

**DRAFT PENDING COUNTY COUNSEL REVIEW**

Free Recording in accordance with  
California Government Code  
Section 6103 and 27383

Recording requesting by:  
and when recorded mail to:  
El Dorado County  
Health and Human Services Agency  
ATTN: HCED  
3057 Briw Road, Suite A  
Placerville, CA 95667

Space above this line for Recorder's use

**REGULATORY AGREEMENT**

**between**

**El Dorado County**

**&**

**Mercy Housing California 55, a California Limited Partnership**

**in respect to**

**HOME INVESTMENT PARTNERSHIPS PROGRAM**

THIS REGULATORY AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between Mercy Housing California 55, a California Limited Partnership, with its principal place of business located at 3120 Freeboard Drive, Suite 202, West Sacramento, CA 95691 (hereinafter referred to as the "Borrower") and El Dorado County, a political subdivision of the State of California (hereinafter referred to as the "County").

**Recitals**

Pursuant to the Development Agreement between the Department of Housing and Community Development, a public agency of the State of California (the "HCD"), the County and the Borrower with respect to the HOME Investment Partnership Program, dated of even date herewith (hereinafter referred to as the "Development Agreement"), the County has agreed to loan to the Borrower an amount not to exceed Three Million Dollars (\$3,000,000) (hereinafter referred to as the "Loan") for the purpose of assisting the Borrower in the construction of that certain real

## DRAFT PENDING COUNTY COUNSEL REVIEW

property located at Sunset Lane and Becken Lane, Shingle Springs, California, (Assessor's Parcel Numbers 090-430-21-100 and 090-430-22-100), County of El Dorado, and more particularly described in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property").

The Loan is being made pursuant to the HOME Investment Partnership Program (hereinafter referred to as the "HOME Program") established and governed by the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, as implemented by and subject to Title 24 Code of Federal Regulations Part 92.

The Loan is composed of an amount not to exceed Three Million Dollars (\$3,000,000) received from the HOME Program. The Loan is evidenced by that certain promissory note (hereinafter referred to as the "Note") dated of even date herewith and is secured by that certain Deed of Trust of even date herewith.

As a condition of receiving Loan funds for the construction of forty (40) units, of which thirty-nine (39) units are considered to be HOME-assisted (hereinafter referred to as the "Project"), the Borrower must agree to place specified restrictions upon the use and transfer of the Property found at 24 CFR 92.252. It is the intent of the parties hereto to evidence the Borrower's compliance with the Loan requirements of the HOME Program and place such restrictions upon the use and transfer of the Property, to ensure continued Project affordability, as are required by HOME Program regulations.

NOW THEREFORE, in consideration of the Loan and other valuable consideration, the parties hereto covenant and agree as follows:

1. Recitals

The foregoing recitals are a part of this Agreement.

2. Definitions

Except to the extent modified or supplemented by the HOME Program Agreement between the City and HCD, any term defined in the ACT or the HOME Program regulations at 24 CFR Part 92, as amended, shall have the same meaning when used herein.

- a. "AMI" means the Area Median Income for the Project area as determined by HUD.
- b. "Displacement" means the temporary or permanent movement of a Household and/or its personal property from the Property as a direct result of the rehabilitation, demolition, and/or acquisition (or written notice of intent to acquire, or initiation of negotiations to acquire) of the Property. The temporary movement of a Household from the Property which exceeds one year in duration is defined as permanent.

**DRAFT PENDING COUNTY COUNSEL REVIEW**

- c. “HOME Rents” means rents calculated annually by HUD and are:
  - 1) “High HOME Rents” which are the lesser of the Fair Market Rents, as determined by HUD, or a rent that does not exceed 30 percent of 65 percent of Area Median Income as determined by HUD.
  - 2) “Low HOME Rents” which are a rent that does not exceed 30 percent of 50 percent of Area Median Income as determined by HUD.
- d. “HUD” means the United States Department of Housing and Urban Development.
- e. “Initiation of Negotiations” means January 16, 2007 - the date of the HOME award letter from HCD to the City.
- f. “Lower income household” means persons or families whose incomes are 80 percent or less of the Area Median Income as determined by HUD.
- g. “Period of Affordability” means a period of the years as listed below beginning from the date of Project Completion as defined by 24 CFR 92.2 wherein the project must meet the affordability requirements contained herein. The period of years shall be consist of the Federal period of affordability (the "Federal Period") and the State period of affordability (the "State Period") which shall run concurrently from the Commencement Date. The Federal Period is a term of 20 years, and the State Period is a term of 55 years. The Federal Period is established by HOME Federal Regulations (the “Final Rule”), 24 CFR 92.254(e), and the State Period is established by HOME Investment Partnership Program Regulations section 8208 in effect as of March 26, 1996.
- h. “Very Low-Income Household” means low-income persons or families whose incomes are 50 percent or less of the Area Median Income as determined by HUD.

