

**SUBMITTAL TO THE RIVERSIDE COMMUNITY HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 14.1  
(ID # 24525)

**MEETING DATE:**

Tuesday, April 09, 2024

**FROM :** RIVERSIDE COMMUNITY HOUSING CORP.:

**SUBJECT:** RIVERSIDE COMMUNITY HOUSING CORP. (RCHC): Adopt Resolution No. 2024-001, Rescinding Resolution 2021-003 and Authorizing RCHC Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$12,000,000 from the California Department of Housing and Community Development (HCD) Multifamily Housing Program (MHP) and Adopt Resolution No. 2024-002, Authorizing the Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$8,000,000 from PNC Bank, National Association for The Blossom Apartments (formerly Allegheny Apartments) project on behalf of RCHC; Approve attached forms of loan and loan agreement documents with HCD and PNC Bank; Not a Project under CEQA; District 5. [\$20,000,000 – 60% California Multifamily Housing Program Funds and 40% PNC Bank Permanent Loan Funds] (Clerk of the Board to File Notice of Exemption)

**RECOMMENDED MOTION:** That the Board of Directors:

1. Find that the State of California Standard Agreement for the Multifamily Housing Program (MHP) Permanent Loan and Permanent Loan from PNC Bank, National Association do not constitute a project under California Environmental Quality Act (CEQA) and Section 15004(b) of the State CEQA Guidelines in that it does not vest any development rights or result in the physical change in the environment, and does not commit the lead agency to any definite course of action or foreclose alternatives or mitigation measures that would ordinarily be part of CEQA;

Continued on Page 2

**ACTION:Policy**

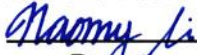
  
Heidi Marshall, Director of Housing, Community Development 3/21/2024

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**MINUTES OF THE BOARD OF DIRECTORS**

On motion of Director Gutierrez, seconded by Director Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez  
Nays: None  
Absent: None  
Date: April 9, 2024  
xc: RCHC, Recorder/State Clearinghouse (OPR)

Kimberly A. Rector  
Clerk of the Board  
By:   
Deputy

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
HOUSING CORP. BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**RECOMMENDED MOTION:** That the Board of Directors:

2. Adopt Resolution No. 2024-001, Rescission of Resolution 2021-003; Authorizing Riverside County Housing Corp. Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$12,000,000 from the California Department of Housing and Community Development (HCD) Multifamily Housing Program for The Blossom Apartments (formerly Allegheny Apartments) project on behalf of Riverside Community Housing Corp. (RCHC);
3. Adopt Resolution No. 2024-002, Authorizing Riverside County Housing Corp. Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$8,000,000 from PNC Bank, National Association for The Blossom Apartments (formerly Allegheny Apartments) project on behalf of Riverside Community Housing Corp. (RCHC);
4. Approve the attached form of State of California Standard Agreement for the MHP Permanent Loan (MHP Loan Agreement), including all attachments thereto, between HCD and LINC-Beaumont 2 Apts, LP, a California limited partnership between RCHC, in its capacity as Administrative General Partner, and LINC-Beaumont 2 APTS, LLC, a California limited liability company and affiliate of LINC Housing Corporation, a California nonprofit public benefit corporation, in its capacity as Managing General Partner, to secure permanent financing for The Blossom Apartments in the City of Beaumont;
5. Approve the attached forms of Regulatory Agreement, Senior Regulatory Agreement, Lease Rider, Promissory Note, and Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (collectively, MHP Loan Documents);
6. Approve the attached form of Amended and Restated Promissory Note for the Permanent Loan (PNC Permanent Loan Agreement), including all attachments thereto, between PNC Bank, National Association and LINC-Beaumont 2 Apts, LP, a California limited partnership between RCHC, in its capacity as Administrative General Partner, and LINC-Beaumont 2 APTS, LLC, a California limited liability company and affiliate of LINC Housing Corporation, a California nonprofit public benefit corporation, in its capacity as Managing General Partner, to secure permanent financing for The Blossom Apartments in the City of Beaumont;
7. Authorize the Chief Executive Officer of RCHC, or designee, on behalf of RCHC in its capacity as the Administrative General Partner of LINC – Beaumont 2 Apts LP, to execute MHP Loan Agreement and MHP Loan Documents, substantially conforming in form and substance to the attached MHP Loan Agreement and MHP Loan Documents, subject to approval as to form by RCHC General Counsel;
8. Authorize the Chief Executive Officer of RCHC, or designee, on behalf of RCHC in its capacity as the Administrative General Partner of LINC – Beaumont 2 Apts LP, to execute PNC Permanent Loan Agreement in an amount not to exceed \$8,000,000 and PNC Permanent Loan Documents, subject to approval as to form by RCHC General Counsel;
9. Authorize the Chief Executive Officer of RCHC, or designee, acting alone, on behalf of RCHC in its capacity as the Administrative General Partner of LINC – Beaumont 2 Apts LP, to take all necessary steps to implement the MHP Loan Agreement in an amount not to exceed \$12,000,000 and MHP Loan Documents, including but not limited to, signing subsequent necessary and relevant documents, subject to approval as to form by County Counsel;
10. Authorize the Chief Executive Officer of RCHC, or designee, acting alone, on behalf of RCHC in its capacity as the Administrative General Partner of LINC – Beaumont 2 Apts LP, to take all necessary steps to implement Permanent Loan Agreement in an amount not to

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exceed \$8,000,000 and PNC Permanent Loan Documents, including but not limited to, signing subsequent necessary and relevant documents, subject to approval as to form by County Counsel; and

11. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk and the State Clearinghouse at the Office of Planning and Research (OPR) within five (5) business days of approval.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$20,000,000	\$ 0	\$20,000,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> California Department of Housing and Community Development (HCD) Multifamily Housing Program (60%); PNC Bank Permanent Loan Funds (40%)			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 23/24-24/25	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

On March 30, 2021 (Item 14.1), the Riverside Community Housing Corp. (RCHC) Board of Directors approved a Memorandum of Understanding (MOU) between LINC Housing Corporation (LINC), a California corporation and RCHC to form Linc-Beaumont 2 Apts LP, a California limited partnership between RCHC, in its capacity as Administrative General Partner, and LINC-Beaumont 2 APTS, LLC, a California limited liability company and affiliate of LINC Housing Corporation, a California nonprofit public benefit corporation, in its capacity as Managing General Partner, to construct, own and operate an affordable housing project known as The Blossom Apartments (formerly Allegheny Apartments), a 48-unit affordable multifamily apartment complex for low-income households including one manager unit located at 652 Allegheny Street in the City of Beaumont (Project).

On August 24, 2021 (Item 14.1), the Board approved Resolutions 2021-001, 2021-002 and 2021-003, authorizing RCHC in its capacity as the Administrative General Partner of LINC – Beaumont 2 Apts LP, to take all necessary steps to secure construction financing and permanent financing, obtain a 25% partnership interest, and execute any documents necessary to receive permanent financing in an amount not to exceed \$12,000,000 from the California Department of Housing and Community Development (HCD) Multifamily Housing Program (MHP) for the Project.

On October 24, 2023, construction was completed, and the Project received Certificate of Occupancy from the City of Beaumont. The Project is in the process of converting its construction financing to permanent financing. Anticipated permanent financing for the Project include following estimated sources totaling approximately \$30,427,536:

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PNC Permanent Loan	\$8,000,000
CA HCD MHP Loan	\$12,000,000
Deferred Developer Fee	\$1,183,748
Limited Partner Equity Contribution	\$9,243,788
<b>Total Sources</b>	<b>\$30,427,536</b>

Resolution No. 2024-001, rescinds Resolution 2021-003, and authorizes Riverside County Housing Corp. Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$12,000,000 from HCD MHP, and Resolution No. 2024-002 authorizes Riverside County Housing Corp. Chief Executive Officer or the Chief Operating Officer to execute any documents necessary to receive permanent financing in an amount not to exceed \$8,000,000 from PNC Bank, National Association for the Project on behalf of RCHC in its capacity as Administrative General Partner of Linc-Beaumont 2 Apts LP.

General Counsel has reviewed and approved as to form the attached Resolution 2024-001 and forms of Standard Agreement for the MHP permanent loan, including all exhibits, including but not limited to the forms of the Regulatory Agreement, Senior Regulatory Agreement, Lease Rider, Promissory Note, and Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing. General Counsel has reviewed and approved as to form the attached Resolution 2024-002 and forms of PNC Amended and Restated Promissory Note.

Staff recommends the Board of Directors adopt Resolution 2024-001 and approve the attached forms of Standard Agreement for the MHP permanent loan, including all exhibits, including but not limited to the forms of the Regulatory Agreement, Senior Regulatory Agreement, Lease Rider, Promissory Note, and Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (collectively, MHP Loan Documents). Staff further recommends the Board of Directors adopt Resolution 2024-002 and approve the attached forms of PNC Amended and Restated Promissory Note.

**Impact on Citizens and Businesses**

The Blossom (formerly Allegheny Apartments) will have a positive impact on residents and businesses in Riverside County as it will provide much needed housing and services of the homeless population.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

No impact upon the County's General Fund; RCHC's contribution to the Project will be funded with California Department of Housing and Community Development (HCD) Multifamily Housing Program (MHP) funds and permanent loan from PNC Bank, National Association.

**Attachments:**

- Resolution 2024-001

**SUBMITTAL TO THE RIVERSIDE COMMUNITY  
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COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

- Standard Agreement for the Multifamily Housing Program (MHP) Permanent Loan
- Regulatory Agreement, Senior Regulatory Agreement, Lease Rider, Promissory Note, and Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
- Resolution 2024-002
- PNC Bank Amended and Restate Promissory Note
- Notice of Exemption

  
\_\_\_\_\_  
Kimberly Britt, ASST COUNTY EXECUTIVE OFFICER      3/27/2024

  
\_\_\_\_\_  
Erianna Lontajo, Principal Management Analyst      4/3/2024

  
\_\_\_\_\_  
Aaron Gettis, Chief of Deputy County Counsel      3/26/2024



FILED / POSTED

County of Riverside  
Peter Aldana  
Assessor-County Clerk-Recorder

E-202400409  
04/09/2024 05:00 PM Fee: \$ 50.00  
Page 1 of 1

Removed: By: Deputy



**Notice of Exemption**

To:  Office of Planning and Research  
 For U.S Mail: Street Address: Riverside Community Housing Corp.  
 P.O. Box 3044 1400 Tenth St. Address: 4080 Lemon Street, Suite 400  
 Sacramento, CA 95812-3044 Sacramento, CA 95814 Riverside, CA 92501  
 From: Public  
 Agency: Riverside Community Housing Corp.  
 Address: 4080 Lemon Street, Suite 400  
Riverside, CA 92501  
 Contact: Mervyn Manalo  
 Phone: (951) 955-0774

County Clerk  
 County of: Riverside  
2724 Gateway Drive  
P.O. Box 751  
 Address: Riverside, CA 92502-0751  
 Lead Agency (if different from above):  
 Address: \_\_\_\_\_  
 Contact: Juan Garcia  
 Phone: (951) 955-8126

**SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the public Resources Code.**

State Clearinghouse Number (if submitted to State Clearinghouse): \_\_\_\_\_

State of California Department of Housing and Community Development (HCD) Standard Agreement for the  
 Multifamily Housing Program (MHP) Permanent Loan and Permanent Loan documents from PNC Bank,  
 Project Title: National Association for The Blossom Apartments (formerly Allegheny Apartments) project on behalf of RCHC

Project Location (include county): 652 Allegheny Street, Beaumont, CA 92223, County of Riverside

Project Description: LINC-Beaumont 2 Apts, LP, a California limited partnership between Riverside Community Housing Corp. (RCHC), a California nonprofit public benefit corporation, in its capacity as Administrative General Partner, and LINC-Beaumont 2 APTS, LLC, a California limited liability company and affiliate of LINC Housing Corporation, a California nonprofit public benefit corporation, in its capacity as Managing General Partner, propose to enter into loan agreements between California Department of Housing and Community Development (HCD) and PNC Bank, National Association and permanently finance an affordable housing project known as The Blossom Apartments (formerly Allegheny Apartments), a 48-unit affordable multifamily apartment complex for low-income households including one manager unit located at 652 Allegheny Street in the City of Beaumont (Project).

Project Sponsor: Riverside Community Housing Corp. (RCHC)

This is to advise that the RCHC Board of Directors approved the above project on

Lead agency or  Responsible Agency

April 9, 2024 and has made the following determinations regarding the above-described project:  
(Tentative date)

Find that the State of California Standard Agreement for the MHP Permanent Loan and Permanent Loan from PNC Bank, National Association do not constitute a project under California Environmental Quality Act (CEQA) and Section 15004(b) of the State CEQA Guidelines in that it does not vest any development rights or result in the physical change in the environment, and does not commit the lead agency to any definite course of action or foreclose alternatives or mitigation measures that would ordinarily be part of CEQA.

Signature: (Public Agency)  Title: Chief Operating Officer  
 Mike Walsh

Date: \_\_\_\_\_ Date received for filing at OPR: \_\_\_\_\_

2  
3 RESOLUTION NO. 2024-001

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5 **A RESOLUTION OF THE BOARD OF DIRECTORS OF RIVERSIDE COMMUNITY HOUSING CORP.**  
6 **AUTHORIZING THE CHIEF EXECUTIVE OFFICER OR CHIEF OPERATING OFFICER TO EXECUTE**  
7 **ANY DOCUMENTS NECESSARY TO RECEIVE PERMANENT FINANCING IN AN AMOUNT NOT TO**  
8 **EXCEED \$12,000,000 FROM THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY**  
9 **DEVELOPMENT MULTIFAMILY HOUSING PROGRAM FOR THE BLOSSOM APARTMENTS**  
10 **(FORMERLY ALLEGHENY APARTMENTS) AFFORDABLE HOUSING PROJECT LOCATED IN THE**  
11 **CITY OF BEAUMONT**

12  
13 **WHEREAS**, the Riverside Community Housing Corp. ("RCHC"), a California nonprofit public benefit  
14 corporation, was created for the purpose of financing, acquiring, developing, rehabilitating, owning, managing, and  
15 selling affordable housing for extremely low-, low-, and moderate-income persons within the County of Riverside;

16 **WHEREAS**, the State of California Department of Housing and Community Development (the  
17 "Department") has issued a Notice of Funding Availability under its Multifamily Housing Program (the "MHP")  
18 dated June 19, 2019; .

19 **WHEREAS**, on March 30, 2021, the Board of Directors of RCHC (the "Board") approved the formation of  
20 a limited partnership with LINC Housing Corporation, a California nonprofit public benefit corporation, or its  
21 affiliated limited liability companies (the "Partnership"), for the purpose of developing and operating 48 low-income  
22 residential units, an affordable housing project known as Allegheny Apartments (the "Project"), on real property  
23 located in the City of Beaumont in Riverside County, California [APN 419-150-050] (the "Property");

24 **WHEREAS**, it is in the best interests of the RCHC to act as the Administrative General Partner of LINC-  
25 Beaumont 2 APTS, LP, a California limited partnership (the "Borrower"), together with LINC-Beaumont 2 APTS,  
26 LLC, a California limited liability company as the Managing General Partner;

27 **WHEREAS**, the Borrower has either received, or been assigned, a conditional commitment of funds under  
28 the above-described Notice of Funding Availability; and

FORM APPROVED COUNTY COUNSEL  
BY:  3-22-24  
DATE  
PAULA S. SALCIDO

1           WHEREAS, the Board had previously adopted Resolution No. 2021-003 authoring Carrie Harmon, Chief  
2 Operating Officer to execute MHP loan documents on behalf of RCHC, as the Administrative General Partner of  
3 Borrower, but Carrie Harmon is no longer Chief Operating Officer of RCHC.

4           **NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Board of  
5 Directors of the Riverside Community Housing Corp., in regular session assembled on or about April 9, 2024, in  
6 the meeting room of the Board located on the 1<sup>st</sup> floor of the County Administrative Center, 4080 Lemon Street,  
7 Riverside, California, and based upon the evidence and testimony presented on the matter, both written and oral,  
8 including the Administrative Record as it relates to the permanent financing from MHP, as follows:

- 9           1. That the Board of Directors hereby finds and declares that the above Recitals are true, correct, and  
10           incorporated herein;
- 11           2. That RCHC is hereby authorized to act as the Administrative General Partner of the Borrower in connection  
12           with the Department's loan of funds to the Borrower pursuant to the above-described Notice of Funding  
13           Availability in an amount not to exceed \$12,000,000 (the "MHP Loan").
- 14           3. That in connection with the Borrower's MHP Loan, RCHC is authorized and directed to enter into, execute,  
15           and deliver, as the Administrative General Partner of the Borrower, a State of California Standard Agreement,  
16           and any and all other documents required or deemed necessary or appropriate to carry into effect the full  
17           intent and purpose as stated herein, in order to evidence the MHP Loan, the Borrower's obligations related  
18           thereto, and the Department's security therefore; including, but not limited to, a promissory note, a deed of  
19           trust and security agreement, a regulatory agreement, a development agreement, and certain other documents  
20           required by the Department as security for, evidence of or pertaining to the MHP Loan, and all amendments  
21           thereto (collectively, the "MHP Loan Documents").
- 22           4. That either Heidi Marshall, Chief Executive Officer, or Michael Walsh, Chief Operating Officer, of RCHC,  
23           is hereby authorized to execute the MHP Loan Documents, and any amendment or modifications thereto, on  
24           behalf of the RCHC, as the Administrative General Partner of the Borrower.
- 25           5. That Resolution 2021-003; Authorizing Carrie Harmon, the Chief Operating Officer, to execute any  
26           documents necessary to receive permanent financing in an amount not to exceed \$11,907,030 from the  
27           California Department of Housing and Community Development (HCD) Multifamily Housing Program  
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(MHP) for The Blossom Apartments project on behalf of Riverside Community Housing Corp. is hereby rescinded.

