prior over-disbursed or under-disbursed amounts, and any remaining COSR funds may be deposited into the Project's Operating Reserve subject to the Department's prior written approval.
- (f) In the event the PRP Regulatory Agreement is terminated, any remaining amounts of the COSR may be deposited into the Project's operating reserve subject to the Department's prior written approval.
- (g) If there are COSR monies held by the Borrower on the PRP COSR Forgivable Loan Maturity Date as defined in the Promissory Note, Borrower may, subject to the Department's prior written approval, deposit the monies into the project's operating reserve. Any such obligation shall survive beyond the term of this Agreement.

8. Ownership, Reduction or Termination of Capitalized Operating Subsidy Reserve.

- (a) Borrower acknowledges and agrees that it has no ownership interest in the PRP COSR. The PRP COSR is for the benefit of the Eligible Tenants of the PRP Assisted Units, and Borrower shall have no right or claim to COSR proceeds.
- (b) Borrower acknowledges and agrees that the annual disbursements from the COSR may be readjusted or the COSR otherwise reduced prior to depletion if the Development receives new, or an extension of, existing Other Project-Based Operating or Rental Subsidies beyond those identified in the original underwriting, and in the judgment of the Department, the Development has not used, or will not be able to fully use funds in the COSR during the term of the new, or an extension of, existing Other Project-Based Operating or Rental Subsidies, or prior to the Maturity Date of the PRP Loan Documents.
- (c) Borrower acknowledges and agrees that the COSR may be reduced, suspended or terminated under the following circumstances:
 - 1. PRP Assisted Units are not rented to PRP Eligible Tenants.
 - 2. The PRP Eligible Tenant occupying an PRP Assisted Unit has other Tenant-Based Operating Subsidies.

3. The PRP Assisted Unit receives other Project-Based Operating or Rental Subsidies that were not anticipated in the original underwriting.
 4. The Borrower is in Default under the terms of Agreement or other PRP Loan Documents.
- (d) Borrower acknowledges and agrees that the COSR has been allocated to the Development for the benefit of the PRP Eligible Tenants.
 - (e) Borrower acknowledges and agrees that the COSR has been calculated from the period of time between construction close and December 31, 2026. This may or may not result in actual funds being available for the full said time.
 - (f) Borrower acknowledges and agrees that the total amount of the COSR or any single disbursement may be reduced by the Department, if the Department determines that the full amount of the disbursement is not required to cover all reasonable and allowable Operating Expenses attributable to operation of the PRP Assisted Units.
 - (g) Borrower acknowledges and agrees that the first year, or any subsequent year, disbursement of the COSR may be held back in the event that the Development has Other Project-Based Operating or Rental Subsidies to fully cover Operating Expenses for the PRP Assisted Units.
 - (h) Borrower acknowledges and agrees that at the end of the term of this PRP Regulatory Agreement, any undisbursed COSR amounts may be disencumbered from the project. Furthermore, any excess amounts disbursed to the Borrower (see paragraph 7(b) above) may be required to be promptly returned to the Department or with prior written approval by the Department, be deposited into the operating reserve at the end of the COSR term.

9. Conditions for the Initial Disbursement.

- (a) Initial Disbursement of COSR may be advanced at construction close based on the Department's review and approval of the first-year operating deficit attributable to PRP Assisted Units and upon the Department's receipt and approval of the following:
 1. Fully executed and recorded PRP Loan Documents.
 2. A first-year annual operating budget and long-term cash flow analysis on forms made available by the Department that meet PRP Program requirements. For a Project that contains Units not assisted by the PRP COSR, the Borrower must submit a bifurcated annual operating budget (that shows associated costs for each Unit-type) that distinguishes the following:
 - i. The PRP Assisted Units that do not receive the COSR, and
 - ii. The non-PRP Assisted Units.
 3. A current listing of all permanent funding sources, including amounts, payment terms, and legal documentation, as requested.
 4. A description of and documentation for any Other Project-Based Operating or Rental Subsidies, or Other Tenant-Based Operating

Subsidies committed, contemplated, or denied for use in the Development.

5. A tenant selection plan meeting the requirements of the NOFA, including copies of PRP rental agreements to be used, and current rent schedule showing the gross rents, utility allowances, and contract rents.
6. Documentation of current utility allowance figures from the local housing authority or other source approved by the Department.
7. The final organizational documents of the Borrower and any other documents, including but not limited to investor estoppels, if applicable, as requested by the Department.
8. If requested by the Department, an updated Department-approved supportive services plan, prepared on forms made available by the Department, which shall include the supportive services budget and supportive services staffing ratios approved by the Department.
9. An executed Memorandum of Understanding (the "MOU") or other written agreement with Borrower, the lead service provider, and the property management agent.
10. Other items deemed necessary by the Department to determine the required amount of COSR or to determine compliance with the requirements of the Program.
11. Borrower shall provide a signed request for disbursement of COSR funds on a form provided by the Department.

10. Subsequent Disbursement of COSR Funds.

- (a) Subsequent annual disbursements of COSR shall be available following review and approval by the Department of the Annual Bifurcated Audit for the Project's prior Fiscal Year.
- (b) Subsequent Disbursement shall require:
 1. Borrower's signed request for disbursement of COSR funds on a form provided by the Department;
 2. Reports as required in Section 11(c) below; and
 3. Additional information as requested by the Department.
- (c) In addition to the conditions set forth above, all subsequent Disbursements shall be subject to (1) the Borrower's full compliance with all other terms and conditions of this PRP Regulatory Agreement, Program Guidelines, the PRP Loan Documents, and other Program documents. These include the correction of any deficiencies identified by the Department, and compliance with any agreements with the Borrower regarding the funding of supportive services for the Assisted Units; and (2) the timeframe required to review the bifurcated Audit and process disbursements through the State Controllers Office.

11. Borrower's Ongoing Obligations.

(a) Subsidies:

1. Borrower is required to re-apply for Other Project-Based Operating or Rental Subsidies at least twelve (12) months prior to their expiration date, or other lesser time periods as may be necessitated by the applicable funding source for those subsidies.

(b) Reporting:

1. The Borrower shall submit an Annual Operating Budget of the Development's projected Operating Expenses and a Schedule of Rental Income (SRI) detailing the anticipated income no later than sixty (60) days prior to the beginning of the Development's Fiscal Year, on forms provided by the Department. The Annual Operating Budget should reflect COSR distribution requested by the Borrower for that year, although the actual request for COSR disbursement must be submitted in accordance with Section 9(a)(13) above.
2. The Borrower shall submit an Annual Bifurcated Audit of the Project's actual income and expenses no later than ninety (90) days after the end of the Project's Fiscal Year. The Annual Bifurcated Audit should reflect the actual distribution (need) of COSR funds for that Fiscal Year, and any unspent COSR at the end of the Fiscal Year, if applicable. The Borrower shall submit an Annual Bifurcated Audit that distinguishes actual annual income and expenses of the PRP Assisted Units, and any other Project Units.

12. Assignment Prohibited.

This Agreement shall not be assignable by Borrower in whole or in part without the prior written approval of the Department.

13. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

14. No Waiver.

No waiver by the Department of any breach, 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.

15. 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.

16. 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 Property, including the Development.

17. Initial COSR Calculation Worksheet. *This Initial COSR Calculation Worksheet may be adjusted and all records will be kept with the Department, after the execution of this document, as needed pursuant to the Guidelines.*

[see Transaction Summary for the initial COSR Calculation Worksheet]