3. HOME-Assisted Units & Unit Schedule

Upon occupancy and for the entire Period of Affordability, the project shall have thirty-nine (39) HOME-assisted units. These units shall be designated as floating units and shall be rented according to the Annual HUD Home Program Rents, as updated annually. The following schedule of units is based upon the 2011 HUD Home Program Rents:

	<b>1 Bedroom</b>	<b>2 bedroom</b>	<b>3 bedroom</b>	<b>4 bedroom</b>
<b>Low HOME rent</b>	\$704	\$845	\$976	Not Applicable

**DRAFT PENDING COUNTY COUNSEL REVIEW**

<b>High HOME rent</b>	\$861	\$1,050	\$1,235	Not Applicable
---------------------------	-------	---------	---------	-------------------

4. Tenant Income Standards

a. Initial Occupancy

During the initial year of occupancy, 90% of HOME-assisted units shall be occupied by households whose incomes do not exceed Sixty (60%) percent of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

b. Period of Affordability

1. During the Period of Affordability, One-Hundred (100%) percent of HOME-assisted units must be occupied by households earning no more than Eighty (80%) percent of area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended, unless this requirement is superseded by the statutory requirements of other state or federal funding sources or tax credit program requirements.

2. A minimum of Twenty (20%) percent or eight (8) of the thirty-nine (39) HOME-assisted Project units shall be occupied by households whose annual incomes do not exceed Fifty (50%) percent of the area median income as established by HUD at rent levels consistent with 24 CFR 92.252, as amended.

5. Tenant Selection Standards

During the Period of Affordability the Borrower shall select tenants in conformance with HOME Program requirements and California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8305.

a. Borrower shall rent vacant Assisted Units in the Development only to eligible households in accordance with a Management Plan approved by the County. Such Management Plan may be periodically altered and such alteration must be submitted to and approved by the County prior to use. The Management Plan shall include:

(1) Reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

(2) Prohibition of local residency requirements;

**DRAFT PENDING COUNTY COUNSEL REVIEW**

- (3) Prohibition of local residency preferences, except where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas;
- (4) Tenant selection procedures that include the following components, and that are available to prospective tenants upon request:
  - (A) Selection of tenants based on order of application, lottery or other reasonable method approved by the County;
  - (B) Notification to tenant applicants of eligibility for residency and, based on turnover history for Assisted Units in the Development, the approximate date when an Assisted Unit may be available;
  - (C) Notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;
  - (D) Maintenance of a waiting list of applicant households eligible to occupy Assisted Units and non-assisted units designated for various tenant income levels, which shall be made available to prospective tenants upon request;
  - (E) Targeting specific special needs populations in accordance with this Agreement and applicable laws; and
  - (F) Affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of HUD, 24 CFR Part 200.620(a)-(c), or similar affirmative fair marketing housing plan as approved by the County.
- b. Borrower shall rent vacant units to households with no less than the number of people specified in the following occupancy standards schedule:

Unit Size	Minimum Number of Persons in Household
SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6
5-BR	8

## DRAFT PENDING COUNTY COUNSEL REVIEW

Borrower may assign tenant households to units of sizes other than those indicated as appropriate in the table above if the Borrower reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file. The Borrower's determination is subject to approval by the County. Through the Management Plan, Borrower may receive advance County approval of categorical exceptions to the above schedule.

