

Recording requested by and
when recorded mail to:

Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

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DRAFT

REGULATORY AGREEMENT
Federal Credits

Tax-Exempt Bond Financed Project

This Regulatory Agreement (this "Agreement") is made between the California Tax Credit Allocation Committee ("TCAC"), established under Section 50199.8 of the Health and Safety Code of the State of California, and ("Owner") and is dated as of (the "Effective Date"). The Owner has requested TCAC's determination and TCAC has determined that the Project (as herein defined) satisfies the requirements of the State of California's Qualified Allocation Plan relating to the low-income housing tax credit (the "Federal Tax Credit") under Section 42 of the Internal Revenue Code of 1986. The Tax Credit relates to a multifamily rental housing project known as , identified in the records of TCAC by TCAC# CA- and IRS Building Identification Number , and located on the real property described in Exhibit A of this Agreement, attached hereto and incorporated herein (the "Project"). This Agreement is intended to constitute the extended low income housing commitment required by Section 42(h)(6) of the Internal Revenue Code. Accordingly, in consideration of the allocation relating to the Tax Credit by TCAC and the requirements of the Internal Revenue Code, the Owner and TCAC hereby agree as follows:

Section 1. Definitions.

a. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings:

"Agreement" means this Regulatory Agreement between TCAC and the Owner.

"Applicable Fraction" means the smaller of the Unit Fraction or the Floor Space Fraction, all calculated in accordance with Section 42(c)(1) of the Code.

"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary for purposes of Section 42 of the Code, including adjustments for family size.

"Assumption Agreement" shall have the meaning assigned in Section 14 hereof.

"Code" means those provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto.

"Compliance Period" means the period of 30 consecutive taxable years beginning with the first taxable year of the Credit Period, or such longer period as is prescribed at Appendix A.

"Credit Period" means, with respect to the State Tax Credit, the period of four taxable years beginning with the taxable year the Project is placed in service or (at the election of the Owner) the succeeding taxable year, and with respect to the Federal Tax Credit, the period of ten taxable years beginning with the taxable year the Project is placed in service or (at the election of the Owner) the succeeding taxable year, as further provided pursuant to Section 2b hereof.

"Effective Date" means the date first set forth herein above.

"Federal Tax Credit" means the low-income housing tax credit under Section 42 of the Code.

"Floor Space Fraction" means the fraction, the numerator of which is the total floor space of the Low-Income Units in a building and the denominator of which is the total floor space of the Units in such building.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, as provided in Section 4c hereof, or such alternative income level as may be set forth in Appendix A.

"Low-Income Tenant" means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low- Income. For so long as the Tenant occupies the particular Unit [or another unit in the same building], the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of Low-Income.

"Low-Income Unit" means a Unit in the Project that is occupied by a Low-Income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

"Minimum Amount" means the number of Units in the Project required to be Low-Income Units, which Minimum Amount for this Project is 20% or 40% of the Units, as provided in Section 4c hereof. Notwithstanding the Minimum Amount, the Applicable Fraction for this project shall be no less than that set forth at Section 4d hereof.

"Owner" means _____, or successors.

"Project" means the residential rental housing project known as _____, TCAC# CA- _____, and located on the real property described in Exhibit A.

"Qualified Low-Income Housing Project" means a residential rental project meeting the requirements of Section 4 hereof.

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code, as modified by Appendix A, if applicable.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"State Tax Credit" means the low-income housing tax credit under the provisions of Sections 12206 17058 and 23610.5 of the Revenue and Taxation Code.

"Tax Credit" means the low-income housing tax credit under Section 42 of the Code.

"TCAC" means the Tax Credit Allocation Committee and its successor.

"TCAC Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by TCAC for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Owner and the Project with the provisions of Section 42 of the Code and notify the Service of instances of noncompliance.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Owner.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

"Unit Fraction" means the fraction, the numerator of which is the number of Low-Income Units in a building and the denominator of which is the number of Units in such building.

b. Any term or phrase which is used in this Agreement and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

Section 2. Term.

a. This Agreement shall commence as of the Effective Date and shall terminate on the last day of the Compliance Period (the "Term"), unless earlier terminated pursuant to Section 2c hereof.

b. The Credit Period commences with respect to each building in the Project (i) the taxable year in which the building is placed in service or (ii) the succeeding taxable year, at the irrevocable election of the Owner pursuant to Section 42(f) (1)(B) of the Code. In the case of the

Project, the Credit Period begins in the calendar year 20____ or **as set forth at Appendix A with respect to individual buildings.**

c. Notwithstanding subsection 2.a., this Agreement shall terminate with respect to any building in the Project on the date such building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary determines that such acquisition is part of an arrangement a purpose of which is to terminate such period; provided, however, that, except for eviction for good cause, the Tenant of any Low-Income Unit shall be entitled to occupy such Unit in accordance with the provisions of this Agreement for a period of three years following such termination.