6. That this resolution shall take effect immediately upon its passage.

**BE IT FURTHER RESOLVED:** That this resolution shall take effect immediately upon its passage.

ROLL CALL:

Ayes: Jeffries, Washington, Spiegel, Perez, and Gutierrez  
Nays: None  
Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

KIMBERLY A. RECTOR, Clerk of said Board

By: Naomy Li  
Deputy

CERTIFICATE OF THE SECRETARY

The undersigned, Secretary of Riverside Community Housing Corp. (RCHC), a California nonprofit public benefit corporation does hereby attest and certify that the foregoing Resolution is a true, full and correct copy of a resolution duly adopted at a meeting of the Board of Directors of the RCHC which was duly convened and held on the date stated thereon, and that said document has not been amended, modified, repealed or rescinded since its date of adoption and is in full force and effect as of the date hereof.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Juan Garcia, Secretary

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3 RESOLUTION NO. 2024-002

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5 **A RESOLUTION OF THE BOARD OF DIRECTORS OF RIVERSIDE COMMUNITY**  
6 **HOUSING CORP. AUTHORIZING THE CHIEF EXECUTIVE OFFICER OR CHIEF**  
7 **OPERATING OFFICER TO TAKE ALL NECESSARY ACTIONS TO ACCEPT ADDITIONAL**  
8 **PERMANENT LOAN IN AN AMOUNT NOT TO EXCEED \$8,000,000 FOR THE BLOSSOM**  
9 **APARTMENTS, EXECUTE LOAN AGREEMENTS, AND ANY RELATED DOCUMENTS TO**  
10 **SECURE AFOREMENTIONED PERMANENT FINANCING FOR THE BLOSSOM**  
11 **APARTMEMNTS AFFORDABLE HOUSING PROJECT LOCATED IN THE CITY OF**  
12 **BEAUMONT**

13  
14 **WHEREAS**, the Riverside Community Housing Corp. (“Corporation”), a California nonprofit  
15 public benefit corporation, was created for the purpose of financing, acquiring, developing, rehabilitating,  
16 owning, managing, and selling affordable housing for extremely low-, low-, and moderate-income persons  
17 within the County of Riverside;

18 **WHEREAS**, on March 30, 2021, the Board of Directors of RCHC (the “Board”) approved the  
19 formation of a limited partnership with LINC Housing Corporation, a California nonprofit public benefit  
20 corporation, or its affiliated limited liability companies (the “Partnership”), for the purpose of developing  
21 and operating 48 low-income residential units, an affordable housing project known as Allegheny  
22 Apartments (the “Project”), on real property located in the City of Beaumont in Riverside County,  
23 California [APN 419-150-050] (the “Property”);

24 **WHEREAS**, it is in the best interests of the RCHC to act as the Administrative General Partner of  
25 LINC-Beaumont 2 APTS, LP, a California limited partnership, together with LINC-Beaumont 2 APTS,  
26 LLC, a California limited liability company, as the Managing General Partner;

27 **WHEREAS**, in connection with the development of the Project, the Partnership has obtained (i)  
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FORM APPROVED COUNTY COUNSEL  
BY: PAULA S. SALCIDO DATE 3-22-24

1 financing in the amount of \$12,735,866 (the “Original Bond Loan”) and (ii) subsequent bond financing in  
2 amount of \$1,045, 424 from the proceeds of Multifamily Housing Revenue Bonds (Allegheny Apartments)  
3 2021 Series A (the “Original Bond”) issued by California Municipal Finance Authority (the “Issuer”),  
4 which has been purchased by PNC Bank, N.A., a national banking association (“PNC”) (iii) supplemental  
5 construction loan from PNC in the amount of \$1,350,000. ;

6 **WHEREAS**, the Board of Directors of the Corporation, acting as the administrative general partner  
7 of the Partnership, deems it necessary and to be in the best interests of the Partnership to obtain permanent  
8 finance loan from PNC Bank in an amount to exceed \$8,000,000 and to enter into any and all documents  
9 required in connection with the Permanent Loan;

10 **WHEREAS**, the Board of the Directors of the Corporation, acting in its sole capacity, deems it to  
11 be in the best interests of the Corporation to assist the Partnership in obtaining the Permanent Loan by  
12 entering into any and all documents required in connection with said loan, including but not limited to  
13 indemnity agreements, guaranty agreements and any other documents necessary to assist the Partnership in  
14 obtaining the Permanent Loan;

15 **NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Board  
16 of Directors of the Riverside Community Housing Corp., in regular session assembled on or about April  
17 9, 2024, in the meeting room of the Board located on the 1<sup>st</sup> floor of the County Administrative Center,  
18 4080 Lemon Street, Riverside, California, and based upon the evidence and testimony presented on the  
19 matter, both written and oral, including the Administrative Record as it relates to the financing of the  
20 Allegheny Apartments Affordable Housing Project, as follows:

- 21 1. That the Board of Directors hereby finds and declares that the above Recitals are true, correct,  
22 and incorporated herein;
- 23 2. That the Partnership shall borrow the Permanent Loan in an amount not to exceed \$8,000,000  
24 and shall enter into any and all documents required in connection with the said loan, including  
25 but not limited to loan agreement, promissory note, deed of trust, and any other documents  
26 necessary to obtain the Permanent Loan;
- 27 3. That the Corporation shall assist the Partnership in obtaining the Permanent Loan and shall  
28

1 enter into any and all documents necessary, including but not limited to loan agreement,  
2 promissory note, deed of trust, and any other agreements required to assist the Partnership in  
3 obtaining the Permanent Loan;

- 4 4. That the CEO or the COO of RCHC, or their designee(s), in its capacity as the Administrative  
5 General Partner of the Partnership, is authorized to enter into any and all necessary documents,  
6 including, but not limited to, the loan agreement, promissory note, deed of trust, and any other  
7 agreements, and all further actions necessary to consummate the actions described herein.  
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11 ROLL CALL:

12 Ayes: Jeffries, Washington, Spiegel, Perez, and Gutierrez

13 Nays: None

14 Absent: None  
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16 The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors  
17 on the date therein set forth.  
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19 KIMBERLY A. RECTOR, Clerk of said Board

20 By: Naomy Li  
21 Deputy  
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**CERTIFICATION**

I, Michael Walsh, Chief Operating Officer of Riverside Community Housing Corp. (RCHC), a California nonprofit public benefit corporation, do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution duly passed and adopted by the Board of Directors of RCHC (Board), by written consent of the Board, or at a meeting of the Board, duly and regularly called, noticed and held on \_\_\_\_\_, 2024; that said resolution is now in full force and effect; that there is no provision in the Restated Articles of Incorporation or Bylaws of RCHC limiting the powers of its Board to pass the foregoing resolution and that such resolution is in conformity with the provisions of such Restated Articles of Incorporation and Bylaws of RCHC.

IN TESTIMONY WHEREOF, I have hereunto set my hand as of \_\_\_\_\_, 2024.

\_\_\_\_\_, Chief Operating Officer of  
Riverside Community Housing Corp., a California nonprofit public benefit  
corporation

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

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**MULTIFAMILY HOUSING PROGRAM  
(NOFA \_\_\_\_-\_\_\_\_-\_\_\_\_)**

**REGULATORY AGREEMENT**

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

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 loan (the "Loan") for the development of a Rental Housing Development located at \_\_\_\_\_, California, consisting of a total of \_\_\_\_ rental units (the "Development"), of which \_\_\_\_ [if the project has multiple sources of HCD funding, insert number of units assisted by MHP] Assisted Units are to be occupied by Eligible Households as provided in this Agreement. The Development is located on the real property described in Exhibit A hereto (the "Property"). The Department has conditionally agreed to provide the Loan under the Multifamily Housing Program pursuant to chapter 6.7 of part 2 of division 31 of the Health and Safety Code commencing with section 50675 (the "Program") and the

Multifamily Housing Program Regulations and the Uniform Multifamily Regulations, California Code of Regulations, title 25, division 31, chapter 7, subchapter 4, section 7300 et seq. and section 8300 et seq. (the "Regulations"). The obligations imposed on the Borrower by the Program, the Regulations and the Department's policies and procedures are collectively referred to herein as the "Program Requirements."

- B. As required by the Program, Borrower and the Department have entered into that Standard Agreement, numbered \_\_\_\_\_, and dated \_\_\_\_\_, 20\_\_\_\_, regarding the Development and governing the terms of the Loan (the "Standard Agreement").
- C. Also as required by the Program and in addition to the Standard Agreement, Borrower has executed or will execute each of the following documents in form approved by the Department:
  - 1. A promissory note evidencing the Loan specifying, *inter alia*, the principal amount thereof, the interest accruing thereon and the terms of repayment thereof (the "Note").
  - 2. A deed of trust, assignment of rents, security agreement, and fixture filing securing the Note and naming the Department as beneficiary and the Borrower as trustor, and recorded or to be recorded against the Property (the "Deed of Trust"). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department.
  - 3. Such other documents and instruments as the Department may reasonably require.
- D. 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."
- E. As further consideration for the Loan and in furtherance of the purposes of the Program, Borrower has agreed to enter into this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program Requirements.

**NOW, THEREFORE**, the parties hereto agree as follows:

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



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

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

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

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

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program statutes, which include by reference definitions found in chapter 2 of part 1 of division 31 of the Health and Safety Code (commencing with § 50050) and the definitions included in the Regulations.

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. "Fiscal Year" for the Development shall mean the annual period commencing on \_\_\_\_\_ and concluding on \_\_\_\_\_  
\_\_\_\_\_ each year.
- b. "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.
- c. "Special Needs Population Units" shall mean Assisted Units restricted to certain groups, as described in Section 7301(r) of the Regulations that may not meet all of the qualifications required to occupy Supportive Housing Units, but who still need services linked to their housing, such as disabled households who are not homeless.
- d. "Supportive Housing Units" shall mean Assisted Units offered as permanent housing linked to supportive services where occupancy is restricted to Eligible Households that both (1) are homeless or at risk of homelessness and (2) include a disabled adult.
- e. "Sponsor" shall mean { \_\_\_\_\_ }.
4. Compliance with Program Requirements. The Borrower agrees that at all times its actions regarding the Development and the use of funds provided under the

Standard Agreement shall be in conformity with all Program Requirements, including the requirements of this Agreement and the other Loan Documents. The Borrower acknowledges that it is familiar with the Program Requirements and has access to professional advice to the extent necessary to enable the Borrower to fully comply with the Program Requirements.

5. Term of Agreement. This Agreement shall commence on the date set forth above and remain in full force and effect and shall apply to the Development through and including the fifty-fifth (55<sup>th</sup>) 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.
6. Assisted Units, Restricted Units, Special Needs Populations Units and Supportive Housing Units.
  - a. For the full term of this Agreement, Borrower shall provide within the Development, the number, type and size of Assisted Units set forth in Exhibit B, Part I, attached hereto and incorporated herein.
  - b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
  - c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Borrower may change the designation of a particular Unit from Assisted Unit to non-Assisted Unit, and vice versa, over time.
  - d. Borrower shall comply with all the requirements for Supportive Housing Units, supportive services and Special Needs Populations Units, if any, as set forth in Exhibit B, Part II.
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;

- 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;
  - 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; and
  - j. specify procedures for obtaining statistical information for identifying the status of tenants as either elderly or veteran.
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 Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law, and only with prior approval of the selection criteria by the Department.
9. Rental Agreement and Occupancy Procedures.
- a. Each Eligible Household selected to occupy an Assisted Unit in the Development shall enter into a written rental or occupancy agreement with

the Borrower, the form of which shall be subject to approval by the Department and be consistent with the Program Requirements. Such rental agreement shall, inter alia, provide for good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.

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

10. Assisted Unit Rents.

- a. For the Initial Operating Year, Borrower shall charge Rents for the Assisted Units in the Development in accordance with Exhibit B hereto.
- b. After the Initial Operating Year, Rents for Assisted Units may be adjusted no more often than every twelve (12) months. The amount and method of adjustment for Assisted Units shall be in accordance with TCAC.
- c. Notwithstanding the previous subparagraph, Rents for Assisted Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the Units continue to receive the rental assistance.
- d. Units in the Development covered by project-based rental assistance, if any, are described in Exhibit C. For such Units:
  - (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and
  - (2) If the project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. 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.

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, in the annual operating budget described in paragraph 15 herein, and shall report all income and expenses attributable to non-Assisted Units and Commercial Space in the annual report described in paragraph 17 herein.
12. Certification of Tenant Income and Household Size.
  - a. The income and household size of all households occupying Assisted Units 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 low income housing tax credit program ("LIHTC").
  - b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the income level applicable to new tenants for respective Assisted Units, and, to the extent a rent increase for the household is permitted by statutes and regulations governing the LIHTC, 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 20%, 40% and 50% of Area Median Income, if the income of a household occupying a Unit designated as a 20% Unit increases to 48% of Area Median Income, the Sponsor must redesignate the household's Unit as a Unit at the 50% level, increase the tenant's Rent

to the level applicable to Units at the 50% level, and designate the next available comparable Unit as a Unit at the 20% income level.

- 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 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 Area Median Income. 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 Area Median Income could have their Rent increased to the Rent level applicable to the 35% income level.

13. Management and Maintenance.

- a. Borrower is responsible for all maintenance, repair, and management functions, including without limitation, the following: selection of tenants; recertification of family income and size; evictions; collection of Rents; routine and extraordinary repairs; and replacement of capital items. Borrower shall maintain all Residential Units, common areas and Commercial Space in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan described below.
- b. Borrower is responsible for operating the Development in accordance with the Management Plan. 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 contract shall be subject to prior written approval by the Department and shall contain a provision allowing the Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Department, and notice to the Borrower thereof, that the contractor performing the functions required in subparagraphs a. and b. has failed to operate the

Development in accordance with this Agreement and the approved Management Plan, the Borrower shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Department approval, for continuing performance of the functions required in subparagraphs a. and b.

- d. Upon a determination by the Department, and notice to the Borrower thereof, that the Borrower has failed to operate the Development in accordance with this Agreement, the Department may require the Borrower to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Department deems necessary to ensure performance of the functions required in subparagraphs a. and b.
- e. Borrower shall operate, maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.

14. Hazard and Liability Insurance and Condemnation.

- a. The Borrower shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Department. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Department.
- b. In the event of any fire or other casualty to the Development or eminent domain proceedings resulting in condemnation of the Development 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.

- a. For the Initial Operating Year, Borrower shall operate the Development and expend Operating Income in accordance with the initial operating budget approved by and on file with the Department. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year.
- b. No later than sixty (60) days prior to the beginning of each subsequent Fiscal Year of the Development, the Borrower shall submit to the Department a proposed annual operating budget on a form provided by the Department. The proposed annual operating budget shall set forth the Borrower's estimate of Operating Income, Operating Expenses and debt service for the upcoming year, amounts payable to reserves, and proposed Rent adjustments.
- c. If the Development contains either non-Assisted Units or Commercial Space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between Assisted Units, 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; and
- e. other information as required by the Department to accurately monitor Borrower's performance hereunder.

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

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 Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing", published April 2018, as periodically updated.
- c. The report must specifically identify the number of units rented to the elderly. The report must also specifically identify the number of units rented to military veterans.

18. Required Reserves. Borrower shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Borrower, earn interest, and, unless otherwise approved in writing by the Department, insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. 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 funds are disbursed pursuant to the Loan Documents, Borrower shall establish a segregated replacement reserve account. Borrower shall make annual

deposits from Operating Income to the replacement reserve account in the amount set forth in Exhibit C, unless the Department determines, in its sole discretion, that more frequent deposits are required. Borrower shall also deposit any Development funds designated for replacement reserves into this account, including those identified in Exhibit C. The amount of the minimum annual deposit may be adjusted, as determined by the Department, in its sole discretion, based on the results of reserve studies, 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 reserve funds over time. In no event shall this reserve be used to fund limited partner exit costs.

- 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), or Distributions. 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.
  - c. Other Reserve Accounts. Borrower certifies that Exhibit C hereto contains a complete listing of all reserve accounts established or to be established for the Development. All withdrawals from these accounts shall require prior written Department approval, except as specifically noted in Exhibit C.
19. Accounting Records. In a manner subject to Department approval, Borrower shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. All records and books relating to this system shall be retained for not less than seven (7) years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the Department or its representative.
20. Use of Income from Operations.

- a. The Borrower, or Borrower's management agent, shall promptly deposit all Operating Income in a segregated account established in the Borrower's name exclusively for the Development and insured by an agency of the federal government or other comparable federal insurance program.
- b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement, and the approved annual operating budget, and shall be disbursed, applied, or reserved and set aside for payment when due, in the following priority, to the extent available:
  - (1) salaries, wages, and any other compensation due and payable to the employees or agents of the Borrower employed on site in connection with the maintenance, administration or operation of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;
  - (2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums;
  - (3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, including the Loan, which are secured by liens on the Property, which have been approved by the Department, payments on which are to be made prior to the determination of Net Cash Flow, as specified in Exhibit C, hereto;
  - (4) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the Department;
  - (5) deposits to required reserve accounts;
  - (6) deferred Developer Fee;
  - (7) asset management, partnership management and similar fees, including fees paid to investors in an amount not to exceed per year the sum of:
    - a. \$30,000 for 2016 and increased at the rate of 3.5% for each subsequent year, plus

- b. Unpaid asset management, partnership management and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and
- (8) Supportive Services Costs that these regulations would allow to be paid as operating costs, but that other funding sources do not.
- (9) Distributions, in accordance with paragraph 21 of this Agreement.

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 only upon the express written approval of the Department. Net Cash Flow shall be distributed in accordance with paragraph 22 hereto.

21. Distributions.

- a. Borrower shall be limited to annual Distributions equal to fifty-percent (50%) of the annual Operating Income remaining after payment of the items allowed in clauses (1) through (8) of subparagraph b. of paragraph 20 above. 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 for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Borrower submits a complete annual report and operating budget and the Department determines that the report and budget demonstrate compliance with all Program Requirements.
- d. No Distributions, 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 Development;
- (2) when the Department determines that the Borrower or Borrower's management agent has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Development;
- (3) if all currently required debt service, including mandatory payments on the Loan, and Operating Expenses have not been paid; or
- (4) if the replacement reserve account, operating reserve account or any other required reserve account is not fully funded pursuant to this Agreement.

22. Use of Net Cash Flow.

Net Cash Flow shall be applied to payment of interest, principal, impound fees and charges, if any, on loans which are secured by liens on the Property, including the Loan, which have been approved by the Department and which are to be paid from Net Cash Flow in the amounts, proportion and in accordance with the terms specified in Exhibit C hereto. Upon payment in full of the loans payable from Net Cash Flow as set forth in Exhibit C, all Net Cash Flow shall be paid to the Department as excess cash, used to reduce rents in Assisted Units, or used for other purposes related to the Development as approved by the Department.

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, a special audit of the Development certified by an independent certified public accountant. The Department may also perform or cause to be

performed audits of any and all phases of the Borrower's activities related to the Development.

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

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

- a. Except with the Department's prior written approval, Borrower shall not:
  - (1) make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or Development or of any of its interest in either of them;
  - (2) substantially add to, remodel, remove, reconstruct, or demolish any part of the Development;
  - (3) permit the use of the Development for any purpose other than that permitted by this Agreement;
  - (4) incur any liability or obligation in connection with the Property or Development, other than for current Operating Expenses, nor incur any liability, charge, assessment, or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Property provided that the Department may permit refinancing or additional financing secured by the Property to the extent necessary to maintain or improve the Development's Fiscal Integrity, or to maintain affordable Rents;
  - (5) enter into any contract relating to rehabilitating or managing the Development;
  - (6) enter into any lease for more than a single rental Unit, a ground lease of the Property or any interest therein, except for the rental of Commercial Space in the Development; or
  - (7) if the Borrower or its successor in interest is a limited partnership, discharge or replace any general partner or amend, modify or add to its partnership agreement, or amend, modify or add to the organizational documents of the general partner; except that it may

transfer limited 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 and is selected with reasonable promptness.

- b. The Department may 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 Program Requirements.
  - (3) The transferee Borrower demonstrates to the Department's satisfaction that it has the ability to own and operate the Development in full compliance with this Agreement and the Program Requirements.
  - (4) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the Department's security or the transferee Borrower's (or borrower's, as applicable) ability to comply with all Program Requirements.
  - (5) The Department will not approve any cash payment to the selling party, or to any party related to or affiliated with the selling party. The Sponsor may not cash out its equity. Deferred developer fee, and seller carry back loans, cannot be cashed out from the proceeds of a sale, transfer, conveyance or refinance.
- c. The Department may 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 or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the

deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.

- d. 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 is and remains subordinate to 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 the Borrower in form 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 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 in form 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 of the Development and bring any action necessary to enforce any rights of the Borrower growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the Department, in its sole discretion, shall determine that the Borrower is again in a position to operate the Development in accordance with the terms of this Agreement.
  - (3) Apply to any court, state or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Borrower that the injury to the Department arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Department, in light of the purposes and requirements of the Program, would be impossible to ascertain.
  - (4) Accelerate all amounts, including outstanding principal and interest, due under the terms of the Loan Documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note provides that the Department may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.
  - (5) Seek such other appropriate remedies as may be available under the law.
- b. In the event that the breach or violation involves charging tenants Rent or other charges in excess of those permitted under this Agreement, the Department may demand the return of such excess Rents or other charges to the affected households. If legal action is necessary to enforce

the provisions of 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. The tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement, all shall have such rights and remedies to enforce the Program 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. 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, Borrower shall have such period to effect a cure 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. 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, 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 provision pertaining to the use of receipts, payments, reserves and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement and the Program Requirements shall control as to the use of the funds provided under the Standard Agreement and all Operating Income from the Development.
  - b. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the other Loan Documents, the terms of this Agreement shall control.

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 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.
34. Indemnification and Waiver.
- a. Borrower agrees to indemnify the Department and its agents, employees and officers against, and holds the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (1) the making of the Loan to the Borrower; (2) Borrower's failure to perform any obligations as and when required by this Agreement or any of the other Loan Documents; (3) any failure at any time of any of Borrower's representations or warranties to be materially true and correct; (4) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the

Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Borrower 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 indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the Borrower or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Borrower's duty to indemnify the Department shall survive the term of this Agreement, the release and cancellation of the Note, and the reconveyance or partial reconveyance of the Deed of Trust. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

- b. The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
  - c. The Borrower expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: A general release does not extend to claims 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.

**Commented [AJ1]:** Effective as of 2019 :  
[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1542.&lawCode=CIV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1542.&lawCode=CIV)

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. 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). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.
42. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
43. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property;

Exhibit B: Unit Designation and Rent Schedule and requirements for

Supportive Housing Units or Special Needs Population  
Units; and

Exhibit C: Special Conditions.

***[Signatures of the Borrower and the Department follow on page 25 of this  
Regulatory Agreement. The remainder of this page is intentionally left blank.]***

SAMPLE

COMMUNITY DEVELOPMENT  
BANK OF MASSACHUSETTS

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

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

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

By: Farm  
\_\_\_\_\_, Closings Manager

**Principal Place of Business:**  
Department of Housing and Community Development  
Asset Management and Compliance  
2020 West El Camino Avenue  
Sacramento, CA 95833

**BORROWER:**  
\_\_\_\_\_  
|

**Mailing Address:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: Farm  
\_\_\_\_\_  
[Original Signature]

**Principal Place of Business:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY: Paula S. Salcido 3/26/24  
PAULA S. SALCIDO DATE



**EXHIBIT A TO REGULATORY AGREEMENT**  
**LEGAL DESCRIPTION OF THE PROPERTY**

SAMPLE

**EXHIBIT B TO REGULATORY AGREEMENT**

**I. UNIT DESIGNATIONS AND RENT SCHEDULE**

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

The Initial Operating Year ends at the end of the initial Fiscal Year, which is: \_\_\_\_\_, 20\_\_.

During the Initial Operating Year:

- A. Borrower shall charge Rents for Assisted Units that do not exceed Rents set forth in the schedule below; and
- B. Borrower shall charge Rents for Units other than Assisted Units in amounts not less than the amounts shown herein.

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

**Unit Mix:**

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

The above Unit Mix chart is based on the following:

Maximum Gross Rent is as stated in the **[insert year] HERA [or non-HERA]** MHP Income, Rent and Loan Limits.

Income Limit is as stated in the **[insert year] HERA [or non-HERA]** MHP Income Rent and Loan Limits.

SAMPLE

## II. SUPPORTIVE HOUSING UNITS REQUIREMENTS

- A. 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.
- B. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision:
- C. No later than ninety (90) days after the end of each Fiscal Year for the Development, Borrower shall submit for Department review and approval a report on the 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.

### III. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

- A. For the full term of this Agreement, Borrower shall restrict occupancy of \_\_\_\_\_ units within the Development to the following Special Needs Population or Populations:
  
- B. For these units, Borrower shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Department, as may be amended from time to time. For the full term of this Agreement, Borrower shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Department. At a minimum, Borrower shall provide without cost to tenant the following services, or arrange for their provision:
  
- C. No later than ninety (90) days after the end of each Fiscal Year for the Development, Borrower shall submit for Department review and approval a report on the Special Needs Population households in the Development. This report shall be on a form provided by the Department, and shall include a listing of the number and type of Special Needs Population residents, a description of the supportive services provided to them, and such other matters as the Department may require.

**EXHIBIT C TO REGULATORY AGREEMENT**  
**Special Conditions**

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

Requirements for project-based Rental Assistance (paragraph 10.d).  
The following Units shall be covered by project-based rent subsidies:

No. of Units	Bedrooms	Assistance Program	MHP Income Limit

Required Reserves (paragraph 18).

Replacement Reserves (paragraph 18.a).<sup>1 2</sup>

Annual Deposit Amount<sup>3</sup>: \$ \_\_\_\_\_  
 based on .006 times construction costs per UMR 8309(b)(1): \$ \_\_\_\_\_  
 based on \$500 times number of units  
 based on a physical needs assessment  
 based on a direct federal loan or grant program: \_\_\_\_\_  
 based on CalHFA requirements  
 Initial Capitalization Amount: \$ \_\_\_\_\_  
 Withdrawals Require Prior Department Approval: Yes

<sup>1</sup> 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 programs. However, upon termination of such programs, reserve requirements will revert to the Department's requirements. [use footnote only if HCD defers to such federal loan or grant programs, delete otherwise]

<sup>2</sup> 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 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]

<sup>3</sup> The first annual deposit amount shall be prorated from the close of escrow to the end of the Fiscal Year (defined in section 3.a.).

Operating Reserve (paragraph 18.b).

Deposit Amount:	\$ _____ per month
Initial Capitalization Amount:	\$ _____
Date of Deposit:	[close of escrow or ___?]
Withdrawals Require Prior Department Approval?	YES

Other Reserves (paragraph 18.c). If applicable, approved transition reserve account established to prevent tenant displacement resulting from the termination of rent subsidies.

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

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

**[ADD language for Unfunded Transition Reserves; otherwise delete.]**

A transition reserve is not required because the LOSP grant agreement, dated \_\_\_\_\_, ("LOSP Grant Agreement" )does not provide for renewable subsidy after expiration of its fifteen-year term, which concludes on \_\_\_\_\_ ("the LOSP Grant Agreement Termination Date"). For this scenario, the Department has underwritten to ensure project feasibility after the non-renewable LOSP subsidy terminates. The Department has determined project feasibility for the 55 year period pursuant to Health and Safety Code Sections 50675(c), 50675.7(b)(3) and 50675.8(a)(7) by ensuring that after the \$\_\_\_\_\_ LOSP subsidy terminates, the project will remain feasible for the remaining duration of the Department's loan term based on the following:

1. In order to provide sufficient transition time to prepare for the LOSP subsidy termination, Borrower will cease leasing to new LOSP-subsidized tenants effective \_\_\_\_\_, (or earlier if the Borrower receives notice that the subsidy will be terminated earlier), unless an amendment to such LOSP Grant Agreement is approved, by the City and County of San Francisco Board of Supervisors or to the appropriate devolved budget approval authority, prior to \_\_\_\_\_, to modify the LOSP Grant Agreement Termination Date in order to extend the LOSP subsidy grant term ("LOSP Amendment"). The terms and conditions of the LOSP Amendment must be acceptable to the Department and will be subject to the one-year Subsidy Termination Notice requirements of this special condition the Department's acceptance will not be unreasonably conditioned, delayed, or denied. Notice to tenants must be given one year prior to the termination of the LOSP Grant Agreement unless such LOSP Amendment is approved prior to \_\_\_\_\_.
2. Borrower shall provide written confirmation to the Department of the status of the LOSP Grant Agreement as of \_\_\_\_\_, as follows:
  - a. If the LOSP Amendment has been approved prior to \_\_\_\_\_, Borrower shall provide written notice to the Department by the earlier of (i) within thirty (30) days of approval of the LOSP Amendment; or (ii) no later than \_\_\_\_\_; or
  - b. If the LOSP Amendment is not approved prior to \_\_\_\_\_, then the Borrower shall provide the Department with notice of the same no later than \_\_\_\_\_.
3. Unless the LOSP Amendment is approved prior to \_\_\_\_\_, units that become vacant, or are leased, on or after \_\_\_\_\_, shall be leased to new tenants at rent and income levels necessary to maintain Fiscal Integrity, as required by the Regulations and determined by the Department. In no event shall rents be increased above the 50% of AMI rent/income limits.
4. Borrower shall provide written notice to all LOSP subsidized tenants one-year prior to the LOSP Grant Agreement Termination Date, notifying the tenants that the LOSP subsidy is ending, and that rents will be increasing at the end of the LOSP Grant Agreement term ("Subsidy Termination Notice"). Borrower will ensure that all LOSP tenants acknowledge receipt of the Subsidy Termination Notice, and will provide tenants with reasonable assistance in locating alternate affordable housing (e.g. housing counseling, lists of subsidized housing, tenant meetings to disseminate information). Notwithstanding the foregoing, Borrower shall not be required to provide the



Subsidy Termination Notice if the LOSP Amendment is approved prior to \_\_\_\_\_.

5. Borrower will actively pursue a new LOSP subsidy contract, or other subsidy contract, to begin immediately after the current LOSP Grant Agreement Termination Date;
6. If Borrower is unable to have a new LOSP subsidy contract in place when the initial LOSP Grant Agreement terminates and is unable to acquire alternative funds to cover the operating deficit, then the Borrower will increase the rents, pursuant to section 10(d)(2) herein, for those previously identified LOSP units (at 20% AMI) ("LOSP Units") to the level necessary to ensure Fiscal Integrity, as approved by the Department; and
7. The Borrower shall submit a transition plan to the Department which details how the Borrower will meet the requirements itemized above ("Transition Plan"), no later than 90 days, or earlier than 180 days, from the date of issuance of the Subsidy Termination Notice to tenants. The Transition Plan shall be subject to Department review and approval.

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

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

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

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

Deferred Developer Fee (paragraph 20.b.). The Department approved deferred Developer Fee from paragraph 20.b.(6) at close of escrow is \$\_\_\_\_\_. The Department approved Deferred Developer Fee from paragraph 20.b.(9) at close of escrow is \$\_\_\_\_\_.

The Developer Fee will be adjusted for 9% tax credit projects (new construction) and 4% tax credit projects to reflect any change approved by the Department at placed-in-service date. Excess Developer Fee determined at placed-in-service date must be refunded to the Department in an amount pro rata with the other funding sources within 6 months of the placed-in-service date. Increases at placed-in-service date to the Developer Fee will result in an upward adjustment to the deferred Developer Fee payable in accordance with 8314 (a)(1)(A) and decreases will result in a downward adjustment to the deferred Developer Fee payable in accordance with 8314 (a)(1)(A). If a reduction in Developer Fee results in a credit to the Department owing to over-

payment of Developer Fee from Operating Cash Flow, the deficit shall be paid to the Department from Distributions paid to sponsor in accordance with paragraph 21.

Use of Net Cash Flow (paragraph 22 ). Net Cash Flow shall be applied towards payment of the following loans, in the percentages noted:

Lender:	California Department of Housing and Community Development
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	55 years
Lien Position:	
Interest Rate:	3%

Lender:	
Initial Principal Amount:	\$
Percentage of Net Cash Flow:	%
Term to Maturity:	Years
Lien Position:	
Interest Rate:	

**[if applicable otherwise delete]**

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.

**ADD language for LAHD projects; Otherwise Delete.**

Los Angeles Housing Department(LAHD). Borrower acknowledges that LAHD's annual monitoring fee for the project will not exceed \$135 per restricted unit. The calculation of residual receipts by any lender, including but not limited to LAHD, will prioritize HCD's required debt service of .42% for both the SHMHP loan and the AHSC loan prior to the determination of residual receipts as detailed above.

***[Insert additional project specific Special Conditions.]***

**ADD language for Unfunded Transition Reserves; Otherwise Delete.**

**Paragraph 20(b)(7) Use of Income From Operations.** Throughout the term of the LOSP Grant Agreement, the asset management fee, partnership management fee and similar fees combined (the "Asset Management Fee"), shall be the greater of \$30,900 for the first Operating Year or the amount set forth in 8314 (a)(B), and may increase by 3.5% annually, paid from Net Cash after the payment of all Operating Expenses, debt service and all Reserve Account deposits have been made per Paragraphs 20.b.1 through 20.b.6. In the event that the Grant Agreement is terminated, the Department will adjust the amount of the Asset Management Fee to the amount specified in UMR 8314 (a)(B). No Asset Management Fee shall be paid in any year in which there is a withdrawal from the Operating Reserve, unless such Reserve has been fully replenished.

**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 partners, have been provided copies of the Department Loan Documents and that the Borrower is authorized pursuant to the **First Amended and Restated Agreement of Limited Partnership of CHP Scott Street** (the "LPA") to enter into the Department Loan and comply with the obligations imposed by the Department Loan Documents. The Borrower acknowledges and agrees that it is obligated to comply with the terms and conditions of the Department Loan Documents.

Failure of the General Partner to obtain consent as specified within the LPA to perform any act required by the Department Loan Documents does not excuse or relieve the Borrower from its obligations under the Department Loan Documents. Nothing in the LPA or this paragraph limits the Department's remedies including declaring a default under any of the Department Loan Documents.

**Term.** The Term of this Agreement is 55 years; however, such Term will not expire prior to payment in full of the Department Loan.

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's designation, 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 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 like fees.

Limited Partner Exit. No Development funds, including replacement reserves, nor any operating reserves except in accordance with UMR 8308(g), may be used to fund the purchase of or to acquire a limited partner share.

Continuity of Reserves. All reserves shall remain with the Development for uses approved by the Department during the term of the Regulatory Agreement notwithstanding the sale or transfer of the Development, the exercise of an option to purchase or right of first refusal under the LPA, or the dissolution of the Borrower organization. Reserves may not be used to pay any transfer taxes, ground lease payments, repayment of debts to the limited partner, or limited partner buyout costs, except that operating reserves may be used in accordance with UMR 8308(g).

## EXHIBIT A

### AUTHORITY, PURPOSE AND SCOPE OF WORK

#### 1. Authority

The State of California has established the Multifamily Housing Program ("Program" or "MHP") pursuant to Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code, all as amended and in effect from time to time. Pursuant to Health and Safety Code section 50675.11, the state has issued the Multifamily Housing Program Final Guidelines (the "MHP Guidelines"). This STD 213, Standard Agreement (the "Agreement") is entered under the authority and in furtherance of the Program.

This Agreement is the result of the Sponsor's application (the "Application") for funding under the Program (the "Loan"). This Agreement hereby incorporates by reference the Application and the Project Report in their entirety. This Agreement is governed by the following requirements (collectively, the "Program Requirements"):

- A. Chapter 6.7 of Part 2 of Division 31 of the Health and Safety Code;
- B. The MHP Guidelines, dated June 19, 2019, all as amended and in effect from time to time;
- C. Any provisions of the Uniform Multifamily Regulations (Cal. Code Regs., tit. 25, § 8300 et seq.) (the "UMRs"), which the MHP Guidelines incorporate by reference;
- D. The Notice of Funding Availability (the "NOFA"), dated July 23, 2021;
- E. The Award Letter issued by the Department to the Sponsor; and,
- F. Any and all other applicable law.

#### 2. Purpose

Sponsor applied to the State of California for the Loan in order to develop, construct, and/or rehabilitate an Affordable Housing Development, as defined in paragraph 3.A. below. The Affordable Housing Development will be developed on certain real property (the "Property"), as described in the Application and the Project Report. The Department will make the Loan to the Sponsor, or to the Sponsor's Department-approved affiliate (the "Borrower"), as owner of the Development. The Department will require that the Affordable Housing Development be developed, owned, rented, managed, maintained, and operated in accordance with the Program Requirements for the full term of the Loan, regardless of sale or transfer of the Property or prepayment of the Loan.

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**EXHIBIT A**

To further effect this purpose, if Sponsor or Borrower is an entity other than the Sponsor identified in the Application, the Department will require the Sponsor to enter into a sponsor operating agreement (the "Sponsor Operating Guaranty") as a condition of closing the Loan.

By entering into this Agreement and thereby accepting the award of Program Loan funds, the Sponsor agrees to comply with the Program Requirements and the terms and conditions of this Agreement. As noted above, this Agreement incorporates by reference the Application and the Project Report in their entirety.

**3. Definitions**

Capitalized terms herein shall have the definitions set forth in the MHP Guidelines. In addition:

- A. "Affordable Housing Development" or "Development" refers to the transitional or rental housing development which was described in the Application and which provides units that are affordable to lower income households. The Affordable Housing Development must meet all Program Requirements and is in consideration of the MHP Loan.
- B. "Agreement" refers to this Standard Agreement.
- C. "Borrower," or "Ultimate Borrower," refers to the borrowing entity and owner of the Development, as identified in Exhibit E. The Sponsor, or its wholly controlled affiliate, shall have continuing control of the Borrower. The organizational structure of the Borrower must comply with UMR Section 8313.2.
- D. "Sponsor" or "Development Sponsor" refers to the entity or entities that made the Application to the Department for the Award for the Affordable Housing Development (the "Development") and identified as "Contractor" on page one to this Agreement (STD 213).  
  
"Sponsor" also includes any affiliate or assignee of the Sponsor approved by the Department and undertaking all the obligations of the Sponsor hereunder (e.g., the Borrower). In the case of joint applicants, "Sponsor" shall refer to each applicant or the approved assignee of such applicant. Each joint applicant shall be jointly and severally liable for all obligations of a Sponsor as set forth herein.
- E. "Department" or "HCD" refers to the Department of Housing and Community Development.

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**EXHIBIT A**

- F. "Project Report" refers to the staff report presented to and approved by the Department's Internal Loan Committee. The Project Report sets forth the project criteria approved by the Department at the time of the award of Program Loan funds. The project criteria may be amended only upon the Department's written approval.
- G. "Performance Milestones" refers to the development schedule and/or milestones proposed by the Sponsor in its Application and set forth in the Project Report.
- H. "Program" refers to the Multifamily Housing Program (MHP).
- I. "Residual Receipts" refers to the 50 percent (50%) share of cash or other benefits which, pursuant to UMR Section 8314, is available to the Department on an annual basis as payment on the MHP Program Loan. The Department may agree to share the Residual Receipts with other public agency lenders. Only public agency lenders can receive Residual Receipts.
- J. "TCAC" refers to the California Tax Credit Allocation Committee.
- K. Any reference to a specific "Section" or "section" of the MHP Guidelines shall initially refer to that specific numbered section of the MHP Guidelines adopted on and dated June 19, 2019. If the Department amends any portion of the MHP Guidelines, all references herein to any such portion of the MHP Guidelines shall be deemed to refer to the updated version of the MHP Guidelines, either in whole or in part, as may be applicable. To the extent that any MHP Guidelines provision is amended, and thereafter receives a new section number, any reference herein to the old MHP Guidelines section number shall be interpreted to refer instead to the MHP Guidelines section as amended.

**4. Scope of Work**

The "Scope of Work" or "Work" for this Agreement shall consist of the development and construction of the Development identified in the Award Letter. Sponsor shall cause the Development to be developed and constructed in full accordance with this Agreement and the Program Requirements. Any reference in this Agreement to "construction" shall include rehabilitation construction, if applicable.

All written materials or alterations submitted as addenda to the original Application and which are approved in writing by a Division of Financial Assistance Program Manager or higher departmental official, as appropriate, are hereby incorporated as part of the Application and hereby incorporated as part of the Agreement.

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**EXHIBIT A**

The Department hereby reserves the right to review and approve any and all of the Work, and the Scope of Work may in no event be revised or altered without the Department's prior written consent and approval, which consent and approval is within the Department's sole and absolute discretion.

**5. Evidence of Point Generating Activities**

Based on the points awarded to its Application, Sponsor assures the Department of the existence or planned aspects of all point generating activities as detailed in the Project Report.

At the request of the Department, Sponsor shall provide further and additional evidence sufficient to demonstrate the existence and/or completion of the items for which the Sponsor's Application received points. Failure to provide such evidence to the reasonable satisfaction of the Department may result in a reevaluation of the Application and the reduction or cancellation of the award, require repayments of any disbursed Program funds, and result in the disencumbrance of Program funds awarded.

**6. Performance Milestones**

Sponsor shall inform the Department of any anticipated delays, or changes to the Sponsor's proposed Performance Milestones as set forth in the Project Report no later than the date designated for such completion therein (each a "Milestone Completion Date"). Sponsor may submit a written request for extension of any such Milestone Completion Date. Any such request shall include Sponsor's demonstration of good cause and reasonable assurances that the extension will not adversely affect completion of the project. Approval of any such extension request shall be in the Department's sole discretion; however, such approval shall not be unreasonably withheld.

**7. State Coordinator**

The coordinator of this Agreement for the state is the Program Manager for the Multifamily Housing Program, Division of State Financial Assistance. Any notice, report, or other communication required by this Agreement shall be mailed by first-class mail to the Program Manager at the following address:

Department of Housing and Community Development  
Division of State Financial Assistance – PDI  
P.O. Box 952054  
Sacramento, California 94252-2054

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**EXHIBIT A**

**8. Sponsor's Contract Coordinator**

The Sponsor's Contract Coordinator for this Agreement is listed below. Unless the Department is otherwise informed, any notice, report, or other communication required by this Agreement will be mailed by first-class mail to the Sponsor's Contract Coordinator at the following address:

Sponsor:	Insert Contact Info Here
Authorized Representative Name and Title:	Insert Contact Info Here
Address:	Insert Contact Info Here
Phone No.:	Insert Contact Info Here
Email Address:	Insert Contact Info Here

**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Terms of Loan**

A. Principal Amount: The principal amount of the Loan shall be the lesser of:

- 1) the principal amount as stated in the Application, or,
- 2) the amount later approved by the Department as consistent with the requirements of the MHP Guidelines.

B. Interest and Payment: The initial term of the Loan shall be at least fifty-five (55) years, and it shall commence on the date of recordation of the MHP Loan documents. Principal and accumulated interest is due and payable upon completion of the term of the Loan. The Loan shall bear simple interest at the rate and be payable as provided in section 7308 of the MHP Guidelines and under the terms of the Department's promissory note to be executed at loan closing. Interest shall accrue from the date that funds are disbursed by the Department to or on behalf of the Sponsor. For the first thirty (30) years of the Loan term, payments in the amount of 0.42 percent (0.42%) of the outstanding principal loan balance shall be payable to the Department; such payments will commence on the last day of the Initial Operating Year and will continue on each anniversary date thereafter. The Loan may not be prepaid without the prior written consent of the Department.

**2. Invoicing and Payment**

A. **All Loan proceeds shall be disbursed through an independent escrow/title company. The Department shall prepare and submit instructions to the escrow holder, detailing the requirements for the release of Loan proceeds to the Borrower.**

B. The Loan shall be released through escrow upon the Sponsor's, or its assignee's, submittal of the Request for Funds form and the satisfaction of the terms of the Award Letter and this Agreement. The Department reserves the right to retain 10 percent (10%) of the approved loan proceeds pending receipt and acceptance of the cost audit and any remaining Loan closing checklist items.

**3. Payees**

The authorized Payee(s) is/are as specified below:

Multifamily Housing Program (MHP)

NOFA Date: 07/23/2021

Approved Date: 1/11/2022

Prep. Date: XX/XX/XXXX

Contractor's Name

21-MHP-XXXXX

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Name:

Amount: \$XXX,XXX.00

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## EXHIBIT E

### SPECIAL CONDITIONS

The following Special Conditions are applicable to this Standard Agreement:

1. [ULTIMATE BORROWER] ("LP") is an affiliate of [SPONSOR] ("Corp"). Corp was awarded the MHP Loan funds, in the amount of [\$\$\$X,XXX.00], pursuant to the Award Letter, dated [DATE]. The Department acknowledges LP as the Ultimate Borrower of the MHP Loan funds. As such, LP will execute the MHP Loan documents described in paragraph 40 of Exhibit D of this Agreement. For the purposes of this Agreement, LP and Corp will be collectively referred to herein as "Sponsor." Accordingly, LP and Corp shall be jointly and severally liable for all the obligations of the Sponsor as set forth herein. Performance satisfactory to the Department by LP of any duties and obligations under this Agreement, and under any other agreements required by the Department, will be deemed as performance by the Sponsor.
2. Not less than 60 days prior to construction loan closing, the Sponsor shall provide updated financial documents including, but not limited to the development budget, development sources and uses, schedule of rents and unit mix, operating budget and 15-year cash-flow analysis, which are acceptable to the Department and demonstrate compliance with all applicable Program regulations or guidelines and the Uniform Multifamily Regulations (UMR). All proposed changes to the project, including but not limited to project financing, rents and unit mix, scope of work to be performed or Borrower's organizational structure must be submitted to and approved by the Department in writing.
3. The Sponsor who garnered the experience points at the application stage must be the Sponsor who controls the borrowing entity at construction, through permanent close of escrow, and into management and operation of the project. Organizational documents demonstrating that the experienced Sponsor has the authority to exercise control of the borrowing entity in compliance with Section 8301(s) of the Uniform Multifamily Regulations (UMR) must be submitted to the Department for review and approved by the Department prior to execution of the Standard Agreement.
4. All proposed changes to the project, including but not limited to project financing, rents and unit mix, scope of work to be performed or Borrower's organizational structure must be submitted to and approved by the Department in writing.

**EXHIBIT E**

5. Prior to construction loan close, the Sponsor must comply with applicable local, state and federal relocation requirements of Government Code section 7260 et seq. and California Code of Regulations, title 25, section 6000 et seq. including a relocation plan which shall be subject to the approval of the Department. Should a relocation plan not be required, Sponsor must provide documentation for Department approval that there are no relocation requirements.

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

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Multifamily Housing Program (MHP)  
Department of Housing and  
Community Development  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
\_\_-SHMHP-\_\_

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**MULTIFAMILY HOUSING PROGRAM (MHP)  
(NOFA November 27, 2014)**

**SENIOR REGULATORY AGREEMENT  
(Affordability Restrictions)**

LOAN NUMBER \_\_ - SHMHP - \_\_\_\_

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

**RECITALS:**

- A. Borrower has applied to the Department for a loan (the **"Loan"**) for the development of a Rental Housing Development located at \_\_\_\_\_, California, consisting of a total of \_\_\_\_\_ rental units (the **"Development"**), of which \_\_\_\_\_ SHMHP Restricted Units (**"Assisted Units"**) are to be occupied by Eligible Households as provided in this Agreement. The Development is located on the real property described in Exhibit A hereto (the **"Property"**). The Department has conditionally agreed to provide the Loan under the Multifamily Housing Program (**"SHMHP"**) pursuant to part 1 of division 44 of the California Public Resource Code commencing with section 75210 (the

**"Program"**), the MHP Program Guidelines (the **"Guidelines"**), and the Multifamily Housing Program Regulations and the Uniform Multifamily Regulations, California Code of Regulations, title 25, division 1, chapter 7, subchapter 4, section 7300 et seq. and section 8300 et seq. (the **"Regulations"**). The obligations imposed on the Borrower by the Program, the Guidelines, the Regulations and the Department's policies and procedures, as well as all other applicable laws, are collectively referred to herein as the **"Program Requirements"**.

- B. As required by the Program, Borrower, Sponsor and the Department have entered into that Standard Agreement, numbered \_\_\_\_\_-SHMHP-\_\_\_\_\_, and dated \_\_\_\_\_ 201\_\_\_\_, [and subsequently amended on DATE, if applicable] regarding the Development and governing the terms of the Loan ([collectively,] the **"Standard Agreement"**).
- C. Also as required by the Program and in addition to this Agreement and the Standard Agreement, Borrower has executed or will execute each of the following documents in form approved by the Department:
1. A promissory note evidencing the Loan specifying, inter alia, the principal amount thereof, the interest accruing thereon and the terms of repayment thereof (the **"Note"**).
  2. A deed of trust, assignment of rents, security agreement, and fixture filing securing the Note and naming the Department as beneficiary and the Borrower as trustor, and recorded or to be recorded against the Property (the **"Deed of Trust"**). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department; provided, however, this Agreement shall be senior to and have priority over the Deed of Trust.
  3. The Department's customary regulatory agreement regulating and restricting the occupancy, rents, operation, ownership and management of the Development and Property in compliance with Program Requirements, and recorded or to be recorded against the Property (the **"Junior Regulatory Agreement"**).
  4. Such other documents and instruments as the Department may reasonably require.
- D. The Standard Agreement, the Note, the Deed of Trust, the Junior Regulatory Agreement, this Agreement and such other documents and instruments as are reasonably required by the Department are collectively referred to herein as the



**"Loan Documents."** NOTE: Only the terms of the Standard Agreement that set forth the applicable income and rent restrictions, including any definitions and special conditions appurtenant to such restrictions, are incorporated into this Agreement, except to the extent conflicting with the provisions hereof, notwithstanding that the term of the Standard Agreement may be less than the term of the Department Regulatory Agreement. All other terms in the Standard Agreement, including, without limitation, any restrictions on transfer, are specifically excluded from this Regulatory Agreement and the foregoing definition of Loan Documents. E. The conventional loan encumbering the Property ("**Conventional Loan**") [is from a party related to Borrower or one or more of its constituent members or partners][is not fully amortizing and matures prior to the maturity date of the Note]. As a result, according to the Program Requirements the affordability restrictions of the Junior Regulatory Agreement executed and recorded against the Property must be senior to the **Conventional** Loan and accordingly this Agreement, which repeats and contains such affordability restrictions, and the Junior Regulatory Agreement shall both be executed in connection with the closing of the Loan, but this Agreement shall be senior to the **Conventional** Loan and the Junior Regulatory Agreement shall be subordinate to the **Conventional** Loan.

- E. As further consideration for the Loan and in furtherance of the purposes of the Program, Borrower has agreed to enter into this Agreement. The purpose and intent of this Agreement is to regulate and restrict the occupancy and rents of the Development and the Property, and to otherwise set forth the continuing senior "Affordability Provisions", as contemplated by sections 8310(f) and 8315(d) of the Regulations, applicable to the Development and Property, in compliance with the Program Requirements.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.
2. Property. Borrower is the owner in fee of the Property and all improvements now and hereafter located thereon.

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

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

Property. The Property is owned in fee by \_\_\_\_\_  
a \_\_\_\_\_ (the "Public Agency"). Borrower has an

agreement with the Public Agency for construction and operation of the improvements located on the Property. **[Modify as appropriate.]**

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program statutes, which include by reference definitions found in chapter 2 of part 1 of division 31 of the Health and Safety Code (commencing with § 50050) and the definitions included in the applicable Program regulations or guidelines [PERHAPS MAKE SPECIFIC TO PROGRAM].
4. Compliance with Program Requirements. Borrower agrees at all times to comply with the terms of this Agreement, and acknowledges that it has access to professional advice to the extent necessary to enable the Borrower to comply with the same.
5. Term of Agreement. This Agreement shall commence on the date hereof and remain in full force and effect and shall apply to the Development through and including the fifty-fifth (55<sup>th</sup>) anniversary of the date of recordation of this Agreement pursuant to paragraph 20 hereof regardless of any prepayment of the Loan or sale, assignment, transfer or conveyance of the Development or the Property, unless terminated earlier by the Department or extended by the mutual consent of the parties.
6. Assisted Units, Restricted Units, Special Needs Populations Units and Supportive Housing Units.
  - a. For the full term of this Agreement, Borrower shall provide within the Development, the number, type and size of Assisted Units set forth in Exhibit B, Part I, attached hereto and incorporated herein.
  - b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
  - c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Borrower may change the designation of a particular Unit from Assisted Unit to non-Assisted Unit, and vice versa, over time.
7. Tenant Selection Procedures. Borrower shall rent Assisted Units in the Development to Eligible Households and otherwise operate the Property in accordance with the Management Plan developed by the Borrower and approved

by and on file with the Department (the “**Management Plan**”). 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;
  - 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;
  - 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; and
  - j. specify procedures for obtaining statistical information for identifying the status of tenants as either elderly or veteran.
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 Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law, and only with prior approval of the selection criteria by the Department.

9. Rental Agreement and Occupancy Procedures.

- a. Each Eligible Household selected to occupy an Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Borrower, the form of which shall be subject to approval by the Department and be consistent with the Program Requirements. Such rental agreement shall, inter alia, provide for good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.
- b. The Borrower may establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the Program Requirements and shall not distinguish or discriminate between Restricted Units and non-Restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall become effective no less than thirty (30) days after giving written notice thereof to each household in the Development.

10. Assisted Unit Rents.

- a. For the Initial Operating Year, Borrower shall charge Rents for the Assisted Units in the Development in accordance with Exhibit B hereto.
- b. After the Initial Operating Year, Rents for Assisted Units may be adjusted no more often than every twelve (12) months. The amount and method of adjustment for Assisted Units shall be in accordance with TCAC.
- c. Notwithstanding the previous subparagraph, Rents for Assisted Units subsidized under section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the Units continue to receive the rental assistance.
- d. Units in the Development covered by approved project-based rental assistance, if any, are described in Exhibit C. For such Units:
  - (1) Borrower shall in good faith apply for and accept all available renewals of project-based rental assistance; and

- (2) If the project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels shown in the schedule published by the Department for the applicable Unit size and income limit, but only to the minimum extent required for project feasibility, as determined by the Department. In addition, Rents for Units designated in Exhibit C as restricted to households with incomes not exceeding a specified percentage of state median income 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 Low Income Housing Tax Credit (LIHTC) Program.

11. 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 Program.
- b. If, at the time of tenant recertification, the income of a household occupying an Assisted Unit exceeds the income level applicable to new tenants for respective Assisted Units, and, to the extent a rent increase for the household is permitted by statutes and regulations governing the LIHTC, 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 20%, 40% and 50% of Area Median Income, if the income of a household occupying a Unit designated as a 20% Unit increases to 48% of Area Median Income, the Sponsor must redesignate the household's Unit as a Unit at the 50% level, increase the tenant's Rent

to the level applicable to Units at the 50% level, and designate the next available comparable Unit as a Unit at the 20% income level.

- 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 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 subparagraph, income levels shall not be limited to those applicable to new tenants, and shall consist of five percent increments of Area Median Income. Continuing with the example described in subparagraph 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 Area Median Income could have their Rent increased to the Rent level applicable to the 35% income level.
  - d. At any time and from time to time during the term of this Agreement, the Department or its designee may, upon reasonable notice to Borrower and accompanied by a representative of Borrower, enter and inspect the physical premises of the Development and the Property and inspect and copy all accounting records pertaining to the Development's or Property's compliance with the covenants and agreements set forth in this Agreement. Upon request by the Department, the Borrower shall notify occupants of upcoming inspections of their Units in accordance with state law.
  - e. At any time and from time to time during the term of this Agreement, the Department or its designee may request any other information, data or records related to the Development or the Property that it reasonably deems necessary to monitor compliance with the requirements set forth in this Agreement. The Borrower shall promptly provide such information, data and/or records, to the Department, and allow the Department and/or its designees to review, inspect and make copies of the same.
12. Management. Borrower shall be responsible for the operation and maintenance of the Development and the Property in a manner consistent with this Agreement.
13. Periodic Reports. Borrower shall submit to the Department such periodic reports as deemed necessary by the Department to monitor the Borrower's compliance with the affordability provisions of this Agreement.

14. Violation of Agreement by Borrower.

- a. In the event of the Borrower's breach, violation or default in the performance of any covenant, agreement or obligation of the Borrower set forth in this Agreement, the Department shall give the Borrower written notice in the manner specified in this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the reasonable satisfaction of the Department pursuant to paragraph 15 below, the Department may declare a default hereunder and may, as its exclusive remedy pursuant to this Agreement or applicable law, apply to a court of applicable jurisdiction to seek Equitable Relief (as defined below). As defined herein, "Equitable Relief" shall mean seeking, applying for, pursuing and obtaining any one or more of the following:
- (1) An order for specific performance enforcing the covenants, agreements and obligations of the Borrower set forth herein, and in connection therewith, Borrower acknowledges and agrees that the injury to the Department arising from a failure or default under this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Department, in light of the purposes and requirements of the Program, would be impossible to ascertain;
  - (2) A temporary restraining order, preliminary injunction or permanent injunction with respect to or against the breach or violation of the covenants, agreements and obligations set forth herein;
  - (3) Declaratory relief;
  - (4) Conducting a department investigation or holding a Department hearing to determine whether or what action, if any, is appropriate with respect to the project; and/or
  - (5) Seeking the payment and/or reimbursement of any and all court costs, attorneys' fees, witness fees and the like incurred by the Department in pursuing any or all of the foregoing.
- b. The Equitable Relief remedies of the Department referenced above are cumulative and non-exclusive, and the exercise of one or more of such

remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Department of any one or more of its other remedies hereunder. The Department hereby waives the right to seek any other remedy here under for breach, violation or default of any of the covenants set forth in this Agreement; provided, however, notwithstanding the foregoing or any other provision of this Agreement:

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

15. Time to Cure. If a breach, violation or default occurs with respect to the covenants set forth in this Agreement, prior to exercising the exclusive remedy described in paragraph 14 thereunder, the Department shall give Borrower written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower shall have such period to effect a cure prior to exercise of the Department's remedy. If the default is such that it is not reasonably capable of being cured within such 30-day period and if Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time, not to exceed an additional 180 days to cure the default prior to exercise of the remedy by the Department. If Borrower or its successor



in interest is a limited partnership, if Borrower fails to take corrective action or to cure the default within such a specified time, the Department shall give Borrower written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.

16. Assignment of Department Rights. The Department retains the right at its sole discretion to assign all or part of its rights under this Agreement to another governmental entity or agency for the purpose of ensuring compliance and enforcement of Borrower's duties and obligations hereunder. In addition, the Department may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.
17. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties.
18. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
19. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transferees, successors in interest and assigns, provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Department. The term "Borrower" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary or possessory interest of Borrower in the Development.
20. Recording Agreement. This Agreement, and all amendments hereto, shall be executed by each of the parties. This Agreement, or, where approved by the Department in writing, a memorandum thereof, shall be recorded against the Property in the official records of the county in which the Development is situated, superior to the lien of the Deed of Trust.
21. Indemnification and Waiver.
  - a. The following subparagraph does not apply to any successor in interest to the Property that succeeds to the Borrower as a result of foreclosure upon a loan to Borrower: Borrower agrees to indemnify the Department and its agents, employees and officers against, and holds the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other

expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (1) the making of the Loan to the Borrower; (2) Borrower's failure to perform any obligations as and when required by this Agreement or any of the other Loan Documents; (3) any failure at any time of any of Borrower's representations or warranties to be materially true and correct; (4) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Borrower (but not any successor to Borrower in the ownership of the Property) shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Borrower's duty to indemnify and save harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Borrower (but not any successor to Borrower in the ownership of the Property) shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the Borrower or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Borrower's duty to indemnify the Department shall survive the term of this Agreement, the release and cancellation of the Note, and the reconveyance or partial reconveyance of the Deed of Trust. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

- b. The Borrower waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. The Borrower expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or**

**her must have materially affected his or her settlement with the debtor.”**

22. No Waiver. No waiver by the Department of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder.
23. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.
24. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
25. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.
26. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.
27. Department's Approval, Etc. Whenever this Agreement or any of the other Loan Documents requires the approval, consent, or other determination by the Department, the Department shall act reasonably and in good faith unless any such approval or consent is expressly stated as being in the Department's sole discretion.
28. Compliance with IRC section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income

unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.

29. Special Conditions. The Borrower agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
30. Construction. Each party hereto acknowledges and agrees that it has had independent counsel review and participate in the drafting of this Agreement, and it hereby fully waives the application of any law, statute or rule of construction or interpretation, including without limitation California Civil Code section 1654, to the effect that any ambiguities are to be construed against the drafting party.
- 31.. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property;

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

Exhibit C: Special Conditions.

***[Signatures of the Borrower and the Department follow on page \_\_ of these Affordability Restrictions. The remainder of this page is intentionally left blank.]***

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

**DEPARTMENT:**

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

**Mailing Address:**

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

By: Form  
\_\_\_\_\_, Closings Manager

**Principal Place of Business:**

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

**BORROWER:**

Form  
\_\_\_\_\_

**Mailing Address:**

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

By: \_\_\_\_\_  
[Original Signature]

**Principal Place of Business:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY: PS 3/26/2024  
PAULA S. SALCIDO DATE

**EXHIBIT A TO REGULATORY AGREEMENT**  
**LEGAL DESCRIPTION OF THE PROPERTY**

SAMPLE

## EXHIBIT B TO REGULATORY AGREEMENT

### I. UNIT DESIGNATIONS AND RENT SCHEDULE

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

The Initial Operating Year ends at the end of the initial Fiscal Year, which is: \_\_\_\_\_, 20\_\_.

During the Initial Operating Year:

- A. Borrower shall charge Rents for Assisted Units that do not exceed Rents set forth in the schedule below; and
- B. Borrower shall charge Rents for Units other than Assisted Units in amounts not less than the amounts shown herein.

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

**Unit Mix:**

No. of Bedrooms	MHP Restricted	Total Restricted	non-Restricted Units	Total Units	Rent	Utility Allowance	Net Rent (gross – util. allw.)	Annual Net Rent	Income Limit	
									%	SMI/AMI
									%	SMI
									%	AMI
									%	SMI
									%	AMI
									%	AMI
									%	AMI
									%	AMI
									%	SMI
									%	AMI
									%	AMI
						0				Market Rate
						0				Mngr.
<b>Totals</b>										

The above Unit Mix chart is based on the following:

Maximum Gross Rent is as stated in the *[insert year]* HERA *[or non-HERA]* MHP Income, Rent and Loan Limits.

Income Limit is as stated in the *[insert year]* HERA *[or non-HERA]* MHP Income Rent and Loan Limits.

SAMPLE



**EXHIBIT C TO REGULATORY AGREEMENT**  
**Special Conditions**

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

Requirements for project-based Rental Assistance (paragraph 10.d).

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

No. of Units	Bedrooms	Assistance Program	MHP Income Limit

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

## EXHIBIT D

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

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

**2. Termination**

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

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

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any affiliate or general partner of Sponsor, for the benefit of creditors; or the filing of an application for the appointment of a receiver, trustee, custodian or liquidator for Sponsor or any of its property, or for any affiliate or general partner of Sponsor or any of its property.

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

**3. Timing**

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

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**EXHIBIT D****4. Disputes**

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

**5. Consent**

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

**PRE-CONSTRUCTION LOAN REQUIREMENTS**

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

**6. Site Control**

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

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

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

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

**7. Title Report**

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

**8. Site Inspection**

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

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

### 9. **Adaptability and Accessibility**

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

### 10. **Physical Needs Assessment**

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

### 11. **Reserve Study**

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

### 12. **Development Budget**

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

### 13. **Reasonable Development Costs**

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

**EXHIBIT D****14. Cost Savings**

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

**15. Sponsor Control of Development**

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

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

**16. Limited Partnership Agreement (LPA)**

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

**17. Relocation Plan**

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

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

### 18. Architect Contract

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

### 19. Appraisals

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

### 20. Non-Department Financing

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

### 21. Senior Loan Terms and Disclosures

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

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

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



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

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

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

**22. Environmental Conditions**

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

**23. Article XXXIV**

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

**24. Supportive Services Plan**

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

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

### **CONSTRUCTION PHASE REQUIREMENTS**

#### **25. Construction Phase Information**

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

#### **26. Inspection**

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

#### **27. Updated Information**

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

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

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

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

**29. Signage**

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

**PROJECT NAME: DEVELOPMENT NAME**

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

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

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

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

**30. Photographs**

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

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### COMPLETION OF CONSTRUCTION

#### 31. Relocation Plan Implementation Report

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

#### 32. Architect Certification

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

#### 33. Cost Certification

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

#### 34. Recorded Notice of Completion

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

### PROGRAM LOAN CLOSING REQUIREMENTS

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

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**35. Development Construction**

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

**36. Title Insurance**

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

**37. Sponsor's Status**

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

**38. Compliance with California's Prevailing Wage Law**

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

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

### 39. Insurance

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

### 40. Program Loan Documents

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

### 41. Restrictions on Transfer and Change of Ownership

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

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

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

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

**42. Rental Subsidy Contract**

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

**43. Substitution of Rent or Social Service Subsidy**

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

**44. Final Certificate of Occupancy**

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

**45. Environmental Conditions Remedial Work**

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

**46. Reserve Accounts**

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

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**47. Operating Reserve Account**

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

**48. Replacement Reserve Account**

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

**49. Capitalized Reserve Accounts**

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

**50. CalHFA and HUD Funded Projects**

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

**51. Asset Management and Compliance Requirements**

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

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



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

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

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

### **52. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance**

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

### **53. Identification of Elderly and Veteran Units**

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

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**54. TCAC and Other Regulatory Agreements**

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

**55. Property Tax Exemption**

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

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

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

**57. Change of Conditions**

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

**58. Investor Commitments**

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

**EXHIBIT D****59. Restricted Units**

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

**60. Asset Management Fees**

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

**61. Sponsor Representations**

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

**62. Survival of Obligations**

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

**63. Litigation**

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

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

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

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

### 65. Waivers

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

### 66. Audit/Retention and Inspection

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

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

**67. Reporting Requirements**

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

**68. Assignment Prohibited**

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

**69. Cash Out**

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

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### 70. Residual Receipts

Only public agencies can receive Residual Receipts.

### 71. Invalidity of Statute, Regulation or Use

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

### 72. Attorney's Fees, Costs

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

### 73. Governing Law

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

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**74. Integration**

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

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**Free recording in accordance with  
California Government Code  
section 27383 and 27388.1.**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

State of California  
Department of Housing and  
Community Development  
Multifamily Housing Program  
P.O. Box 952054  
Sacramento, CA 94252-2054  
Attn: **Legal Affairs Division**  
\_\_-MHP-\_\_

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**LEASE RIDER**  
(Ground Lease)

This Lease Rider (the "Agreement") is made and entered into as of \_\_\_\_\_, for reference purposes only, is effective as the date of recordation (the "Effective Date"), by and among the \_\_\_\_\_ (the "Landlord"), \_\_\_\_\_, a California limited partnership (the "Lessee"), and the Department of Housing and Community Development, a public agency of the State of California (the "Department") in consideration of the following facts and circumstances which are all limited to and provided as of the Effective Date.

**RECITALS:**

A. Landlord is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property"). Lessee is the owner of the leasehold estate in that real property described in Exhibit A;

B. Landlord and the Lessee entered into a ground lease (the "Ground Lease"), as memorialized by a Memorandum of Ground Lease of the Property dated \_\_\_\_\_, and recorded in the Official Records of \_\_\_\_\_ County, California (the "Official Records") on \_\_\_\_\_, as Series No. \_\_\_\_\_ and amended by that certain First Amendment to Ground Lease Agreement recorded on \_\_\_\_\_, as Recorder's Serial Number \_\_\_\_\_, in Official Records (the "Lease"), which granted Lessee the leasehold estate in the Property mentioned in Recital A;



C. Pursuant to the Lease, Lessee has agreed to develop, lease, construct, own, operate and manage a rental housing development on the Property consisting of not less than \_\_\_-residential rental units. Lessee is the owner of the fee interest in all of those certain buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in our replacements of the whole or any part of said articles of property (collectively, the "Improvements."). Collectively, the Property and the Improvements are hereinafter sometimes referred to as the Development (the "Development");

D. The Department has agreed to loan an amount not to exceed \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_.00) (the "Loan") to Lessee to finance the Development, in part, pursuant to the Multifamily Housing Program (the "Program"). The Loan is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Agreement;

E. As a further condition of the Loan and pursuant to the requirements of the Program, Lessee and the Department have entered into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), governing the use, occupancy, operation, management and ownership of the Development. Landlord and Lessee hereby waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement (including in particular the provisions of paragraphs 20 [Use of Income from Operations], 21 [Distributions] and 22 [Use of Net Cash Flow]);

F. The Loan will be evidenced by a Promissory Note (the "Note") from Lessee and secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed") on Lessee's interests in the Property;

G. Lessee and Landlord have requested that the Department accept the Lease as security for the Loan. In order to induce the Department to make the Loan, Landlord and Lessee have agreed to enter into and record this Agreement for the benefit of the Department, its successors, and assigns; and

H. This Agreement amends, and is made part of, the Lease. As a result, this Agreement encumbers the Development and must be recorded on the Property.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, the Department, Lessee and Landlord hereby agree as follows:

1. Leasehold. As used herein, "Leasehold" means all of Lessee's interest in the Property

described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases entered into in connection with the Lease (the "Subleases").

2. Representations and Warranties of Landlord. Landlord hereby represents and warrants to the Department as follows:

a. Title. Landlord's interest in the Development is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Preliminary Report regarding the Property issued on \_\_\_\_\_, issued by \_\_\_\_\_ Title Company, for Escrow No. \_\_\_\_\_, Order No. \_\_\_\_\_ (the "Report"). The Report is attached hereto as Exhibit B. Landlord has not required or permitted and has no knowledge of any other matters of record to be recorded that are not contained in the Report.

b. Priority. The Lease is superior to any and all mortgage liens on the Property.

c. Transfers by Landlord. Landlord has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property and the Development in whole or in part, except as shown in the Report and except as security for loans to Lessee approved in writing by the Department.

d. Status of Lease.

(1) Landlord is the current Lessor under the Lease. The Lease is in full force, the Lease is not void, voidable or terminable at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Development, and there has been no default thereunder on the part of Lessee, nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Landlord has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Landlord under the Lease. As of the Effective Date, there exist no defenses or offsets to enforcement of the Lease by Lessee.

(2) Any consent or approval of any third party (including any lender) that is required to deliver this Agreement has been obtained, including consent by the Investor Limited Partner and first mortgage Lender (defined in the Lease) which are attached and made a part of this Agreement.

(3) No alterations, improvements or additions now exist on the Property that have not been approved by the Landlord.

e. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and there have been no further or other supplements, amendments, modifications or extensions thereof except those submitted to and approved by the Department. Nothing in this Lease Rider is intended to waive, supercede, modify or terminate any provision of the Lease granting rights to the Department as a Mortgage Lender.

f. Lease Term. The date of the commencement of the Lease term is \_\_\_\_\_, and will end after Eighty-Eighth (88) years unless the option to extend the lease is exercised. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder has been fully satisfied. Notwithstanding anything in the Lease to the contrary, Lease shall not expire prior to payment in full of the Department's Loan and fulfillment of Lessee's obligations under the Regulatory Agreement.

g. Development. The Development constructed, or to be constructed, by Lessee on the Property satisfies all requirements affecting the design, use or characteristics of such Development imposed by Landlord under the Lease or otherwise, any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

h. Insurance. As of the Effective Date, all notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered and approved by Landlord.

3. Representations and Warranties of Lessee. Lessee, as borrower of the Loan, hereby represents and warrants to the Department as follows:

a. The Lease is superior to any and all mortgage liens on Lessee's Leasehold in the Property.

b. Any consent or approval of any third party (including any Lender of Lessee) that is required to deliver this Lease Rider has been obtained.

c. The Improvements constructed, or to be constructed, by Lessee on the Property satisfy all requirements affecting the design, use or characteristics of such Development imposed by Landlord under the Lease or otherwise, any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

d. As of the Effective Date, all notices, certificates, binders, endorsements, copies of policies, and receipts relating to insurance required under the Lease have been delivered to Landlord.

4. Cancellation, Transfer of Interest.

a. Landlord and Lessee agree that so long as the Department, its successor or assigns holds the Trust Deed and Regulatory Agreement encumbering the Leasehold, no termination of the Lease by Lessee, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of the Department, which consent shall be in the Department's sole and absolute discretion, and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. Any attempt by Lessee to take such action shall be void without the Department's prior written consent.

b. Landlord agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development without the prior written approval of the Department, which consent shall be in the Department's sole and absolute discretion, and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. If the Department approves any such transfer, conveyance, sale, hypothecation, assignment or other encumbrance of its interest, or any portion thereof, in the Property or the Development, Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of Landlord under the Lease and this Agreement by a written instrument recordable in the Official Records.

c. Bankruptcy. Neither the Landlord nor the Lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the Lease or otherwise render it unenforceable in accordance with its terms.

d. No Merger. There shall be no merger of the Lease or any interest in the Lease, nor of the Leasehold, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold estate created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Development or any interest of the Lessee under the Lease.

5. Consent to Assignment, Payment of Rent.

a. Landlord hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Trust Deed and the Regulatory Agreement; possession of the Property and any Development thereon by the Department or by a receiver under the Trust Deed or the Regulatory Agreement; and sale of the Leasehold and the Development by foreclosure under the Trust Deed or transfer by deed in lieu of foreclosure;

(2) Assignments to the Department or its designee of any subleases and any and all rents from such subleases; and

(3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser at a foreclosure sale under the Trust Deed or to any transferee of a deed in lieu of foreclosure (such purchaser or transferee, including the Department, is collectively referred to as the "Transferee"), and to subsequent transfers without restriction (all such assignments, transfers, and subsequent transfers referred to in this Agreement as the "Transfer"). Any such Transferee, upon the Transfer of all its interest in the Development and the Leasehold, shall be relieved of all liability under the Lease accruing after date of such Transfer.

b. Nothing in this Agreement, in the Trust Deed or in the Lease shall impose on the Department the obligations of Lessee under the Lease or require the Department to assume the Lease unless the Department forecloses on the Leasehold under the Trust Deed or accepts an assignment or deed in lieu of foreclose.

6. Notice of Defaults; Termination Notice.

a. Notice and Cure. Landlord shall provide simultaneously to the Department a written copy of all notices and demands, including, without limitation, notices of default or breach which Landlord has given, delivered or sent to Lessee under the Lease. No notice or demand under the Lease shall be effective unless and until a copy of such notice is provided to the Department as provided herein. Any notice of default under the Lease or this Agreement shall describe the default(s) with reasonable detail. The Department shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to the Department is not given or is delayed for any reason, the period of time within which the Department may cure any such breach or default shall commence upon receipt by the Department of such notice. Landlord and Lessee authorize the Department to enter the Development for the purpose of preventing defaults or

exercising its right to cure and any other powers given the Department under the Trust Deed, this Agreement or the Lease.

b. (i) Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure the default, Landlord shall not terminate the Lease on account of such default but shall give the Department a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Landlord intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after the Department's receipt of the Termination Notice, provided that Landlord agrees to extend such termination date if the Department reasonably requires additional time to accommodate the Department's taking possession of the Development where possession is necessary to cure Lessee's default. No Termination Notice shall be effective to terminate the Lease if:

(1) Except as provided in section 6.c., within one hundred eighty (180) days after receipt of the Termination Notice, the Department cures any default which can be cured by payment or expenditure of money with or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such default. To effect a cure of Lessee's default, the Department may make any repair of improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. The Department and its agents and contractors will have full access to the Development for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by the Department shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

(2) The Department commences and diligently pursues to completion proceedings for foreclosure and sale under the Trust Deed or assignment or transfer in lieu of foreclosure.

b. (ii) Termination of Agreement and removing the Lease Rider from fee title. The Department upon (receiving the Termination Notice and) being informed that Landlord intends to terminate the Lease because of Lessee's default or breach, may exercise its right to cure any breach or default under this Agreement and prevent Lease termination.

However, should the Department elect not to exercise its cure rights under the Agreement in the event of Lessee default, in conjunction with Landlord, the Department will take steps to terminate the Agreement and execute the appropriate documents to remove the Agreement from the fee title, to the extent such actions are required to remove the Agreement.

c. Defaults Not Susceptible to Department Cure. The Department shall not be required to perform any act which is not susceptible to performance by the Department, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay any lien, charge or encumbrance which is junior in priority to the Trust Deed, or to pay any amount owed under an indemnity of Landlord by Lessee based on an event occurring prior to the Department's possession of the Development.

d. Landlord's Payment of Loan Payments. Landlord agrees that if Landlord cures Lessee's failure to make any payment due under the Loan, it shall seek reimbursement of amounts so paid solely from Lessee and the Department shall have no obligation to pay such amounts to Landlord.

e. Waiver of Breach or Default. On transfer of the Leasehold at any foreclosure sale under the Trust Deed or by acceptance of a deed in lieu of foreclosure, all violations, defaults and breaches by Lessee under the Lease, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and the Department or other Transferee shall be entitled to the New Lease as described in section 7 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease. Nothing in this section shall be deemed a waiver of any claim by Landlord against Lessee under the Lease.

f. Enforcement Not a Breach. No action taken by the Department to enforce its rights under any of the documents governing the Loan against either the Landlord or the Lessee, or both, including, without limitation, any actions taken to collect any amounts due and owing to the Department or any action to appoint a receiver for the Development or to otherwise protect the security of the Loan, shall constitute or result in a breach or violation of the Lease.

g. Status Quo Ante. Any default by Lessee shall not prejudice the Department if the Department chooses to cure such default within the applicable grace period, and Landlord acknowledges and agrees that upon the Department's cure of any such default, the Lease shall be restored status quo ante.

## 7. New Lease.

a. Conditions. Section 6 hereof notwithstanding, Landlord agrees to comply with the requirements of subsection 7.b., if the following conditions specified in this subsection 7.a. apply:

(1) The Lease is terminated for any reason whatsoever or if the Department

forecloses under the Trust Deed or accepts a deed in lieu of foreclosure; and

(2) Department or other Transferee, whether or not such party has assumed the Lease, requests Landlord in writing to enter into a new lease of the Property within one hundred (180) days after (a) the Department completes a foreclosure under the Trust Deed, or (b) the Department accepts a deed in lieu of foreclosure, or the end of the cure period provided to the Department in the Termination Notice (the "New Lease").

b. Obligations. If the conditions specified in section 7.a. have been satisfied, Landlord shall:

(1) upon receipt of the request for New Lease described in subsection 7.a.(2) above, enter into a New Lease of the Property with the Department, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination or conveyance pursuant to a foreclosure sale or of a deed-in-lieu of foreclosure. The New Lease shall be at the rent of, and consistent with the terms, provisions, covenants, options and agreements contained in the terminated or foreclosed Lease, or granted by the Landlord in connection with the Lease, all as modified or supplemented by this Agreement;

(2) convey by grant deed to the Department, its nominee or its successor-in-interest or other Transferee, all title and interest to the Development, if any, which may become vested in Landlord as a result of any termination of the Lease or foreclosure of the Trust Deed or conveyance of Lessee's interest by deed in lieu of foreclosure;

(3) assign to the Department, its nominee, or its successor-in-interest or other Transferee, all of Landlord's interest, if any, in all existing subleases of all or any part of the Development and all attachments given by the sublessees.

c. Priority. The Leasehold estate and the title (if any) in the Development granted to the Department, its nominee or its successor-in-interest under this section 7 shall be prior to any mortgage or other lien, charge or encumbrance on the Development, except as approved in writing by the Department or as shown in the Report.

8. Successors to Department. Subject to section 5 hereof, if the Leasehold is transferred by a foreclosure sale under the Trust Deed or by a deed in lieu of foreclosure, Landlord shall recognize the Transferee as the tenant under the Lease. Anything in the Lease notwithstanding, the rights and benefits of the Department under this Agreement shall benefit and may be exercised by any Transferee or by the holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by the



Department or its successor(s) after the Department acquires the Leasehold or enters into a New Lease under this Agreement.

9. Diligence of Department. So long as the Department is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Landlord or Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the Department shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that the Department shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

10. Condemnation and Insurance Proceeds.

a. Anything in the Lease notwithstanding, all fire and other hazard or casualty insurance proceeds shall be paid to the Department to the extent required by the Regulatory Agreement and subject to the rights of senior mortgage holders. In addition, in the event of any condemnation or partial condemnation, all condemnation award proceeds payable on account of such condemnation or partial condemnation shall be paid to the Department to the extent required by the Regulatory Agreement, subject to the rights of holders of senior mortgages, if any.

b. During the term of the Loan, the Department shall have the right to participate in any settlement or stipulation of judgment with respect to any condemnation proceeding entered into with the condemnation authority affecting all or any portion of the Development or any agreement to sell all or any portion of the Development in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the Department's prior written consent, which consent shall be in the Department's sole and absolute discretion and may be conditioned upon the satisfaction of such terms and conditions as the Department may prescribe. Department shall also have the right (but not the obligation) to participate in any settlement, discussion, and/or arbitration proceeding between Landlord and Lessee with respect to the apportionment or application of any condemnation award.

11. Certificate by Landlord. Within fifteen (15) calendar days after written request by the Department, Landlord shall execute and deliver to the Department or to any proposed purchaser or encumbrancer of Lessee's estate a certificate declaring (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Lease, the Property or the Development reasonably requested by the Department; and (iv) that Landlord understands

the recipient will rely on the certificate and that the Landlord will describe in reasonable detail any exceptions to the foregoing statements.

12. Notices. Notices and other communications required by this Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To Department: Department of Housing and Community Development  
Multifamily Housing Program  
P.O. Box 952054  
Sacramento, CA 94252-2054  
Attn. Closings Manager

or:

2020 West El Camino Avenue  
Sacramento, CA 95833  
Attn: Closings Manager

To Landlord:

To Lessee:

These addresses may be changed by a notice given in the same manner provided that Landlord acknowledges and agrees that it shall have a duty to verify the addresses provided herein. Notices shall be effective on receipt.

13. Department's Rights Against Lessee. Nothing in this Agreement shall limit or restrict the Department's rights and remedies under the Note, the Trust Deed, the Regulatory Agreement, or any other agreement between the Department and Lessee.

14. Successors and Assigns. This Agreement shall inure to the benefit of and bind the successors and assigns of the Department, Landlord and Lessee.

15. Uninsured Hazard. Landlord agrees that neither the Department nor any person acquiring the Property or a portion of the Leasehold pursuant to a foreclosure under the Trust Deed, or deed in lieu of foreclosure, nor the lessee under a New Lease pursuant to section 6 hereof, nor any successive owner of a portion of the Leasehold after such

foreclosure or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which is due to a hazard not required to be covered by insurance under the Lease or New Lease.

16. Duty to Repair. Landlord agrees that if the Department, its nominee, or its successor-in-interest succeeds to Lessee's leasehold interest in the Property and if the Development on the Property shall have been or becomes materially damaged before or after the date of such acquisition, the Department's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by the Department by reason of that damage or ii) the amount the Department would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease.

17. Options. Landlord and Lessee agree that the Department may exercise any option to extend the term of the Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease.

18. Limitation on Liability. If the Department agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, neither the Department nor Transferee shall have any obligation under the Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or the Department's agreement to be bound by the Lease. Nothing in this Agreement or in the Lease shall impose on the Department any liability to perform the obligations of Lessee under the Lease or require the Department to assume the Lease unless and until the Department acquires Lessee's rights by foreclosure or deed in lieu of foreclosure. After acquiring Lessee's rights by foreclosure or deed in lieu of foreclosure, the Department shall be liable to perform Lessee's obligations only until the Department assigns or transfers the Leasehold. The Department shall not, however, be required to cure Lessee's defaults occurring before the Department's acquisition of Lessee's rights by foreclosure.

19. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of the Department's rights under the Lease as a leasehold mortgagee), but in the event of any conflict or inconsistency between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall govern and control, and the Lease shall be deemed to be modified hereby.

20. Attorney Fees, Costs. In any action to enforce or relating to any provision of this Agreement, the prevailing party shall be entitled to recover from the other party, its costs and expenses. The term "costs and expenses" as used herein shall include all costs and

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

21. Transferee. A Transferee must be qualified and experienced to perform the obligations of the Lease and the Regulatory Agreement.

22. Notice to Landlord. Landlord shall be provided notice of Lessee's default or breach under the Loan and Landlord shall have the right to cure any such default or breach within 60 days of receipt of notice.

23. Future Amendments. Lessee warrants that it can perform and comply with all the provisions and covenants of all the documents in its operation of the Development. Except as provided in this Agreement, none of the parties shall take any action or pursue any remedy which vitiates or negates any provision of the Lease, the Department loan documents, or this Agreement, without the prior written consent of the Landlord and the Department. The Landlord may not modify the Lease in any way that jeopardizes Lessee's performance under the Department's loan documents. The Department may not modify its loan documents in any way that jeopardizes Lessee's performance under the Lease.

24. Acknowledgment. Landlord and Lessee acknowledge that the Department is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in making the Loan to Lessee, and warrants and affirms to and for the benefit of the Department that each of those representations is true, correct and complete as of this date.

25. Counterparts. This Agreement may be signed by 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.

26. Right of Reverter. Landlord, in its capacity as successor in interest to the Redevelopment Agency of the City and County of \_\_\_\_\_ (the "RDA"), shall not exercise any right of reverter as long as the Department's Loan is unpaid, as such right of reverter is specified in the **Notice of Exclusive Right of Reverter**, recorded on \_\_\_\_\_, in

Reel \_\_\_\_\_, Image \_\_\_\_\_, under Recorder's Serial Number \_\_\_\_\_, the  
Disposition and Development Agreement, recorded on \_\_\_\_\_, in Reel \_\_\_\_\_,  
Image \_\_\_\_\_, under Recorder's Serial Number \_\_\_\_\_ and the grant deed from the RDA  
to \_\_\_\_\_, concerning Assessor Block \_\_\_\_\_, Lot \_\_\_\_\_.

**[Signatures follow on page 15 of this Lease Rider.]**

SAMPLE

**LANDLORD:**

By:         Farm        

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[Signatures must be acknowledged.]**

**[Signatures continue on page 16. Remainder of this page is blank.]**

SAMPLE

**LESSEE:**

\_\_\_\_\_ Limited Partnership,  
a California limited partnership

By: \_\_\_\_\_ *Form*

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY *P.S.S.* *3/26/2024*  
PANELA S. SALCIDO DATE

[Signatures must be acknowledged.]

[Signatures continue on page 17. Remainder of this page is blank.]

**SENIOR LENDER:**

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

By: \_\_\_\_\_ Form  
                    , Closings Manager

[Signatures must be acknowledged.]

SAMPLE



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

SAMPLE

**EXHIBIT B**

**THE REPORT**

SAMPLE

**PAYEE DATA RECORD**

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 03/2021)

**Section 1 – Payee Information****NAME** (This is required. Do not leave this line blank. Must match the payee's federal tax return)**BUSINESS NAME, DBA NAME or DISREGARDED SINGLE MEMBER LLC NAME** (If different from above)

LINC-Beaumont 2 Apts, LP

**MAILING ADDRESS** (number, street, apt. or suite no.) (See instructions on Page 2)**CITY, STATE, ZIP CODE****E-MAIL ADDRESS****Section 2 – Entity Type****Check one (1) box only that matches the entity type of the Payee listed in Section 1 above.** (See instructions on page 2) **SOLE PROPRIETOR / INDIVIDUAL** **SINGLE MEMBER LLC** *Disregarded Entity owned by an individual* **PARTNERSHIP** **ESTATE OR TRUST****CORPORATION** (see instructions on page 2) **MEDICAL** (e.g., *dentistry, chiropractic, etc.*) **LEGAL** (e.g., *attorney services*) **EXEMPT** (e.g., *nonprofit*) **ALL OTHERS****Section 3 – Tax Identification Number**Enter your Tax Identification Number (TIN) in the appropriate box. The TIN must **match** the name given in Section 1 of this form. Do not provide more than one (1) TIN. The TIN is a 9-digit number. **Note:** Payment will not be processed without a TIN.

- For **Individuals**, enter SSN.
- If you are a **Resident Alien**, and you do not have and are not eligible to get an SSN, enter your ITIN.
- Grantor Trusts (such as a Revocable Living Trust while the grantors are alive) may not have a separate FEIN. Those trusts must enter the individual grantor's SSN.
- For **Sole Proprietor or Single Member LLC (disregarded entity)**, in which the **sole member is an individual**, enter SSN (ITIN if applicable) or FEIN (FTB prefers SSN).
- For **Single Member LLC (disregarded entity)**, in which the **sole member is a business entity**, enter the owner entity's FEIN. Do not use the disregarded entity's FEIN.
- For all other entities including LLC that is taxed as a corporation or partnership, estates/trusts (with FEINs), enter the entity's FEIN.

**Social Security Number (SSN) or Individual Tax Identification Number (ITIN)**

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

OR

**Federal Employer Identification Number (FEIN)**

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**Section 4 – Payee Residency Status** (See instructions)

- CALIFORNIA RESIDENT** – Qualified to do business in California or maintains a permanent place of business in California.
- CALIFORNIA NONRESIDENT** – Payments to nonresidents for services may be subject to state income tax withholding.
- No services performed in California
- Copy of Franchise Tax Board waiver of state withholding is attached.

**Section 5 – Certification**

*I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.*

**NAME OF AUTHORIZED PAYEE REPRESENTATIVE****TITLE****E-MAIL ADDRESS****SIGNATURE****DATE****TELEPHONE** (include area code)**Section 6 – Paying State Agency**

Please return completed form to:

**STATE AGENCY/DEPARTMENT OFFICE**  
 Department of Housing and Community Development

**UNIT/SECTION**  
 DSFA/PDI

**MAILING ADDRESS**  
 2020 West El Camino Ave, Suite 650

**FAX**  
 916-263-2763

**TELEPHONE** (include area code)  
 916-263-2771

**CITY**  
 Sacramento

**STATE**  
 CA

**ZIP CODE**  
 95833

**E-MAIL ADDRESS**  
 mhp@hcd.ca.gov

**PAYEE DATA RECORD**

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)  
STD 204 (Rev. 03/2021)

**GENERAL INSTRUCTIONS**

Type or print the information on the Payee Data Record, STD 204 form. Sign, date, and return to the state agency/department office address shown in Section 6. Prompt return of this fully completed form will prevent delays when processing payments.

Information provided in this form will be used by California state agencies/departments to prepare Information Returns (Form 1099).

**NOTE:** Completion of this form is optional for Government entities, i.e. federal, state, local, and special districts.

A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.

Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).

**Section 1 – Payee Information**

**Name** – Enter the name that appears on the payee's federal tax return. The name provided shall be the tax liable party and is subject to IRS TIN matching (when applicable).

- Sole Proprietor/Individual/Revocable Trusts – enter the name shown on your federal tax return.
- Single Member Limited Liability Companies (LLCs) that is disregarded as an entity separate from its owner for federal tax purposes - enter the name of the individual or business entity that is tax liable for the business in section 1. Enter the DBA, LLC name, trade, or fictitious name under Business Name.
- Note: for the State of California tax purposes, a Single Member LLC is not disregarded from its owner, even if they may be disregarded at the Federal level.
- Partnerships, Estates/Trusts, or Corporations – enter the entity name as shown on the entity's federal tax return. The name provided in Section 1 must match to the TIN provided in section 3. Enter any DBA, trade, or fictitious business names under Business Name.

**Business Name** – Enter the business name, DBA name, trade or fictitious name, or disregarded LLC name.

**Mailing Address** – The mailing address is the address where the payee will receive information returns. Use form STD 205, Payee Data Record Supplement to provide a remittance address if different from the mailing address for information returns, or make subsequent changes to the remittance address.

**Section 2 – Entity Type**

If the Payee in Section 1 is a(n)...	THEN Select the Box for...
Individual • Sole Proprietorship • Grantor (Revocable Living) Trust disregarded for federal tax purposes	Sole Proprietor/Individual
Limited Liability Company (LLC) owned by an individual and is disregarded for federal tax purposes	Single Member LLC-owned by an individual
Partnerships • Limited Liability Partnerships (LLP) • and, LLC treated as a Partnership	Partnerships
Estate • Trust (other than disregarded Grantor Trust)	Estate or Trust
Corporation that is medical in nature (e.g., medical and healthcare services, physician care, nursery care, dentistry, etc.) • LLC that is to be taxed like a Corporation and is medical in nature	Corporation-Medical
Corporation that is legal in nature (e.g., services of attorneys, arbitrators, notary publics involving legal or law related matters, etc.) • LLC that is to be taxed like a Corporation and is legal in nature	Corporation-Legal
Corporation that qualifies for an Exempt status, including 501(c) 3 and domestic non-profit corporations.	Corporation-Exempt
Corporation that does not meet the qualifications of any of the other corporation types listed above • LLC that is to be taxed as a Corporation and does not meet any of the other corporation types listed above	Corporation-All Other

**Section 3 – Tax Identification Number**

The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations.

**Section 4 – Payee Residency Status**

**Are you a California resident or nonresident?**

- A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.
- A partnership is considered a resident partnership if it has a permanent place of business in California.
- An estate is a resident if the decedent was a California resident at time of death.
- A trust is a resident if at least one trustee is a California resident.
  - For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:

Withholding Services and Compliance Section: 1-888-792-4900  
For hearing impaired with TDD, call: 1-800-822-6268

E-mail address: [wscs.gen@ftb.ca.gov](mailto:wscs.gen@ftb.ca.gov)  
Website: [www.ftb.ca.gov](http://www.ftb.ca.gov)

**Section 5 – Certification**

Provide the name, title, email address, signature, and telephone number of individual completing this form and date completed. In the event that a SSN or ITIN is provided, the individual identified as the tax liable party must certify the form. Note: the signee may differ from the tax liable party in this situation if the signee can provide a power of attorney documented for the individual.

**Section 6 – Paying State Agency**

This section must be completed by the state agency/department requesting the STD 204.

**Privacy Statement**

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it. It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000. You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

MULTIFAMILY HOUSING PROGRAM

PROMISSORY NOTE SECURED BY DEED OF TRUST

LOAN NUMBER \_\_-MHP-\_\_

U.S. \$ \_\_\_\_\_

Dated: \_\_\_\_\_

Borrower:

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

**FOR VALUE RECEIVED**, the undersigned, (hereinafter referred to as the "Borrower") hereby promises to pay to the order of the Department of Housing and Community Development (hereinafter referred to as the "Department") a public agency of the State of California, which has its principal office at 2020 West El Camino Avenue, Sacramento, CA 95833 (mailing address: P.O. Box 952052, Sacramento, CA 94252-2052), the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or so much thereof as may be advanced by the Department to or on behalf of the Borrower pursuant to a Standard Agreement dated \_\_\_\_\_, by and between the Borrower and the Department, together with interest thereon as specified herein (the "Loan"). The obligation of the Borrower in respect of all such advances is subject to the terms of (a) a Regulatory Agreement by and between the Borrower and the Department of even date hereof (the "Regulatory Agreement"), (b) this Note, (c) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date hereof, securing this Note, recorded in the Official Records of the County Recorder of \_\_\_\_\_ County, California (the "Deed of Trust"), and (d) the Standard Agreement, which together with all other loan related documents and instruments required by the Department are collectively referred to as the "Loan Documents." Capitalized terms not otherwise defined herein shall have the meanings set forth in the Regulatory Agreement.

1. This Note evidences the obligation of the Borrower to the Department for the repayment of funds loaned to the Borrower by the Department for the purpose of assisting in the development by the Borrower of a rental housing development on the real property located in \_\_\_\_\_, California, more fully described in the Deed of Trust and the Regulatory Agreement (the "Development").

2.
  - a. Borrower agrees to pay the entire unpaid principal amount advanced under the Loan Documents, together with all accrued but unpaid interest thereon on the fifty-fifth (55<sup>th</sup>) anniversary of the date of recordation of the Regulatory Agreement or such later date as may be approved in writing by the Department, in its sole discretion (the "Maturity Date").
  - b. Interest on the unpaid principal balance advanced under the Loan Documents shall accrue from the date of such advance at the simple interest rate of three percent (3%) per annum. Payments in the amount of forty-two hundredths of one percent (.42%) per annum on the unpaid principal balance of the loan shall be payable to the Department commencing on the last day of the Initial Operating Year (the "Interest Payment Date") and continuing annually thereafter up to and including the twenty-ninth (29<sup>th</sup>) anniversary of the Interest Payment Date.
  - c. Commencing on the thirtieth (30<sup>th</sup>) anniversary of the Interest Payment Date and continuing annually thereafter, the Borrower shall pay to the Department annual loan payments in an amount equal to the lesser of (1) the full amount of interest accruing on the unpaid principal amount advanced under the Loan Documents for the immediately preceding twelve (12) month period, or (2) the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Development for compliance with the requirements of the Program.
  - d. Borrower agrees to make additional payments from Net Cash Flow toward repayment of the Loan as required by the Department under the terms of the Regulatory Agreement.
3. All payments on this Note shall be applied first to any costs or charges incurred in connection with the indebtedness evidenced by the Loan Documents; next, to the payment of accrued interest; then to the reduction of the principal balance.
4. The amount due and payable under this Note and the other Loan Documents is payable at the principal office of the Department set forth above, or at such other place or places as the Department may designate to the Borrower in writing from time to time, in any coin or currency of the United States of America, which on the respective date of payment thereof shall be legal tender for the payment of public and private debts.
5. All covenants, conditions and agreements contained in the Deed of Trust are hereby made a part of this Note. If any payment due under this Note is not paid when due and remains unpaid or any other default occurs under the terms of this Note or the other Loan Documents, the Department, at its option, may declare the entire principal amount then outstanding and any and all accrued

interest thereon due and payable immediately, upon the expiration of not less than thirty (30) days after the date written notice of the Department's decision to accelerate is mailed to Borrower. Such written notice shall be given as provided herein. All such amounts due after acceleration shall bear interest at the rate of ten percent (10%) per annum. The Department may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. In the event of default, the Department may, at its option, exercise all of its rights and remedies enumerated herein, which rights are in addition to and not in limitation of any other rights the Department may have under applicable law. The following events shall also constitute default under this Note:

- a. the Borrower becoming insolvent or bankrupt, being unable or admitting in writing its inability to pay its debts as they are due, or making a general assignment with creditors;
  - b. initiation by or against the Borrower of proceedings for the appointment of a receiver, trustee, or liquidator of all or a substantial part of the assets of the Borrower, which proceedings are not dismissed within sixty (60) days of institution;
  - c. initiation by or against the Borrower of proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, which proceedings are not dismissed within sixty (60) days of initiation; or
  - d. dissolution of the corporate or partnership structure of the Borrower or death of the Borrower, if Borrower is an individual.
6. The Borrower hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the Department in the enforcement of this Note, the Deed of Trust, or any term or provision thereof. Each maker, endorser, surety, and guarantor of this Note hereby jointly and severally waives demand, protest, presentment, notice of nonpayment, notice of protest, notice of dishonor, and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of said amount may be extended from time to time by the Department without notice.
7. The obligations under this Note shall be without recourse against the Borrower and any partners, general or limited, of the Borrower. Notwithstanding anything in this Paragraph 7 to the contrary, Borrower, and any general partner of Borrower, shall be liable for each and all of the following:
- a. any fraud, intentional misrepresentation or omission, or other cause of action, that is independent of liability under the Loan Documents;

- b. any waste or intentional destruction of the Development or of any collateral secured by the Deed of Trust;
  - c. all insurance proceeds, condemnation awards, or other sums or payments attributable to the Development not applied in accordance with the terms of the Loan Documents, except to the extent that such sums were not applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of a bankruptcy, receivership, or similar judicial proceeding;
  - d. all rents, lease payments, profits, issues and other income from the Development received by or on behalf of the Borrower following any event of default and not applied in accordance with the terms of the Loan Documents, except to the extent that such sums were not applied in accordance with the Loan Documents solely because Borrower did not have the legal right to so apply such sums because of bankruptcy, receivership, or similar judicial proceeding; and
  - e. any liability arising under or pursuant to any Borrower indemnity contained in the Loan Documents.
8. No delay or failure of Department in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Department shall be deemed a waiver of any such right or remedy.
9. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated in the Regulatory Agreement, 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.
10. This Note shall be binding upon the Borrower and its successors and assigns. The Borrower shall not make any sale, assignment, or conveyance, or transfer in any other form, of the Property or the Development or any part thereof or of any of its interests therein other than in accordance with the terms of the Deed



of Trust and the Regulatory Agreement and with the prior written approval of the Department.

11. The Borrower shall be entitled to pay the indebtedness evidenced by this Note, or any part thereof, prior to or in advance of the Maturity Date, only upon the prior written consent of the Department. No such approved prepayment shall relieve Borrower from its obligations under the Regulatory Agreement.
12. This Note shall be construed in accordance with and be governed by the laws of the State of California.
13. If any provision of this Note 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 unless, in the sole discretion of the Department, the invalidity, illegality or unenforceability of the provision negates the Program purpose and/or threatens the security of the Department.
14. The Borrower hereby certifies to the Department that this is the Note described in and secured by the Deed of Trust covering the real and personal property therein described.

Executed as of the date first set forth above at \_\_\_\_\_, California.

**BORROWER:**

**BORROWER'S ADDRESS:**

\_\_\_\_\_ *Form*

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]* *3/26/24*  
PAULA S. SALCIDO DATE

**LOAN AUTHORIZATION OF [NAME OF LIMITED OR GENERAL PARTNERSHIP]**

The undersigned hereby **[certify / certifies]** that **[it / he / she / they]** **[is / are]** the **[sole general partner / managing general partner]** of **[name of limited partnership]**, a California **[type of partnership]** (the "Borrower"), and as such **[makes / make]** the following certifications and representations to the State of California Department of Housing and Community Development (the "Department"):

1. Under the Notice of Funding Availability, dated **XXXXXXX**, issued by the Department under its Multifamily Housing Program ("MHP"), the Borrower has either received, or been assigned, a conditional commitment of funds pursuant to an Award Letter issued by the Department.

2. The Borrower is duly formed as a **[limited / general]** partnership in the state of \_\_\_\_\_, is authorized to do business in the State of California, and has the power and authority to borrow the funds, which are the subject of conditional commitment of the Department, in an amount not to exceed \$ \_\_\_\_\_ (the "MHP Loan")

3. That in connection with the MHP Loan, the Borrower is authorized to enter into a State of California Standard Agreement, and any and all other documents required or deemed necessary or appropriate to evidence the MHP Loan, the Borrower's obligations related thereto, and the Department's security therefore; including, but not limited to, a promissory note, a deed of trust and security agreement, a regulatory agreement, a development agreement and certain other documents required by the Department as security for, evidence of or pertaining to the MHP Loan, and all amendments thereto (collectively, the "MHP Loan Documents") .

4. That **[Name(s) and Title(s) of Corporate Officer(s)]**, on behalf of the **[Sponsor/s]**, as **[sole member/manager]** of the **[LLC]**, as **[sole/managing/administrative]** general partner of the Borrower **[is/are]** authorized and directed to execute the MHP Loan Documents, and any amendments thereto, on behalf of the Borrower.

Dated: \_\_\_\_\_

**BORROWER:**

**[Name of Borrower]**, a  
California limited partnership

By: **[Name of Managing General Partner]**

Its: Managing General Partner

By: **[Name-Sole Member/Manager]**

Its: **[sole member/manager]**

By: \_\_\_\_\_  
[Name of Signatory]  
[Title of Signatory]

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

RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

Multifamily Housing Program  
State of California  
Department of Housing and  
Community Development  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
\_\_\_\_-MHP-\_\_\_\_

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**MULTIFAMILY HOUSING PROGRAM**

NOFA of [Month Day, Year]

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING (PERMANENT FINANCING)**

LOAN NUMBER \_\_\_\_-MHP-\_\_\_\_

**THIS DEED OF TRUST** is dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, for  
reference purposes only, by \_\_\_\_\_, a

\_\_\_\_\_  
(the "Borrower"), whose address is listed herein, to \_\_\_\_\_, as  
trustee (the "Trustee"), whose address is \_\_\_\_\_, California,  
for the benefit of the Department of Housing and Community Development, a  
public agency of the State of California (the "Lender"), whose mailing address is  
Attention: Multifamily Housing Program, P.O. Box 952054, Sacramento, CA  
94252-2052, and whose principal place of business is 2020 West El Camino  
Avenue, Sacramento, CA 95833.

- A. Borrower, in consideration of the indebtedness herein recited and the trust  
herein created, irrevocably grants and conveys to Trustee, in trust, with  
power of sale, the property located in the County of \_\_\_\_\_,  
State of California and described in Exhibit A, attached hereto and made a  
part hereof, which has the address of \_\_\_\_\_,  
California (the "Property Address");

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given herein to Borrower to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, Venetian blinds and other furnishings, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property"; and together with all accounts, bank, reserve or other, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds arising from or related to the Property; together with all replacements, proceeds, additions and accessions to the foregoing, which shall be deemed to be and remain a part of the Property and covered by this Deed of Trust.

B. The interests herein conveyed are for the purpose of securing to Lender (1) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith (the "Note"), in the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or such lesser amount as shall equal the aggregate amount disbursed to or on behalf of Borrower by Lender, with interest thereon, if any, providing for full payment, due and payable as specified therein; (2) the performance of the covenants and agreements of Borrower herein contained, contained in the regulatory agreement between the Borrower and the Department (the "Regulatory Agreement"), or contained in the Note; and (3) any other obligation or other evidence of indebtedness of Borrower to Lender now or hereafter created, whether acquired by assignment from third parties, or otherwise, where such obligation specifically recites that it is secured by this Deed of Trust.

1. The Note is evidence of the loan made by Lender to Borrower (the "Loan") pursuant to the Multifamily Housing Program (the "Program") for the development on and as part of the Property of a rental housing development (the "Development"). The Program is established and governed by chapter 9 of part 2 of division 31 of

the California Health and Safety Code, commencing with section 50675, all as amended and in effect from time to time.

2. The Loan is further subject to the provisions of a Standard Agreement, between Lender and Borrower. The Standard Agreement, the Note and the Regulatory Agreement are collectively referred to herein as the "Loan Documents." The Loan Documents, among other things, govern, regulate and restrict the continued occupancy, operation, management and ownership of the Development for the period of time as set forth in the Regulatory Agreement. The Regulatory Agreement shall be recorded in the office of the county recorder for the county described above as the location for the Property as a separate and independent lien on the Property pursuant to section 50675.8 of the Health and Safety Code.
3. Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Borrower will warrant and defend generally the title of the Property against all claims and demands, subject to any liens, encumbrances, declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy accepted by Lender insuring Lender's interest in the Property.

**NOW, THEREFORE,** Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note. Lender shall apply all payments received by Lender under the Note in the order as indicated in the Note.
2. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall pay when due all encumbrances, charges, and liens, on the Property or any portion thereof and payments on notes or other obligations secured by an interest in the Property or any portion thereof, with interest in accordance with the terms thereof. Borrower shall have the right to contest in good faith any claim or lien, or payment due thereunder, provided that Borrower does so diligently and without prejudice to Lender.

3. Leasehold Estate. If the estate conveyed in trust by this Deed of Trust is a leasehold, Borrower agrees to fulfill all its obligations under the lease creating such leasehold. Borrower further agrees that it shall not enter into or agree to any termination, modification or amendment to such lease without the prior written approval of Lender.
  
4. Hazard Insurance.
  - a. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss from fire or hazards under a policy approved by Lender, which provides "special form" coverage in an amount at least equal to the replacement value of the improvements. If said improvements, or any part thereof, are at any time during the term of the Loan or Regulatory Agreement designated as being located within a one-hundred year flood plain by the Federal Emergency Management Agency (FEMA), Borrower shall further keep said improvements insured against loss by flood to eighty percent (80%) of replacement cost. In addition, Borrower shall insure against loss of all furniture, equipment and other personal property owned by Borrower related to the operation of the Property as a rental housing development, against loss of rents and all other coverage required under the terms of the Regulatory Agreement. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier, or in a manner agreed to by the Lender.
  
  - b. All insurance policies and renewals thereof shall be with loss payable to the Lender. Lender shall have the right to hold the policies and renewals thereof (or copies thereof), and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.
  
  - c. Unless Lender and Borrower otherwise agree in writing, any proceeds which shall be applied pursuant to paragraph 10 shall not extend or postpone the due date of the payment or payments specified in the Note or change the amount of such payment or payments. If the Property is acquired by Lender by foreclosure or otherwise, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to

Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

- d. All insurance coverage required by this paragraph 4, paragraph 5 below, and under the terms of the Regulatory Agreement shall be maintained for the full term of the Loan and the Regulatory Agreement at Borrower's expense. In the event the Borrower fails to maintain insurance coverage, Lender may purchase insurance in such amounts and in such coverages as it may elect and all amounts paid therefor shall be secured by this Deed of Trust and shall bear interest and be subject to the provisions of paragraph 7 below. Purchase of insurance by the Lender shall not be considered a waiver by Lender of any right or remedy under this Deed of Trust.
5. Liability Insurance. Borrower shall keep general liability insurance for the Property in the amount and type as required by Lender. The insurance carrier shall be chosen by the Borrower subject to approval by the Lender, provided, that such approval shall not be unreasonably withheld. Borrower shall pay all premiums. Lender shall be named as an additional insured.
6. Maintenance of the Property. Borrower agrees:
  - a. To keep the Property in a decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;
  - b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable;
  - c. Not to construct any buildings or improvements on the Property, other than the buildings and improvements contemplated in the Loan Documents or add to, remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property;
  - d. To repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust;
  - e. To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property;



- f. Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Lender's prior written consent; and
- g. Not to alter the use of all or any part of the Property without prior written consent of the Lender.

7. Protection of Lender's Security.

- a. Borrower shall appear and defend any action or proceeding purporting to affect the security hereof or the rights of the Lender. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement for reasonable attorney's fees and entry upon the Property to make repairs.
- b. Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the legal rate of interest. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower and occupant notice prior to any such inspection.

9. Condemnation.

- a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, exercise of eminent domain, or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the rights of senior lien holders. The proceeds of such award or claim shall be applied as provided in paragraph 10 below.

- b. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds of any award to the sums secured by this Deed of Trust.
  - c. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of payment or payments specified in the Note or change the amount of such payment or payments.
10. Awards and Damages. All judgments, awards of damages, settlements, claims paid and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain; (b) any damage to or destruction of the Property or any part thereof by insured casualty; and (c) any other taking, injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Lender. The Lender is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Lender shall determine at its option. The Lender shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Lender may be released to Borrower upon such conditions as the Lender may impose for its disposition. Application of all or any part of the amounts collected and received by the Lender or the release thereof shall not cure or waive any default under this Deed of Trust. Any and all rights granted to Lender by this paragraph shall specifically be subject to the rights of the holders of senior liens and encumbrances, approved by Lender.
11. Uniform Commercial Code Security Agreement, Financing Statement and Fixture Filing.
- a. This Deed of Trust is a security agreement and financing statement under the Uniform Commercial Code for the benefit of Lender as secured party for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants the Lender a security interest in said items. This

Deed of Trust is filed as a fixture filing and covers goods, which are or are to become fixtures. The address of the principal place of business of Lender (secured party) from which information concerning the security interest may be obtained and the mailing address of Borrower (debtor) are set forth in this Deed of Trust. The types or items of collateral are described in paragraph A of this Deed of Trust. Borrower agrees that the Lender may file any appropriate document in the appropriate index as a financing statement for any of the items specified above as part of the Property. In addition, Borrower agrees to execute and deliver to the Lender, upon the Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as the Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Lender may reasonably require. Without the prior written consent of the Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except as otherwise expressly permitted by Lender. Upon acceleration as provided in paragraph 19, the Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at the Lender's option, may also invoke the other remedies provided in this Deed of Trust and Loan Documents as to such items. In exercising any of said remedies, the Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Lender's rights or remedies under the Uniform Commercial Code or of the other remedies provided in this Deed of Trust, in the Loan Documents, or by law.

- b. Borrower agrees that the filing of any financing statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing this Deed of Trust and the intention of the parties hereto that those portions of the Property herein declared part of the real estate are, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether any such item is physically attached to the improvements or any such item is referred to or reflected in any such financing statement so filed at any time.

- c. Similarly, the mention in any such financing statement of (1) compensation for damage to or destruction of the Property by insured casualty, or (2) any judgment, award, or other compensation for a taking of the Property by eminent domain, or (3) the rents, royalties, issues, accounts and profits of the Property under leases, shall never be construed as anywise altering any of the Lender's rights as determined by this Deed of Trust or impugning the priority of the Lender's lien granted hereby or by any other recorded document. However, such mention in the financing statement is declared to be for the protection of the Lender in the event that any court or judge shall at any time hold with respect to (1), (2) or (3) of this paragraph that notice of the Lender's priority of interest to be effective against a particular class of person, including without limitation the federal government or any subdivision or entity thereof, must be filed as provided for in the Uniform Commercial Code.
12. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust. Any extension of time for payment of amounts due under the Note, granted by Lender to Borrower, shall not operate as a waiver or release of Borrower's duties and obligations hereunder or under the Loan Documents.
13. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.
14. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18 hereof. If there are multiple borrowers, all covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.
15. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the

parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated herein, 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.

16. Governing Law; Severability. The laws of the State of California shall govern this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, except as set forth in the Note and to this end the provisions of the Deed of Trust and the Note are declared to be severable.
17. Borrower's Copy. Borrower shall be entitled to a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.
18. Transfer of the Property; Assumption.
  - a. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding any exceptions set forth in the Regulatory Agreement, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person or entity to whom the Property is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this paragraph and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.
  - b. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 15 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is effective pursuant to paragraph 15, mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or

demand on Borrower, invoke any remedies permitted by paragraph 19 hereof.

19. Acceleration; Remedies.

- a. Except as provided in paragraph 18 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust or the Note, including the covenants to pay when due any sums secured by this Deed of Trust, Lender shall mail notice to Borrower as provided in paragraph 15 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no less than thirty (30) days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale.
- b. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.
- c. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the

time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

- d. Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (1) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (2) to all sums secured by this Deed of Trust; and (3) the excess, if any, to the person or persons legally entitled thereto.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession.

- a. As additional security hereunder, subject to the rights of senior lien holders, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 19 hereof or abandonment of the Property, have the right to collect such rents as they become due and use them in accordance with the provisions of the Regulatory Agreement.
- b. Upon acceleration under paragraph 19 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the Receiver shall be applied first to payment of the costs of management of the Property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received. The provisions of this paragraph and paragraph 19 shall operate subject to the claims of senior lien holders.

21. Reconveyance. Upon payment of all sums secured by this Deed of Trust, and only if the term of the Regulatory Agreement has expired, the Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in

the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

22. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.
23. Request for Notice. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address.
24. Statement of Obligation. Lender may collect a fee not to exceed Thirty Dollars (\$30) for furnishing a beneficiary statement or payoff demand statement as provided by section 2943 of the Civil Code of California.
25. Use of Property. Borrower shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.
26. Priority. The Regulatory Agreement of even date between the Lender and Borrower, recorded concurrently herewith, shall be an encumbrance on the Property prior and superior to the lien of this Deed of Trust.

**IN WITNESS WHEREOF**, Borrower has executed this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as of the date first above written.

**[Signature of the Borrower follows on page 14 of this Deed of Trust. The remainder of this page is intentionally left blank.]**



**BORROWER:**

**BORROWER'S ADDRESS:**

Form

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY: PS 2 3/26/24  
PAULA S. SALCIDO DATE

SAMPLE

**EXHIBIT A TO DEED OF TRUST**  
**LEGAL DESCRIPTION OF THE PROPERTY**

SAMPLE

**AMENDED AND RESTATED  
PROMISSORY NOTE  
(Tax-Exempt)**

\$[REDACTED].00

[REDACTED], 2024  
amending and restating that  
certain note originally dated as  
of October 28, 2021 (the  
“Existing Note”)

FOR VALUE RECEIVED and WITHOUT GRACE, on the dates, and in the amounts so herein stipulated, the undersigned, **LINC-BEAUMONT 2 APTS, LP**, a California limited partnership (“**Borrower**”), promises to pay to the order of PNC BANK, NATIONAL ASSOCIATION, and its successors and assigns (“**Lender**”), in both of its capacities as agent (“**Agent**”) for the **CALIFORNIA MUNICIPAL FINANCE AUTHORITY**, a joint exercise of powers agency duly organized and validly existing under the laws of the State of California (“**Issuer**”), and as holder of the Bonds (as defined below) (“**Holder**”) in coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, the principal sum of [REDACTED] AND NO/100 DOLLARS (\$[REDACTED].00), or so much thereof as may be advanced hereunder as provided for in this Promissory Note (this “**Note**”), together with accrued interest on the principal amount hereof remaining unpaid from time to time at the interest rates as hereinafter provided, computed from the date of advance until maturity at a per annum rate, calculated on the basis of a 360-day year (determined on a daily basis, the first such determination being made on the date Lender advances any portion of the principal of this Note, and other determinations being made on the date upon which a change in such rate occurs).

1. **Definitions.** As used in this Note, in addition to capitalized terms defined elsewhere in this Note, the following terms shall have the meanings set forth below:

“**Bonds**” means the Issuer’s Multifamily Housing Revenue Bonds (Allegheny Apartments) 2021 Series A.

“**Business Day**” means a day other than a Saturday, Sunday or a day on which Lender is closed for business.

“**Conversion Date**” means the date of this Note.

“**Determination of Taxability**” has the meaning assigned to such term in the Loan Agreement.

“**Discount Rate**” means the rate which, when compounded monthly, is equivalent to the Treasury Rate when compounded semi-annually.

“**First Payment Date**” means the first Business Day of the month following the month in which the first disbursement of Loan proceeds is made in accordance with the Loan Agreement,

or, if the first disbursement of Loan proceeds is made after the 20th day of a month, means the first Business Day of the second month following the month in which the first disbursement of Loan proceeds is made in accordance with the Loan Agreement.

“**Interest Rate**” shall have the meaning set forth in Schedule 1 to this Note.

“**Loan**” has the meaning assigned to such term in the Loan Agreement.

“**Loan Agreement**” means the Loan Agreement of even date herewith, between Borrower and Lender, in both capacities as Agent and Holder, as may be modified, amended, supplemented, and restated.

“**Loan Documents**” has the meaning assigned to such term in the Loan Agreement.

“**Loan Payment Date**” and “**Payment Date**” means the first Business Day of each month, commencing on the First Payment Date.

“**Master Pledge**” has the meaning assigned to such term in the Loan Agreement.

“**Maturity Date**” means the earlier to occur of (i) May 1, 2039, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise.

“**Maximum Rate**” means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Loan under the laws of the Property Jurisdiction.

“**Note Interest**” shall have the meaning set forth in Schedule 1 to this Note.

“**Prepayment Consideration**” means the greater of: (x) one percent (1%) of the outstanding principal balance of this Note at the time of prepayment; or (y) the Yield Maintenance Amount.

“**Prepayment Date**” has the meaning given such term in Section 10(b).

“**Property Jurisdiction**” shall have the meaning set forth in the Security Instrument.

“**Security Instrument**” means the Construction and Permanent Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, from Borrower for the benefit of Lender, in both capacities as Agent and Holder, as may be amended, restated, supplemented and modified from time to time.

“**Treasury Rate**” means the yield calculated by the linear interpolation of the yields, as reported in Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending before the Prepayment Date, of U.S. Treasury constant maturities with maturity dates (one longer and one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Lender shall select a comparable publication to determine the Treasury Rate.

“**Yield Maintenance Amount**” means the present value, as of the Prepayment Date, of the remaining scheduled payments of principal and interest from the Prepayment Date through the Maturity Date (including any balloon payment) determined by discounting such payments at the Discount Rate, less the amount of principal being prepaid.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Loan Agreement

2. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the first Loan Payment Date following the Conversion Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth in Section B(1) on Schedule 1 attached hereto, in successive monthly installments. Such payments shall be made to the Lender by 2:00 p.m., New York City time.

(c) Any accrued interest remaining past due may, at Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(d) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(e) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(f) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(g) Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

(h) Whenever any payment to be made under this Note shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time may be included in computing interest, if any, in connection with such payment.

3. **Late Charges.** If any payment required under this Note is not paid within ten days after such payment is due, then, at the option of Lender, Borrower shall pay a late charge equal to

five percent (5.0%) of the amount of such payment to compensate Lender for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to Lender.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable under this Note in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Event of Default and Acceleration.** It is especially agreed that upon the occurrence and continuance of a default by Borrower in the payment and performance of this Note or an Event of Default under and as defined in the Loan Agreement, then, in any such event, at the option of Lender or any other holder hereof at any time thereafter without notice of intent to accelerate, notice of acceleration, or any other demand or notice, all of which are expressly waived by Borrower (except as required in the Loan Agreement), the unpaid principal balance of this Note and all accrued interest shall at once become due and payable, and Lender shall have no further obligation to make advances hereunder.

7. **Late Charge.** If any amount payable under this Note or under the Security Instrument or any other Loan Document is not received by Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of principal and/or interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Security Instrument and the other applicable Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all

circumstances existing on the Closing Date, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 9. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights that the Servicer or the Lender may have as provided herein, in the other Loan Documents, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the "Default Rate") equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus five percent (5%), in each case compounded monthly (computed in accordance with Schedule 1 in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate until the unpaid principal balance and all accrued interest is paid in full. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission

expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

10. **Prepayment-When Permitted**. From and after the Conversion Date, Borrower shall have the right to prepay all, but not less than all, of the Obligations on a Prepayment Date only in strict compliance with the provisions of this Section 10:

(a) Prior to the first day of the month that is three (3) calendar months before the Maturity Date (the "**Early Payment Date**"), Borrower shall have the right to prepay all or any portion of the Obligations by paying the sum of: (1) the amount of such prepayment, (2) all accrued and unpaid interest, (3) any other sums due under this Note, the Security Instrument or any Other Document, and (4) the Prepayment Consideration (except for any prepayment permitted under the Security Instrument in the event of a casualty or condemnation). Additionally, any such prepayment not actually received by Lender before 5:00 p.m., central time, on the fifth (5<sup>th</sup>) day of any calendar month must also include the interest which would have accrued on the amount of such prepayment during the entire calendar month in which the prepayment is made.

(b) On or after the Early Payment Date, Borrower shall have the right to prepay all or any portion of the Obligations by paying the sum of: (1) the amount of such prepayment, (2) all accrued and unpaid interest, and (3) any other sums due under this Note, the Security Instrument or any Other Document. No Prepayment Consideration will be due from any prepayment of this Note on or after the Early Payment Date. Additionally, any such prepayment not actually received by Initial Funding Lender before 5:00 p.m., central time, on the fifth (5<sup>th</sup>) day of any calendar month must also include the interest which would have accrued on the amount of such prepayment during the entire calendar month in which the prepayment is made.

(c) **Notice**. Borrower shall give written notice to Initial Funding Lender specifying the date, on which a prepayment of the Obligations is to be made (the date of any prepayment hereunder, whether pursuant to such notice or not, and whether voluntary or involuntary, being herein called the "**Prepayment Date**"). The Prepayment Date so designated must fall within the first ten (10) calendar days after a month during the term of this Note. Lender shall receive this notice not more than sixty (60) days and not less than thirty (30) days before the Prepayment Date. If any such notice of prepayment is given, the entire Obligations, including any applicable Prepayment Consideration, shall be due and payable on the Prepayment Date.

(d) **Prepayment After Event of Default**. If, upon an Event of Default, Borrower shall tender payment of an amount sufficient to satisfy the Obligations at any time before or after a sale of the Mortgaged Property, either through foreclosure or the exercise of the other remedies available to Initial Funding Lender under the Security Instrument or the Other Documents, such tender by Borrower shall be deemed to be a voluntary prepayment under this Note in the amount tendered and, in such case, Borrower shall also pay to Lender, with respect to the amount tendered, the applicable Prepayment Consideration set forth in this Note, which Prepayment Consideration shall be immediately due and payable.