### 6. Certification of Tenant Income & Household Size

- a. The income and household size of all household occupying HOME-assisted units shall be certified by the Borrower prior to occupancy and recertified annually thereafter in a manner approved by the County and specified in the Project's Management Plan.
- b. If the income of a tenant upon re-certification exceeds the upper limit for Lower Income households, and there are no other requirements statutorily imposed by other state or federal funding sources or tax credit program, that tenant household shall not have its lease terminated as a result thereof, but shall be charged rents as provided in Section 5.
- c. Where a tenant occupying a unit designated for occupancy by a Very Low Income household no longer qualifies to reside therein at re-certification, but qualifies as an otherwise eligible household, the rent level appropriate for that income level shall be charged pursuant to Section 5.
- d. If at the time of re-certification a tenant's household size has changed and no longer meets the occupancy standards pursuant to Section 5b, the Borrower may require the tenant to move to the next available appropriately sized unit.

### 7. Rent Limitations

Rents of HOME-assisted units shall not exceed the LOW and HIGH HOME rents allowed under 24 CFR 92.252, as amended, except as noted below.

- a. In a project with five (5) or more HOME-assisted units, a minimum of Twenty percent (20%) of all HOME-assisted units shall be occupied by Very Low-Income households with rents not exceeding LOW HOME rents, except as noted in b. below.
- b. HOME-assisted units receiving state or federal project-based rental subsidies may exceed HIGH or LOW HOME rents if the household qualifies to reside in the unit based on income and household size and the tenant-based portion of the rent does not exceed Thirty (30%) of the household's adjusted monthly income. The HOME-assisted unit's maximum rent (tenant contribution and project-based rental subsidy) becomes the rent allowable under the state or federal project-based subsidy.

## DRAFT PENDING COUNTY COUNSEL REVIEW

- c. If the HOME-assisted units are designated as “Floating” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or thirty percent (30%) of the household’s adjusted monthly income for rent and utilities; except that the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.
- d. If the HOME-assisted units are designated as “Fixed” units in Section 1 above, any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay rent the lesser of the amount payable by the tenant under state or local law or 30 percent of the household’s adjusted monthly income for rent and utilities; except that the rent may equal the market rent for comparable, unassisted units in the neighborhood. HOME-assisted units subject to low-income housing tax credit rules under Section 42 of the Internal Revenue Code shall be governed by such rules.

### 8. Marketing Plan

- a. Borrower shall prepare and implement a Marketing Plan, subject to prior approved by the County, that specifies how the Borrower intends to market the project to prospective tenants in the Project’s market area. The Marketing Plan shall specifically address how the Borrower intends to market the Project to underserved populations in Project market area and the frequency of marketing efforts. The County agrees that the Borrower may utilize the HUD 935.2 Affirmative Fair Housing Marketing Plan for these purposes.
- b. Borrower agrees to evaluate the effectiveness of the Marketing Plan in reaching underserved populations on an annual basis and to revise it as necessary to better reach underserved populations that are not being reached. The revised Marketing Plan shall be submitted to the County for approval prior to implementation.

### 9. Assisted Unit Standards

- a. Restricted Units (HOME-assisted units) shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and units shall not differ in size or amenity level on the basis of income-level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. The Borrower may, within these limits, change the designation of a particular unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving rehabilitation or conversion, the Department may permit certain units to be designated as exclusively market-rate

## DRAFT PENDING COUNTY COUNSEL REVIEW

Units where necessary for fiscal integrity and where all other Program requirements are satisfied.

- b. For the full loan term, the number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in Section 1 and Recitals Paragraph 4 above.

### 10. Rental Agreement and Grievance Procedures

The rental agreement and grievance procedures shall be in accordance with California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, Section 8307.

- a. One-year Term All rental or occupancy agreements for HOME-assisted units shall be for a term of not less than one year unless by mutual agreement between the tenant and the Borrower.
- b. County Approval All rental or occupancy agreements are subject to County approval; and shall include the following:
  - 1. Provisions requiring good cause for termination of tenancy;
  - 2. A provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
  - 3. A notice of grievance procedures for hearing complaints of tenants and appeal of management action; and
  - 4. A requirement that the tenant annually recertify household income and size.
- c. Termination of Tenancy The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of an HOME-assisted unit except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of transitional housing tenancy period; or for other good cause.
- d. Written Notice To terminate or refuse to renew tenancy, the Borrower must serve written notice upon the tenant specifying the grounds for the action at least 30 days prior to the termination of the tenancy.
- e. “Good Cause” One or more of the following constitute “good cause”:
  - 1. Failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as imposed by the County or other state or federal funding sources or tax credits;