Section 3. Filing. This Agreement, and all amendments hereto, shall be recorded as a restrictive covenant in the official records of the County of _____ in which the Project is located. The Owner shall pay all fees and charges incurred in connection with such recording.

The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project land, encumbering the Project land for the Term of this Agreement and binding upon the Owner's successors in title and all subsequent owners and operators of the Project land, and (ii) shall bind the Owner (and the benefits shall inure to TCAC and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of California to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project land. For the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

Section 4. Qualified Low-Income Housing Project.

a. The Owner shall maintain the Project as a Qualified Low-Income Housing Project within the meaning of Section 42 of the Code at all times, commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Agreement. To this end, and without limitation, the Owner shall --

(i) operate the Project such that at least the Minimum Amount of the Units in the Project are Low-Income Units, and

(ii) assure that Units in the Project are (A) available for use by the general public, (B) suitable for occupancy and (C) used on other than a transient basis.

b. During the Term of this Agreement, the Owner shall not evict, terminate the tenancy, or refuse to renew the lease or rental agreement of any tenant of any Low-Income Unit without good cause.

c. For purposes of this Agreement and Section 42 of the Code, the Owner has elected to comply with [] the "20-50 test" pursuant to which "Low-Income" is defined as 50% of Area Median Gross Income and the Minimum Amount is 20% of the Units in the Project or [] the "40-60 test" pursuant to which "Low-Income" is defined as 60% of Area Median Gross Income and the Minimum Amount is 40% of the Units in the Project.

d. The amount of Tax Credit allocated to the Project is based on the requirement that the Applicable Fraction for buildings in the Project will be at least % or as specified, building-by-building, at Appendix A. The Owner's failure to ensure that each building in the Project complies with such requirement will cause TCAC to report such fact to the Service which may result in the reduction and recapture by the Service of Tax Credit, and (ii) to take other appropriate enforcement action, including, but not limited to, the remedies provided herein.

e. The Owner may not refuse to lease a Unit in the Project to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate.

f. The Project and the Owner are subject to the additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

Section 5. Annual Determinations; Low-Income Units. Upon initial occupancy and, unless otherwise allowed under Section 42 of the Code and specifically authorized by TCAC, at least annually thereafter, the Owner shall determine and certify the Income of each Low-Income Tenant. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building (i) is rented to a person who is not a Low-Income Tenant or (ii) is rented without being Rent-Restricted. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit provided that (I) reasonable attempts are made to rent the Unit and (II) no other Units of comparable or smaller size in the building are rented to persons who are not Low-Income Tenants or are rented without being Rent-Restricted. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code, or any successor to such provision, as applicable to the Project.

Section 6. Compliance Monitoring. The Owner acknowledges that TCAC is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Owner's and the Project's compliance with the requirements of Section 42 of the Code and (ii) to notify the Service of any noncompliance which is found. The Owner agrees (I) to maintain records that substantiate and document such compliance, preserving such records for the period required by the Service and TCAC, (II) to take all actions required by TCAC pursuant to the TCAC Compliance Monitoring Procedures to assist or cooperate with TCAC in monitoring such compliance and (III) to pay the

fee prescribed by TCAC with respect to such monitoring. The TCAC Compliance Monitoring Procedures require, among other things, that the Owner annually certify to TCAC (on such forms as are prescribed by TCAC) the number of Units in the Project which are Low-Income Units, the percentage of floor space in the Project which is allocable to Low-Income Units, that the Project continues to be a Qualified Low-Income Housing Project; provided, however, that in the first year of the Credit Period, the Owner shall certify individually with respect to each month of such year the number of Low-Income Units in the Project and the percentage of floor space devoted to such Units on the last day of the month. The Owner is responsible for full adherence to the TCAC Compliance Monitoring Procedures without regard to whether particular requirements of those procedures are enumerated in this Agreement. The Owner agrees TCAC may, at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

Section 7. Notification of Noncompliance. The Owner agrees to notify TCAC or its designee if there is a determination by the Service that the Project is not a "qualified low-income housing project" within the meaning of Section 42(g) of the Code. Notification to TCAC will be made within ten business days of receipt of any such determination.