(e) **Payment Must be Accompanied by Prepayment Consideration**. Funding Lender shall not be obligated to accept any prepayment of the Obligations unless



it is accompanied by all Prepayment Consideration then due in connection therewith. Borrower acknowledges that the Prepayment Consideration is a bargained for consideration and not a penalty, and Borrower recognizes that Lender would incur substantial additional costs and expenses in the event of a prepayment of the Obligations and that the Prepayment Consideration compensates Lender for such costs and expenses (including without limitation, the loss of Funding Lender's investment opportunity during the period after the date such tender is accepted until the Maturity Date). Borrower agrees that Funding Lender shall not, as a condition to receiving the Prepayment Consideration, be obligated to actually reinvest the amount prepaid in any treasury obligation or in any other manner whatsoever. Lender shall notify Borrower of the amount and the basis of determination of any required Prepayment Consideration.

(f) **Prepayments Resulting from Casualty or Condemnation.** Except as otherwise set forth in the Security Instrument, no Prepayment Consideration will be due for involuntary prepayments resulting from any Casualty or Condemnation (as such terms are defined in the Security Instrument)

11. **Accord and Satisfaction.** Borrower agrees not to send Lender payments marked "paid in full," "without recourse," or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amounts owed or that may become owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount, must be mailed or delivered to Lender at the address set forth in Section 20.

12. **Note.** This Note is issued pursuant to and in accordance with the terms and provisions of the Loan Agreement. This Note is the "Note" under and as defined in the Loan Agreement. Borrower shall make all requests for advances pursuant to the requirements of the Loan Agreement. This Note is secured by, among other things, the Security Instrument.

13. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

14. **Waivers.** Borrower and any and all endorsers, guarantors and sureties severally waive all notices, demands for payment, presentment for payment, protest and notice of protest, notice of intent to accelerate, notice of acceleration, any other notices of any kind, the filing of suit hereon for the purpose of fixing liability and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith,

and consent that the time of payment hereof may be extended and re-extended from time to time without notice to them or any of them.

15. **Loan Charges.** It is the intention of the parties hereto to comply with the usury laws of the State of California and of the United States of America. The parties hereto do not intend to contract for, charge or receive any interest or other charge which is usurious, and by execution of this Note, Borrower agrees that Lender has no such intent. This Note, the Loan Agreement, and all other agreements between Borrower and Lender or any other holder hereof in connection herewith or therewith, which are now existing or hereafter arising, whether written or oral, are hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity hereof, or otherwise, shall the amount paid, or agreed to be paid, to Lender or any other holder hereof for the use, forbearance or detention of the money to be due hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to the indebtedness evidenced hereby (the "**Indebtedness**", exceed the Maximum Rate. If from any circumstance whatsoever fulfillment of any provisions hereof or other document, at the time performance of such provisions shall be due, shall involve transcending the valid limits prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate, and if from any such circumstance Lender or any other holder shall ever receive as interest or otherwise an amount which will exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing hereunder or on account of any other principal indebtedness of Borrower to the holder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof and such other indebtedness, such excess shall be refunded to Borrower. All sums paid and agreed to be paid to Lender or any other holder for the use, forbearance or detention of the indebtedness of Borrower hereunder shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the term of this Note (and any renewals, extensions and rearrangements hereof) so that the actual rate of interest on account of the indebtedness evidenced by this Note is uniform throughout the term of this Note (and all renewals, extensions and rearrangements hereof) and does not exceed the Maximum Rate. The terms and provisions of this paragraph shall control and supersede any other provision of this Note, the Loan Agreement, and any other document executed in connection herewith or therewith.

16. **Personal Liability.** On and after the Conversion Date, except as otherwise provided in this Section 16, neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(a) Borrower shall at all times be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the

“Losses”) as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; (3) failure of Borrower to comply with Section 14 of the Security Instrument relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other Loan Document) and then to amounts (“Debt Service Amounts”) payable under this Note, the Security Instrument or any other Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (6) failure of Borrower to comply with the provisions of Section 17(a) of the Security Instrument prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; or (7) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(b) For purposes of determining Borrower’s personal liability under this Section 15, all payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(c) Borrower shall at all times be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower’s acquisition of any property or operation of any business not permitted by Section 33 of the Security Instrument; or (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a managing member in a limited liability company or the transfer of a non-managing member interest in the Borrower permitted by the Security Instrument; or (3) a Bankruptcy Event, as defined by the Security Instrument (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its managing members, general partners, Guarantor or any Borrower Affiliate.

(d) In addition to the Borrower’s personal liability pursuant to the other provisions of this Note, Borrower shall at all times be personally liable to Lender for (1)

the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters) and the Agreement of Environmental Indemnification; (2) the costs of any audit under Section 14(d) of the Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 15, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(e) To the extent that Borrower has personal liability under this Section 15, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. For purposes of this Section 15, the term "Mortgaged Property" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 15, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(f) Nothing herein or in the other Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Loan Documents.

17. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 15, the obligations of the Borrower to make all payments required under this Note and the other Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default

of the Lender hereunder or under any other Loan Document, and regardless of the invalidity of any action of the Lender or the invalidity of any portion of this Note or the other Loan Documents. Provided further, the obligations of Borrower under this Note and the other Loan Documents shall not be affected by:

- (a) any lack of validity or enforceability of any Loan Document or any of the Related Documents;
- (b) any amendment of, or any waiver or consent with respect to, any of the Loan Documents or Related Documents;
- (c) the existence of any claim, set-off, defense or other rights which Borrower, its managing members or Guarantor may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the other Loan Documents) or any other Person, whether in connection with this Note or any other Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;
- (d) any breach of contract or other dispute between Borrower, its managing members or Guarantor, and Lender;
- (e) any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Lender with respect to same); or
- (f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

18. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

19. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

20. **Notices.** Except as otherwise specified herein, any notice, consent, request or other communication required or permitted to be given hereunder shall be in writing, addressed to the other party as set forth below (or to such other address or person as either party or person entitled to notice may by notice to the other party specify), and shall be: (a) personally delivered;

(b) delivered by Federal Express or other comparable overnight delivery service; or (c) transmitted by United States certified mail, return receipt requested with postage prepaid; to:

Lender: PNC Bank, National Association  
10851 Mastin  
Overland Park, Kansas 66210  
Attn: Bank Servicing Group

and to: PNC Bank, National Association  
101 South Fifth Street, 7th Floor  
Mailstop K1-K201-07-4  
Louisville, Kentucky 40202  
Attn: Loan Administration

Borrower: LINC-Beaumont 2 APTS, LP  
3590 Elm Avenue  
Long Beach, California 90807

With a copy to: Gubb & Barshay LLP  
505 14<sup>th</sup> Street, Suite 450  
Oakland, California 94612  
Attn: Lauren Fechter, Esq.

and to Tax Credit  
Investor: Raymond James California Housing  
Opportunities Fund VIII L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attn: Steven J. Kropf, President

Unless otherwise specified, all notices and other communications shall be deemed to have been duly given on the first to occur of actual receipt of the same or: (i) the date of delivery if personally delivered; (ii) one (1) business day after depositing the same with the delivery service if by overnight delivery service; and (iii) three (3) days following posting if transmitted by mail

21. **Increased Costs; Yield Protection.** On written demand, together with written evidence of the justification therefor, Borrower agrees to pay Lender all direct costs incurred, any losses suffered or payments made by Lender as a result of any Change in Law (hereinafter defined), imposing any reserve, deposit, allocation of capital or similar requirement (including Regulation D of the Board of Governors of the Federal Reserve System) on Lender, its holding company or any of their respective assets relative to the Loan. "**Change in Law**" means the occurrence, after the date of this Note, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules,

guidelines or directives promulgated by Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

22. **Right of Setoff.** In addition to all liens upon and rights of setoff against Borrower's money, securities or other property given to Lender by law, Lender shall have, with respect to Borrower's obligations to Lender under this Note and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and Borrower hereby grants Lender a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to Lender, all of Borrower's right, title and interest in and to, all of Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, Lender or each legal entity, if any, who controls, is controlled by or is under common control with Lender, whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon an Event of Default hereunder without any action of Lender, although Lender may enter such setoff on its books and records at a later time.

23. **Indemnity.** Borrower agrees to indemnify each of Lender, each legal entity, if any, who controls, is controlled by or is under common control with Lender, and each of their respective directors, officers and employees (each, an "**Indemnified Party**"), and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of Borrower), in connection with or arising out of or relating to the matters referred to in this Note, the Security Instrument or the Other Documents or the use of any advance hereunder, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by Borrower, (b) arising out of the condition or use of any collateral pledged as security for repayment of the Obligations, or (c) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party's gross negligence or willful misconduct. The indemnity agreement contained in this Section shall survive the termination of this Note, payment of any advance hereunder and the assignment of any rights hereunder and shall not be subject to or limited by the exculpation provisions set forth in Section 15. Borrower may participate at its expense in the defense of any such action or claim.

24. **Anti-Money Laundering/International Trade Law Compliance.** Borrower represents, warrants and covenants to Lender, as of the date hereof, the date of each advance of proceeds under this Note or the Other Documents, the date of any renewal, extension or

modification of this Note, the Security Instrument or the Other Documents, and at all times until this Note, the Security Instrument and the Other Documents have been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of the loan evidenced by this Note will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Jurisdiction or Sanctioned Person; (c) the funds used to repay the obligations evidenced by this Note are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including any Anti-Terrorism Laws; and (e) no Collateral is or will become Embargoed Property. Borrower covenants and agrees that (a) it shall immediately notify Lender in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to Lender, upon request by Lender, Borrower shall provide substitute Collateral acceptable to Lender that is not Embargoed Property.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Collateral**” means any collateral securing any debt, liabilities or other obligations of Borrower to Lender; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of Borrower acting in any capacity in connection with the obligations evidenced by this Note; “**Embargoed Property**” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by Lender of any applicable Anti-Terrorism Law if Lender were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; “**Reportable Compliance Event**” means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause Lender to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the loan evidenced by this Note to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property; “**Sanctioned Jurisdiction**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing



listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

25. **USA Patriot Act Notice.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when Borrower opens an account, Lender will ask for the business name, business address, taxpayer identifying number and other information that will allow Lender to identify Borrower, such as organizational documents. For some businesses and organizations, Lender may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

26. **Authorization to Obtain Credit Reports.** By signing below, each Borrower who is an individual provides written authorization to Lender or its designee (and any assignee or potential assignee hereof) to obtain Borrower's personal credit profile from one or more national credit bureaus. Such authorization shall extend to obtaining a credit profile in considering this Note and subsequently for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account.

27. **Investment Company.** Borrower (i) is not an investment company within the meaning of the Investment Company Act of 1940 (the "Act") and (ii) is not relying on the exceptions contained in Section 3(c)(1) or Section 3(c)(7) of the Act in making such determination. At all times during the term of this Note, Borrower (i) will not be an investment company within the meaning of the Act and (ii) will not rely on the exceptions contained in Section 3(c)(1) or Section 3(c)(7) of the Act in making such determination

28. **Illegality.** If any provision contained in this Note should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Note.

29. **Entire Agreement.** This Note (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

30. **Sole Discretion of Lender.** Wherever pursuant to this Note, Lender makes any judgment or determination (including any judgment of items being satisfactory or acceptable) or exercises any right given to it to approve or disapprove any arrangement, term or condition or decides if any arrangement, term or condition is satisfactory to Lender, the judgment or determination of Lender or decision of Lender to approve or disapprove or to decide that arrangements, terms or conditions are satisfactory or not satisfactory shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

31. **Notice and Cure Rights of Tax Credit Investor.** Notwithstanding any provision in this Note to the contrary, all notices to Borrower relating to any Event of Default under this Note shall be given contemporaneously to Tax Credit Investor in writing and any grace period which may be provided to Borrower under this Note shall not be deemed to have commenced until Tax Credit Investor shall also have received such notice. Tax Credit Investor shall have the right, but not the obligation, to remedy or cure such Event of Default within the same timeframe this Note provides Borrower to effect such remedy or cure, and in no event shall this right of Tax Credit Investor to cure be construed as expanding the rights or remedies of Borrower upon an Event of Default under this Note.

32. **Preservation of Rights.** No delay or omission on Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Lender's action or inaction impair any such right or power. Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Lender may have under other agreements, at law or in equity.

33. **Interpretation.** In this Note, unless Lender and Borrower otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subsections of sections) or exhibits are to those of this Note unless otherwise indicated; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Note. Section headings in this Note are included for convenience of reference only and shall not constitute a part of this Note for any other purpose. Unless otherwise specified in this Note, all accounting terms shall be interpreted and all accounting determinations shall be made in accordance with generally accepted accounting principles consistently applied. If this Note is executed by more than one party as Borrower, the obligations of such persons or entities will be joint and several. Time is of the essence in the performance of this Note. An Event of Default shall continue unless expressly waived in writing by Lender. Lender and Borrower acknowledge and agree that this Note, Security Instrument and other Loan Documents shall not be interpreted "for" or "against" any party as drafter of such Note, Security Instrument or Other Documents, given that this Note, Security Instrument and other Loan Documents have been reviewed and negotiated by sophisticated business persons represented by competent counsel

34. **Remedies Cumulative.** In the event of Borrower's default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

35. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

36. **Governing Law.** This Note shall be construed and enforced in accordance with the laws of the State of California, except to the extent that Lender shall at any time have greater rights under federal law, in which instances federal law shall control. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

37. **WAIVER OF JURY TRIAL.** BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING OF ANY KIND ARISING ON, UNDER, OUT OF, BY REASON OF OR RELATING IN ANY WAY TO THIS NOTE OR ANY OF THE LOAN DOCUMENTS, THE INTERPRETATION, BREACH OR ENFORCEMENT THEREOF OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OR OMISSION OF BORROWER OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S MAKING OF THE LOAN. BORROWER ACKNOWLEDGES AND AGREES THAT THE OBLIGATIONS EVIDENCED BY THIS NOTE ARE EXEMPTED TRANSACTIONS UNDER THE TRUTH IN LENDING ACT, 15 U.S.C. SECTION 1601, ET SEQ.

38. **Sale of Loan by Lender.** Lender shall have the right to transfer, sell or assign this Note, the Security Instrument and the other Loan Documents between Borrower and Lender, and the obligations of Borrower hereunder.

39. **Captions, Etc.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note. This Note, together with the Security Instrument and the other Loan Documents between Borrower and Lender, contain the entire agreement between Borrower and Lender relating to the subject matter thereof, and supersede all prior discussions and agreements (oral or written) which are not contained therein. Neither this Note nor the Security Instrument nor any of the other Loan Documents between Borrower and Lender may be changed, waived, supplemented, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement thereof is sought and then only to the extent expressly set forth in such writing. Any provision of this Note, the Security Instrument or the other Loan Documents between Borrower and Lender which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

40. **Amendment and Restatement.** This Note amends and restates, and is in substitution for, that certain Promissory Note in the original principal amount of \$12,735,866 payable to the order of the Bank and dated October 28, 2021 (the "**Existing Note**"). However,

without duplication, this Note shall in no way extinguish, cancel or satisfy the Borrower's unconditional obligation to repay all indebtedness evidenced by the Existing Note or constitute a novation of the Existing Note. Nothing herein is intended to extinguish, cancel or impair the lien priority or effect of any security agreement, pledge agreement or mortgage with respect to any Obligor's obligations hereunder and under any other document relating hereto

**THIS NOTE REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower has signed or has caused to be signed by its duly authorized representative effective as of the first date written above.

**BORROWER:**

**LINC-BEAUMONT 2 APTS, LP**, a California limited partnership

By: LINC-Beaumont 2 APTS, LLC, a California limited liability company, its Managing General Partner


By: LINC Housing Corporation, a California nonprofit public benefit corporation, its sole Member and Manager

By: FORM COPY - DO NOT SIGN  
Anne B. Wilson, Chief Real Estate Development Corporation

By: Riverside Community Housing Corp., a California nonprofit public benefit corporation, its Administrative General Partner

By: FORM COPY - DO NOT SIGN  
Mike Walsh, Chief Operating Officer

Approved as to form:  
Minh C. Tran  
County Counsel

  
By: Paula S. Salcido  
Deputy County Counsel

**ALLONGE**

This Allonge is attached to and made part of that certain Promissory Note in the original principal amount of TWELVE MILLION SEVEN HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED SIXTY SIX AND NO/100 DOLLARS (\$12,735,866.00 made by **LINC-BEAUMONT 2 APTS, LP**, a California limited partnership to the order of **PNC BANK, NATIONAL ASSOCIATION**, in its capacity as Agent (“**Assignor**”) for the **CALIFORNIA MUNICIPAL FINANCE AUTHORITY**, a joint exercise of powers agency duly organized and validly existing under the laws of the State of California, for the purposes of annexing thereto the following endorsement:

Pay to the order of **PNC BANK, NATIONAL ASSOCIATION** in its capacity as Holder (“Assignee”) of those certain [REDACTED] AND NO/100 DOLLARS (\$[REDACTED].00) Multifamily Housing Revenue Bonds (Allegheny Apartments) 2021 Series A, without recourse.

Effective as of the date of the Promissory Note.

**ASSIGNOR:**

**PNC BANK, NATIONAL ASSOCIATION**, as Agent for the **CALIFORNIA MUNICIPAL FINANCE AUTHORITY**, a joint exercise of powers agency duly organized and validly existing under the laws of the State of California

By: \_\_\_\_\_  
David Rouse, Vice President

**SCHEDULE 1**  
**PRINCIPAL AND INTEREST PAYMENTS**

Except as provided in Sections 8 and 15 of this Note, interest (“**Note Interest**”) shall accrue on the unpaid principal of this Note from, and including, the Closing Date until paid in full at an annual rate (the “**Interest Rate**”) as follows:

**B. Interest Rate and Principal Payments on and after the Conversion Date.** From, and including, the Conversion Date, until the Maturity Date, the following provisions shall apply:

1. **Interest Rate.** Note Interest shall accrue on the unpaid principal of this Note from, and including, the Conversion Date, until the Maturity Date, at an annual rate, as follows:

(a) **Fixed Rate.** Interest shall accrue at an annual rate of [ ] percent ([ ]%).

(b) **Maximum Rate.** Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.

(c) **Interest Accrual.** Note Interest shall be computed on the basis of the actual number of days in the period in respect of which payment is being made divided by 360.

2. **Monthly Payments.** Commencing on the first Payment Date following the Conversion Date and on each Payment Date thereafter until and including the Maturity Date, consecutive monthly installments of principal and interest in the amount set forth below (based upon an amortization schedule of thirty (30) years, assuming, for these purposes only, a 360-day year comprised of twelve 30-day months) shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Note is fully paid. Any remaining principal and interest, if not sooner paid, shall be due and payable on the Maturity Date.

(a) Equal monthly installments of principal and interest in the amount of \$[ ].00, and a final installment on the Maturity Date in the amount of the remaining principal balance and accrued interest on this Note.

(b) In the event that the Loan is re-amortized at any time as a result of the application of any insurance proceeds or condemnation award applied to the amount owing on this Note, equal monthly payments of principal and interest in installments in the amount necessary to fully amortize the remaining principal balance of this Note over the remainder of the original thirty (30) year amortization period, assuming, for these purposes only, a 360-day year comprised of twelve 30-day months, and a final installment on the Maturity Date in the amount of the remaining principal balance of this Note, which amortization schedule shall be determined by Lender and which determination shall be final and conclusive absent manifest error. Lender shall provide Borrower with written notice of any revised amortization schedule determined by Lender pursuant to this clause (c).

**C. Loss of Tax Exclusion.** Borrower understands that the interest rates provided under this Note are based on the assumption that interest income paid on the Loan and received by a holder of this Note who is not a “substantial user” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended will be excludable from the holder’s gross income under Section 103 of the Internal Revenue Code and applicable state law. In the event that Borrower receives notice from Lender that a Determination of Taxability has occurred, then, notwithstanding any provision to the contrary contained herein, the interest rate on this Note and on all obligations of Borrower under the Loan Documents (other than those to which the Default Rate applies) shall be increased to a rate equal to the greater of: (i) three and one-half percent (3.50%) in excess of the then current interest rate or (ii) the Default Rate, provided such rate shall not exceed the Maximum Rate.

Borrower shall, in addition, pay to Lender, promptly upon demand, an amount equal to the difference between the amount of interest payable on this Note from the date on which such loss of tax exemption on the Loan shall be applicable to the date on which the interest rate on this Note was increased and the amount of interest that would have been payable on this Note during such period had this Note borne interest during such period at such higher rate. The Borrower shall also indemnify, defend and hold Lender harmless from any penalties, interest expense or other costs, including attorneys’ fees (including all allocated time and charges of “in-house” and “outside” counsel) and accountants’ costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Loan and the interest payable to Lender on the Loan. The obligations of the Borrower under this paragraph shall survive any termination of the Loan Documents, release of the Security Instrument and repayment of the Loan.