## DRAFT PENDING COUNTY COUNSEL REVIEW

2. Material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:
    - A. Adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;
    - B. Substantially interfere with the management, maintenance, or operation of the Project; or
    - C. Result from the failure or refusal to pay, in a timely fashion, rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;
  3. Material failure by the tenant to carry out obligations under federal, state, or local law;
  4. Subletting by the tenant of all or any portion of the HOME-assisted unit;
  5. Any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the Borrower has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
  6. For Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.
- f. Prohibited Lease Provisions The Lease may not contain any of the following provisions:
1. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Borrower or Borrower's agent in a lawsuit brought in connection with the lease;
  2. Agreement by the tenant that the Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the

## DRAFT PENDING COUNTY COUNSEL REVIEW

- unit. The Borrower may dispose of this personal property in accordance with state law;
3. Agreement by the tenant not to hold the Borrower or Borrower's agent(s) legally responsible for any action or failure to act, whether intentional or negligent;
  4. Agreement of the tenant that the Borrower or Borrower's agent may institute a lawsuit without notice to the tenant;
  5. Agreement by the tenant that the Borrower or Borrower's agent may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
  6. Agreement by the tenant to waive any right to a trial by jury;
  7. Agreement by the tenant to waive tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
  8. Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- g. Rules of Conduct The Borrower shall establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and HOME regulations. Said rules shall be in writing and shall be given to each tenant upon occupancy. Any changes shall become effective no fewer than 30 days after giving written notice thereof to each tenant household.
- h. Appeal & Grievance Procedures The Borrower shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Borrower with respect to tenants' occupancy in the Project, and prospective tenants' applications for occupancy. The Borrower's appeal and grievance procedures shall be subject to County approval and, at a minimum, shall include the following:
1. A requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;
  2. Procedures for informal dispute resolution;
  3. A right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

## DRAFT PENDING COUNTY COUNSEL REVIEW

4. Procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

### 11. Period of Affordability

The Borrower acknowledges that the Loan is being made to the Borrower under the terms and conditions of the HOME Program as part of a public program to ensure affordable housing for project tenants. To preserve affordability of the HOME-assisted Project units, the Borrower covenants that the HOME-assisted Project units shall remain affordable for a period of fifty-five (55) years (hereinafter referred to as the "Period of Affordability") from the date of "Project Completion" as specified at 24 CFR 92.2. It is intended by the parties to this Regulatory Agreement, that this covenant shall run with the land in accordance with the provisions of 24 CFR 92.252, with the benefit of this covenant running to the County, in order to preserve the public interest in maintaining the affordability of the HOME-assisted Project units. The Period of Affordability will remain without regard to the term of any mortgage or the transfer of the Property ownership, other than by foreclosure or deed in lieu of foreclosure.

### 12. Foreclosure after Project Completion

The Borrower promises, covenants, warrants and represents that it shall complete the Project. Whether or not the Project is in fact completed shall be solely determined by the County. Should the Project in fact have been completed, then the Period of Affordability shall terminate upon foreclosure or transfer in lieu of foreclosure, except that the Affordability restrictions shall be revived according to the original terms if, (a) during the original Period of Affordability, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property, or if (b) the foreclosing entity or transferee in lieu of foreclosure assumes in writing and agrees to be bound by the terms of the HOME Agreement and the Loan Documents, as that term is defined in the HOME Agreement.

### 13. Restrictions on Sale or Transfer

- a. Upon any sale or transfer, including transfer by gift, devise, decent, foreclosure, assignment, deed in lieu of foreclosure, condemnation, and voluntary or involuntary bankruptcy, of the Property without the prior written approval of the County, all principal, interest and costs then owing upon the Loan will become immediately due and payable to the County.
- b. The County shall approve a sale, transfer or conveyance of the Property provided that all of the following conditions are met: (I) the existing Borrower is in compliance with this Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Regulatory Agreement; (ii) the successor-in-interest to the Borrower agrees to assume all obligations of the existing

## DRAFT PENDING COUNTY COUNSEL REVIEW

Borrower pursuant to this Regulatory Agreement and the HOME Program; (iii) the successor-in-interest demonstrates to the County's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and (iv) any terms of the sale transfer or conveyance shall not threaten the County's security or the successor's ability to comply with all requirements of the HOME Program and this Regulatory Agreement.

- c. The Borrower agrees to secure advance written State HOME Program approval for any conversion to market rate housing, conversion to homeownership, demolition, or any other action that would prevent the full affordability period noted herein from being satisfied.

### 14. Restrictions on Encumbrances.

The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above, without the written consent of the County; provided, however, that Borrower may, without the written consent of the County, enter into a certain Regulatory Agreement and Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing with the Tax Credit Allocation Committee with regard to the tax-exempt bond financing. In all cases, the provisions of 24 CFR 92.252(e) shall continue to apply to the Project.

### 15. Replacement Reserve

Borrower shall establish a Replacement Reserve in accordance with the Uniform Multifamily Regulations contained in the California Code of Regulations, Title 25, Section 8309 and as required by the Senior Lender. In Years 1 through 5, the annual deposit to the replacement reserve account shall be in the amount of equal to at least 0.6% of estimated construction costs associated with structures in the Project, excluding construction contingency and general contractor profit, overhead and general requirements. The annual deposit amount for Years 6 through 55 shall be based on a third-party physical needs assessment to be prepared at the Borrower's expense every five years from the date of this agreement assessing the replacement needs of the development.

### 16. Operating Reserve

Borrower shall establish an Operating Reserve in accordance with the Uniform Multifamily Regulations contained in the California Code of Regulations, Title 25, Section 8308 of the HOME Program regulations for the purpose of defraying potential operating shortfalls arising from unforeseen circumstances, beyond the rent-up period. The Borrower shall establish a separate Operating Reserve account. If the account is an interest-bearing account, any interest earned on the balance shall stay in the account and shall be used for the same purposes.

## DRAFT PENDING COUNTY COUNSEL REVIEW

Withdrawals from the Operating Reserve shall require prior written approval of the County. Should the County fail to take action on a request for an eligible withdrawal from the Operating Reserve within 30 days from documented receipt of the request, that request shall be deemed approved.

The initial deposit to the Operating Reserve shall be funded from development funding sources in an amount approved by the County and HCD. The initial deposit shall be funded prior to initial occupancy of the project and shall be in the amount not less than the total of the following: 4 months of projected Operating Expenses (excluding the cost of on-site supportive services coordination), 4 months of required Replacement Reserve deposits, and 4 months of non-contingent debt service, except for projects with tax credits, in which case the requirement shall be 3 months of these items. In setting the initial funding level, the County and HCD may consider factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.

Borrower shall fully replace any withdrawals from the Operating Reserve using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.

The Operating Reserve shall be maintained at its initial County and HCD approved level for the entire affordability period of the Project (55 years) and may not be distributed or taken from the project when the project is sold.

If other funding sources require an initial funding level in excess of that required by the County and HCD, the excess amount may be applied to a reduction in any outstanding deferred developer fee at the end of the tax credit compliance period. If there is no outstanding balance, or if the balance is paid off in its entirety without using all of the funds in excess of the initial amount required by the County and HCD, the remaining balance must stay with the project for the entire affordability period and may not be distributed or taken from the project if the project is sold.

### 17. Cash Flow Distribution

The requirements set forth herein shall be superior to and governing over requirements set forth in any other Project Document.

a. Net Cash Flow shall be distributed in accordance with the Uniform Multifamily Regulations contained in the California Code of Regulations, Title 25, Section 8314, "Use of Operating Cash Flow" for the full extent of the HOME regulatory period.

**DRAFT PENDING COUNTY COUNSEL REVIEW**

b. Net Cash Flow shall be distributed annually provided that there is no event of default outstanding or other current cash flow shortage under any Project Document in the following manner:

- 1) First, to payment of any outstanding Deferred Developer Fee;
- 2) Second, to payment of any Asset Management, Partnership Management, Investor Services, Managing General Partner, Incentive Management and similar fees in a total combined amount not to exceed \$12,000 per annum;
- 3) Third, 50% of the remaining cash flow to Distributions;
- 4) Fourth, 50% of the remaining cash flow to repayment of the HOME loan and other residual receipts loans on a proportional basis.

c. Payment of any fees per Section b.2), whether or not stated explicitly therein, shall in no year exceed a combined total of \$12,000.

d. Payment of Distributions in Section b.3) above shall in no year exceed 50% of Net Cash Flow remaining after payment of payments required under Sections b.1) and b.2) above.

e. Payment of the HOME loan shall in no year shall be less than 50% of Net Cash Flow remaining after payment of payments required under Sections b.1) and b.2) above except when there are other residual receipts loans to be repaid on a proportional basis.

18. Superiority of Regulatory Agreement

Except as set forth in Section 8 above, The Borrower covenants that the Borrower has not, and shall not, enter into or execute any other agreement with provisions contrary to the provisions of this Regulatory Agreement, or contrary to the intent of maintaining the affordability of the Property for the full Period of Affordability described in Section 3, above.

19. Violation of Regulatory Agreement by Borrower.

In the event of a breach or violation of the provisions of this Regulatory Agreement, the County may give written notice to the Borrower thereof by certified mail or any express delivery service with a delivery receipt addressed to the Borrower at its principal place of business listed above. If the breach or violation is not cured to the satisfaction of the County within the time period specified in the notice, which shall not be less than 30 days, the County may declare a default and may seek legal remedies.

20. Interpretation of Affordability

It is the intention of the parties to this Regulatory Agreement that affordability be interpreted in view of the express goals of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of

## DRAFT PENDING COUNTY COUNSEL REVIEW

1992. It is the purpose of this Regulatory Agreement to limit and restrict use and resale of the Property in order to maintain the Property's affordability for the entire Period of Affordability.

### 20. Recordkeeping and Reports.

The management agent designated by Borrower, and as approved by the County, will be responsible for recordkeeping and reports, including those required to comply with Fair Housing and Equal Opportunity requirements. The management agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of the Borrower in order to assist the County in meeting federal and state recordkeeping and reporting requirements. All records, books, and accounts will be subject to examination and audit at reasonable hours by any authorized representative of the County. All records and books relating to this system shall be kept for a period of at least five years (5) after termination of this Agreement and in such a manner as to ensure that the records are reasonably protected from destruction or tampering.

### 21. Maintenance & Management

- a. Borrower is specifically responsible for all maintenance, repair, and management functions for the Project, including without limitation, selection of tenants, certification and re-certification of household income and size, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, HUD housing quality standards pursuant to 24 CFR 882.109.
- b. Borrower may contract with a management agent for the performance of the services or duties required in paragraph a. above. However, doing so does not relieve the Borrower of responsibility for proper performance of said duties. Any such contract shall contain a provision allowing the Borrower to terminate the contract without penalty with no more than Thirty (30) days notice. Upon determination by the County and notice to the Borrower thereof that the County has determined that the contracted management agent has failed to operate the Project in accordance with this Agreement, the Borrower shall exercise such right of termination forthwith and shall immediately make arrangements, subject to County approval, for continuing performance of the requirements of this Agreement.
- c. If the Borrower operates the Project directly without contracting with a management agent and the County determines that the Project is not being operated in accordance with this Agreement, the County may provide notice to the Borrower thereof, and may require the Borrower to contract with a management agent to operate the Project, or to make such other arrangements as the County deems necessary to ensure performance of the requirements of this Agreement.

**DRAFT PENDING COUNTY COUNSEL REVIEW**

22. Inspections

- a. Borrower shall allow County access to the Project to conduct inspections on an annual basis, or more frequently, with Thirty (30) days written notice to Borrower.
- b. Borrower shall provide tenants with a minimum of Twenty-Four (24) hours written notice prior to seeking access to a tenant unit for inspection purposes. In said notice, Borrower shall clearly inform tenant of the purposes of the inspection.

23. Hazard & Liability Insurances

- a. The Borrower shall at all times keep the development insured against loss by fire, flood (as required pursuant to 24 CFR 92.358), and other such hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as set forth in Exhibit B attached and made part hereof. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the County. Property insurance policies shall name the County as additionally insured in a manner approved by the County.
- b. Insurance proceeds and condemnation awards for any loss to or taking of the Project, or any portion thereof, shall be applied or utilized by Borrower as provided in the Deed of Trust, executed by Borrower and referred to in the Recitals hereof.

24. Governing Law

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

25. Successors and Assigns

This Regulatory Agreement and all the covenants, promises, and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors, and assigns of the Borrower and the County.

26. Severability

If any provision of this Regulatory 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 unless, in the sole discretion of the County, the invalidity, or unenforceability of the provision negates the program purpose and/or threatens the security of the County.



**DRAFT PENDING COUNTY COUNSEL REVIEW**

27. Venue

If either party to this Regulatory Agreement initiates any legal or equitable action to enforce the terms of this Regulatory Agreement, to declare the rights of the parties under this Regulatory Agreement, or which relates to this Regulatory Agreement in any manner, the County and the Borrower agree that the proper venue for any such action is the Superior Court of the State of California of and for the County of El Dorado.

28. Costs of Enforcement

The Borrower agrees to pay any and all of the County’s costs with respect to enforcement of this Regulatory Agreement, including the County’s reasonable attorneys’ fees, costs and expenses.

29. Counterparts/Originals

This Regulatory Agreement may be executed in counterparts, which together shall constitute one (1) entire Regulatory Agreement.

By SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Regulatory Agreement.

COUNTY

BORROWER

County of El Dorado

MERCY HOUSING CALIFORNIA 55,  
A CALIFORNIA LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Daniel Nielson, M.P.A.  
Director, Health and Human  
Services Agency

By: Sunset Lane Apartments, LLC ,  
its general partner

By: Mercy Housing Calwest,  
member/manager)

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

**DRAFT PENDING COUNTY COUNSEL REVIEW**

ACKNOWLEDGMENT

State of California

County of El Dorado

On \_\_\_\_\_ 20\_\_\_\_, before me, Shirley I. C. Hodgson, a notary public, personally appeared \_\_\_\_\_ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**DRAFT PENDING COUNTY COUNSEL REVIEW**

ACKNOWLEDGMENT

State of California

County of El Dorado

On \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**DRAFT PENDING COUNTY COUNSEL REVIEW**

EXHIBIT A  
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF EL DORADO, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF SECTION 1, TOWNSHIP 9 NORTH, RANGE 9 EAST, M.D.B.&M. DESCRIBED AS FOLLOWS:

PARCELS A AND B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF EL DORADO, STATE OF CALIFORNIA ON SEPTEMBER 12, 1979 IN BOOK 25 OF PARCEL MAPS AT PAGE 32.

Assessor's Parcel No.: 090-430-21-100

Assessor's Parcel No.: 090-430-22-100

**DRAFT PENDING COUNTY COUNSEL REVIEW**

**EXHIBIT B  
INSURANCE REQUIREMENTS**

At close of escrow, the California Department of Housing and Community Development (the “Department”) and County of El Dorado (the “County”) must receive a one-year prepaid Certificate of Insurance policy (or a binder followed by a certificate within 30 days of loan closing).

Prior to construction loan closing, the Borrower shall procure and maintain, and provide proof of, all required insurance coverage during the term of the construction loan. Such insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Borrower, his agents, representatives, employees, contractors or subcontractors. All required evidence of insurance coverage must be in the form of a certificate of insurance and policy endorsements acceptable to the Department Home Investment Partnerships Program and the County.

All insurance certificates must include the following:

- NAIC # for each insurer affording coverage
- Project Name
- Project Address
- Insurance Contact Information, including name and telephone number

The Department should be identified on all insurance documents as follows:

The Department of Housing and Community Development  
Home Investment Partnerships Program (HOME)  
P.O. Box 952054  
Sacramento, CA 94252-2054

The County should be identified on all insurance documents as follows:

El Dorado County  
c/o Health and Human Services Agency, HCED  
3057 Briw Road, Suite A  
Placerville, CA 95667

***Acceptability of Insurers***

Insurance must be placed with insurers with a current A.M. Best rating of no less than A:VII. In the event the insurer’s A.M. Best rate declines below an A:VII rating, Borrower is required to provide a replacement policy from another acceptable insurer within 10 business days.