Section 8. Security for Performance. The Owner hereby assigns its interest in the rents from the Project to TCAC as security for the performance of the Owner's obligations under this Agreement. However, until and unless the Owner defaults in its obligations under this Agreement, the Owner is entitled to collect, retain and apply such rents.

Section 9. Remedies. In the event the Owner defaults in its obligations under this Agreement and such default is not cured within a reasonable time period, the remedies of TCAC, the Tenants and any former or prospective Low-Income Tenants shall include, but are not limited to, the following:

a. collecting all rents with respect to the Project and applying them (i) to meet the ongoing costs of operating the Project, (ii) to pay debt service, (iii) to reimburse any Low-Income Tenants who may have been charged a Gross Rent above the applicable Rent-Restricted level or (iv) to assure the long-term, Low-Income use of the Project consistent with the requirements of Section 42 of the Code and this Agreement;

b. taking possession of the Project and operating the Project in accordance with the requirements of this Agreement, including the collection and application of rents in accordance with subsection a of this Section 9, until the Owner demonstrates that it will operate the Project in accordance with this Agreement;

c. applying to any court for specific performance of any of the obligations herein set forth;

d. securing the appointment of a receiver to operate the Project in a manner consistent with this Agreement, including subsections a and b of this Section 9;

e. suit against the Owner for damages or for the disgorgement of rents collected in excess of those which would have been received had the Owner complied with the requirements of this Agreement; and

f. requiring the replacement of the manager of the Project with a property manager approved by TCAC, in the event the Owner fails to maintain the Project in sound and habitable condition,

such that each Low-Income Unit is suitable for occupancy in accordance with the requirements of Section 42 (I) (3) (B) (I) of the Code and Section 4a of this Agreement;

g. requiring the payment of an increased compliance monitoring fee by the owner for such period as TCAC determines appropriate; and

h. such other relief as may be appropriate.

Section 10. Enforceability. This Agreement may be enforced by TCAC or its designee, including any agency of State or local government identified at Appendix A hereto or otherwise in a written notice provided by TCAC to Owner. In addition, the Agreement shall be deemed a contract enforceable by, and shall inure to the benefit of, one or more Tenants or persons meeting the Low-Income restriction, whether past, present, or prospective Tenants, as third-party beneficiaries hereof. TCAC, its designee and/or any Tenant or other third-party beneficiary shall be entitled to reasonable attorneys' fees and other legal costs in any judicial or administrative action in which such party shall prevail.

Section 11. No Conflicting Agreements. The Owner warrants that it is not bound by and will not execute any other agreement with provisions that bind it to violate the provisions of this Agreement; provided, however, that with the approval of TCAC, this Agreement may be subordinated, if required, to any lien or encumbrance of any banks or other institutional lenders to the Project; provided, further, that the terms of any such subordination shall provide that (i) prior to any such lender's acquisition of the Project by foreclosure or instrument in lieu of foreclosure, the exercise of any remedy or authority by any such lender shall be subject to all of the requirements of the Agreement, and (ii) subsequent to any such lender's acquisition of the Project by foreclosure or instrument in lieu of foreclosure, the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.

Section 12. Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent owners of the Project or any interest therein, and TCAC and its successors and assigns, for the Term of this Agreement, without regard to whether any such parties shall have executed an Assumption Agreement with respect hereto. Upon termination of this Agreement, the covenants and conditions contained herein shall expire, except that the requirement of Section 2c hereof, with respect to the continuation of occupancy and rent restrictions for three years following certain terminations of this Agreement, shall remain in effect.

Section 13. Amendments; Waivers. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and acknowledged by each of the parties hereto or their successors and duly recorded in the official records of the county in which this Agreement is recorded. Any waiver of any provision of this Agreement shall not be deemed to be an amendment hereof. Upon request by TCAC, the Owner agrees that it will take all actions necessary to effect any amendment of this Agreement which may be necessary in TCAC's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Tax Credits.

Section 14. Assignment by Owner. The Owner may not sell or otherwise dispose of any portion of any building in the Project unless it disposes of the entire building to the same person.

