

DRAFT PENDING COUNTY COUNSEL REVIEW

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC IMPROVEMENTS IN SUPPORT OF AFFORDABLE
HOUSING NEW CONSTRUCTION PROGRAM
REGULATORY AGREEMENT

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

A. The Borrower has acquired certain real 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 (the "Real Property"), more fully described in Exhibit A attached hereto and made a part hereof, on which it will develop a 40-unit multifamily housing project ("Project") which it will operate as affordable housing to persons whose incomes fall at or below 60 percent of the area median income as determined by the Department of Housing and Urban Development ("HUD").

B. The Borrower has applied to the County for a Loan (the "Loan") to assist the Borrower in the completion of required off-site infrastructure improvements in support of the Project.

C. The Loan will be provided by the County under the Community Development Block Grant (CDBG) Public Improvements In Support of Affordable Housing New Construction (PIHNC) Program (the "CDBG Program") administered by the County as set forth in 24 CFR 570, Subpart I, of the federal regulations governing the CDBG Program.

D. Concurrently herewith, the Borrower and the County have entered into a CDBG Program Loan Agreement pursuant to which the County will loan Four Hundred Eighty Three (\$483,000) to the Borrower (the "Loan Agreement").

E. As a condition to the Loan, the County requires the Borrower to execute this Regulatory Agreement which will regulate thirty-nine (39) residential units (the "Rental Units") of the Project to insure that the units are occupied by and affordable to low-income persons and very-low income persons for the term of this Regulatory Agreement.

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NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Regulatory Agreement.
2. Definitions. For the purpose of this Regulatory Agreement the following definitions shall apply:
 - a. "HOME Rents" means rents calculated annually by HUD and are:
 - (1) the lesser of the fair market rents or 30 percent of 80 percent of area median income (high CDBG rents); or
 - (2) 30 percent of 50 percent of area median income

(low HOME rents).
 - b. "HUD" means the United States Department of Housing and Urban Development.
 - c. "Low-Income Household" means households whose income is 60 percent or less of the area median income as determined by HUD.
 - d. "Rent" means all charges, other than deposits, paid by the tenant for the use and occupancy of a unit and any mandatory charge for direct or supportive tenant services in a rental housing development, including a utility allowance in an amount determined by HUD.
 - f. "Very Low-Income Household" means households whose income is 50 percent or less of the area median income as determined by HUD.
3. Compliance with Program Requirements. The Borrower agrees that at all times its acts regarding the Project and the use of funds provided herein shall be in conformity with all provisions of the CDBG Program including the statutes, rules and regulations and such policies and procedures of the County, HCD and HUD pertaining thereto. The Borrower acknowledges that it is familiar with such applicable provisions and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to comply fully with such provisions.
4. Term of Regulatory Agreement. The term of this Regulatory Agreement shall commence upon recordation by the County Recorder of this Regulatory Agreement and shall remain in full force and effect through and including the date which is five (5) years following the termination date of Standard Agreement Number 10-STBG-6711 (Exhibit A), between the County and the State of California, which is June 30, 2013, unless terminated earlier pursuant to the terms of this Regulatory Agreement. This term shall be known as the "affordability period" or "period of affordability".
5. Rental Unit Schedule.
 - a. The Borrower shall cause all Rental Units upon occupancy and for the entire period of affordability to be rented only in accordance with the Annual HUD Home Investment Partnership (HOME) Program Rents (the "HOME Rents"), as updated annually.

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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 |

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. Tenant Selection Standards.

a. At all times, not less than 20 percent of the thirty-nine (39) rental units shall be rented to Very Low-Income Households and the balance to Low-Income Households.

b. Borrower shall rent vacant Rental 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;
- (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 Rental Units in the Development, the

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approximate date when an Rental Unit may be available;

- (C) Notification of tenant applicants who are found ineligible to occupy an Rental 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 Rental 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.

7. Rents.

a. HOME Rents shall be used for determining the rents for the Rental Units. The HOME Rents shall be provided annually by the County.

b. At a minimum, 20 percent of the Rental Units must be occupied by Very Low-Income Households paying rents that are no greater than the low HOME Rents.

c. Any household certified as an eligible household upon occupancy but whose income increases above the eligibility level must pay as rent the lesser of the amount payable by the tenant under State or local law or Section 42 of the Internal Revenue Code or 30 percent of the family's adjusted monthly income.

8. Certification of Tenant Income and Household Size.

a. The income and household size of al household occupying Rental 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 7(c) above.

c. Where a household 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 7.

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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.

9. 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.

10. Nondiscrimination. The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, State and federal laws concerning discrimination in housing.

11. 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 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.

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12. 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 4, 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.

13. 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.

14. 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 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.

15. Accounting Records. 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.

16. Use of Income from Operations. The Borrower, or its management agent, shall promptly deposit all Operating Income in a segregated account established exclusively for the Project with an FDIC or other comparable federally-insured financial institution.

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

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18. Amendment. This Regulatory Agreement shall not be altered or amended except in writing, executed by the parties hereto.

19. Partial Invalidity. If any portion 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.

20. Binding on Successors. This Regulatory Agreement shall bind, and benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in interest, and assigns, provided, however, that except for a transfer to Mercy Housing West or an affiliate thereof, the Borrower may not assign this Regulatory Agreement or any of its obligations hereunder, voluntarily or by operation of law.

21. Recording Regulatory Agreement. This Regulatory Agreement, and all amendments thereto, shall be executed by each of the parties. This Regulatory Agreement, or memorandum thereof, shall be recorded against the Project in the official records of the County of El Dorado.

22. Hold Harmless. Absent the gross negligence or willful misconduct of the County, the Borrower and its successors in interest agree to indemnify, defend, and hold harmless the County and its respective agents, employees and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorneys' fees) arising from or in connection with the Borrower's Project, management, maintenance or operation of the Project.

23. Hazard and Liability Insurance.

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. Waiver. No waiver by the County of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

25. Captions. The captions used in this Regulatory 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 Regulatory Agreement.

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

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27. 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.

28. 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.

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

30. Notice. Written notices and other written communications by and between the parties hereto shall be addressed as set forth in the Loan Agreement unless and until a notice party has, in writing, communicated a different address to the other party hereto.

31. 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.

32. Attorney's Fees. The prevailing party in any action to enforce this Regulatory Agreement shall be entitled to reasonable attorney's fees as determined by the trier of facts in that forum.

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IN WITNESS WHEREOF, the County and the Borrower have executed this Agreement as of the date first set forth above.

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)

By: _____
Its: _____

By: _____
Its: _____

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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

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**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.

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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.

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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

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).

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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.

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:

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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.

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

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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.
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.

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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.