**DRAFT PENDING COUNTY COUNSEL REVIEW**

**MINIMUM SCOPE OF INSURANCE AND MINIMUM LIMITS OF INSURANCE**

***Borrower's Insurance Requirements***

Borrower's insurance shall include all contractors as insureds under its policies or shall furnish separate certificates and endorsements for the general contractor to the Department and County for review and approval. Borrower shall have insurance coverage that shall be at least as broad as:

1. Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence (or \$2,000,000 per occurrence for buildings with elevators) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Owners and Contractors Protective Liability Insurance - Insurance Services Office Form (G0009 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor).

Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have "non owned and hired" coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of "non owned and hired" coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

4. Workers' Compensation Insurance - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Workers' Compensation: Statutory Limits

## DRAFT PENDING COUNTY COUNSEL REVIEW

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

5. Course of Construction/Builder's Risk Insurance - Course of Construction insurance covering all risks of loss less policy exclusions on the structure, materials on and offsite, and materials in transit.

Course of Construction: Completed value of the project with no coinsurance penalty provisions.

Course of Construction/Builder's Risk Insurance must be provided on an "all risk" basis insuring the interests of the Department, the County, the Borrower, contractors and material suppliers. The Borrower shall be responsible for any loss within the deductible amount of the insurance.

Course of Construction policies shall contain the following provisions:

- A. California Department of Housing and Community Development and the County of El Dorado shall be named as Loss Payees with a 438BFU endorsement provided.
- B. The insurer shall waive all rights of subrogation against the Department or the County.
- C. A "Permit to Occupy" endorsement, or coverage, shall be included.

### *Contractor's Insurance Requirement*

All coverages for general contractors shall be subject to all of the same requirements as the Borrower for the following insurance requirements:

1. Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have "non owned and hired" coverage.

## **DRAFT PENDING COUNTY COUNSEL REVIEW**

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Workers’ Compensation Insurance - Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

Workers’ Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

### ***Architect, Engineer and Other Licensed Professionals Insurance Requirements***

All architects, Engineers and other licensed professionals shall be registered to practice within the State of California. A California licensed Architect is required on all projects with 16 units or more. For smaller developments, a licensed engineer may be acceptable.

All coverages for Architects, Engineers and subcontractors shall provide:

Errors & Omissions Insurance or Professional Liability Insurance for no less than \$1,000,000 per occurrence.

Commercial General Liability Insurance - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by the Department.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

2. Automobile Liability Insurance - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have “non owned and hired” coverage.



## **DRAFT PENDING COUNTY COUNSEL REVIEW**

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

California Department of Housing and Community Development and the County of El Dorado to be named as both additional insureds and as certificate holders.

3. Workers’ Compensation Insurance - Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

Workers’ Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

California Department of Housing and Community Development and the County of El Dorado to be named as certificate holders.

### ***Deductibles and Self-Insured Retentions***

Any deductibles in excess of \$5,000 must be declared and approved by the Department. In addition, the Borrower shall provide a financial guarantee satisfactory to the Department for the payment of any resulting losses and related investigations, claim administration and defense expenses.

### ***Verification of Coverage***

Borrower shall provide the Department and the County with original certificates and amendatory endorsements for all required insurance coverage, in a form and substance acceptable to the Department prior to the closing of the construction loan and prior to the commencement of construction. The Department and/or County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Such coverage will be required until the final retention payment is released.

### ***Other Insurance Provisions***

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. California Department of Housing and Community Development, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations.

## **DRAFT PENDING COUNTY COUNSEL REVIEW**

2. County of El Dorado, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations.
3. For any claims related to this project, the Borrower's insurance coverage shall be primary insurance as respects the Department and/or the County, their officers, officials, employees, and volunteers.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Department and the County.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### ***Railroad Protective Liability Insurance***

Any exclusion or reduction in coverage due to the project's location at or near a railroad must be removed, or the Borrower shall obtain a separate Railroad Protective Liability policy acceptable to the Department.

### ***Pollution Legal Liability Insurance***

If Pollution Legal Liability coverage is required, Borrower shall obtain for the duration of the contract and for 24 months following acceptance by the Department, Pollution Legal Liability Insurance as respects services or operations under this agreement. Extended discovery period must be no less than 24 months.

### ***Flood Coverage***

If the Department determines that Flood insurance is required, Borrower shall obtain such coverage for the duration of the contract in an amount equivalent to the lesser of:

- the completed value of the project,
- the maximum amount allowed for the property under the National Flood Insurance Program (NFIP), or
- the outstanding balance of the loan.