Upon sale or transfer of the Project, the Owner shall be relieved of all obligations under the Agreement and the transferee shall succeed to and be bound by all of the Owner's rights and obligations hereunder, without regard to whether the transferee has executed an Assumption Agreement as hereinafter provided. Prior to any transfer of the Project, the Owner shall notify TCAC in writing and provide the name(s) and address(es) and financial reports of the prospective successor owner and operator. The Owner shall require, as a condition precedent to any sale, transfer or exchange or any other disposition of the Project prior to termination of this Agreement, that the purchaser or successor assume, in writing, in an Assumption Agreement acceptable to TCAC, the Owner's obligations hereunder and under Section 42 of the Code and applicable regulations, which Assumption Agreement shall be delivered to TCAC in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. The Owner agrees that any sale, transfer or exchange of the Project without execution of an Assumption Agreement or otherwise in contravention of the provisions of this Section 14 shall be voidable at the discretion of TCAC. Changes in the constituents of the Owner shall not constitute a default under this Agreement. Owner acknowledges that the sale, transfer or exchange of the Project, or any interest in the Project or the Owner, consistent with the requirements of this Agreement, does not relieve the Owner or any of its constituents from any obligations which it may have under Section 42 of the Code, including those with respect to recapture of Tax Credit or any alternative thereto.

Section 15. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed received on the second day following the date on which the same have been mailed by certified mail, postage prepaid, or sent by other method which produces evidence of delivery thereof, addressed as follows:

To the TCAC:

California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

To the Owner:

TCAC and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16. Indemnification. The Owner agrees to indemnify and hold harmless the Chairperson, TCAC committee members, TCAC officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by TCAC as a result of any material inaccuracy in any of the representations and warranties contained in this Agreement, or as a result of any action by the Owner, including claims by third parties.

The Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against TCAC which arise out of any of the matters relating to this

Agreement, the Owner will cooperate fully with TCAC in the defense or other disposition thereof.

Section 17. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 18. Governing Law. This Agreement shall be governed by the laws of the State of California, excluding conflicts provisions, and, where applicable, the laws of the United States of America.

Section 19. Survival of Obligations. The obligations of the Owner as set forth herein and in the application shall survive the allocation of the Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

Section 20. Interpretation. TCAC's interpretation of this Agreement shall be controlling for purposes of determining whether (i) the Compliance Period shall have commenced, (ii) this Agreement shall have been terminated in accordance with Section 2 hereof, and (iii) the Additional Use Restrictions elected at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

By _____

Executive Director

By _____

(Owner)

(Please type or print name)

The undersigned, owners of the property described on Exhibit A hereto, hereby consent to recordation of this Regulatory Agreement against such property, and agree that such property shall be bound by the provisions thereof.

By _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF)

On this ____ day of _____ in the year _____,
before me, _____, personally appeared _____,
_____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Given under my hand and official seal this ____ day of _____, ____.

[SEAL]

Notary Public

My Commission Expires:

SAMPLE
Notary, please complete
your own form.

Reminder:
The Recorder's office will refuse
incomplete or illegible notary documents.

EXHIBIT A
to Regulatory Agreement

Description of the real property
on which the Project is located

CA-
Location:

Legal Description:

DRAFT

Project Size Description:

_____ Buildings
_____ Low-Income Units; _____ Manager's Unit
_____ SRO; _____ 1-Bedroom; _____ 2-Bedroom;
_____ 3-Bedroom; _____ 4-Bedroom;
_____ 5-Bedroom

Appendix A

Income Target

Throughout the Compliance Period, unless otherwise permitted by TCAC, Units must be occupied by Tenants such that the income of Tenants residing in _____ of the Units is at or below _____% of Area Median Gross Income and in _____ of the Units is at or below _____% of Area Median Gross Income, such Units shall be Rent-Restricted in accordance with such income level.

Service Amenities

The Project shall include the following service amenities, which must of a regular, ongoing nature, provided to tenants free of charge (with exception of licensed child care), appropriate to the population being served, and committed for a minimum of 10 years:

-
-

Longer Compliance Period

The Compliance Period shall be a period of _____ consecutive taxable years commencing with the first year of the Credit Period.

Designation of First Year of Credit Period by Building

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Building Id. _____ First Year of Credit Period 200_

Minimum Applicable Fraction by Building

Building Id. _____ Minimum Applicable Fraction _____%

Building Id. _____ Minimum Applicable Fraction _____%

Building Id. _____ Minimum Applicable Fraction _____%

Building Id. _____ Minimum Applicable Fraction ____%

Building Id. _____ Minimum Applicable Fraction ____%

Building Id. _____ Minimum Applicable Fraction ____%

Building Id. _____ Minimum Applicable Fraction ____%

Agency Designated to Enforce

At any time during the Compliance Period, the California Tax Credit Allocation Committee may designate an agency of local government to enforce the terms of this Agreement. The Department designates the following agency of local government for such purpose:

