

Exhibit A - Diamond Village CDBG Regulatory Agreement

RECORDING REQUESTED BY
AND RETURN TO:

County of El Dorado
Long Range Planning
2850 Fairlane Court, Bldg. C
Placerville, CA 95667

Attention: HCED Programs

APN: 051-461-068-000

(This space for Recorder's use only)

No Fee for Recording Pursuant to Government Code Sections 6103 And 27383

AFFORDABLE HOUSING REGULATORY AGREEMENT

between

The County of El Dorado

and

Diamond Village Apartments, LP

in respect to

Community Development Block Grant (CDBG) Program

THIS AFFORDABLE HOUSING REGULATORY AGREEMENT (“Agreement”) is made this ___ day of _____, 20___, by and between Diamond Village Apartment LP, a California Limited Partnership (the “**Developer**”), and the County of El Dorado, a political subdivision of the State of California (“**County**”), pursuant to the requirements of the CDBG Program administered by the Department of Housing and Community Development, a public agency of the State of California (the “**Department**”).

RECITALS

- A. Community Development Block Grant funding was awarded by the U.S. Department of Housing and Urban Development (HUD) to the Department for non-entitlement jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301, et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I. The CDBG Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG -Community Development Block Grant Program (the “**Program**”).
- B. As required by the Program, the County and the Department entered into a Standard

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- Agreement, numbered 21-CDBG-HK-00098, and dated June 29, 2022, which provides the overarching terms and conditions for implementing the Program and the terms of the Assistance common to all projects to be completed by the County (the “Standard Agreement”).
- C. Pursuant to the Standard Agreement, the Department awarded to the County of El Dorado an amount not to exceed One Million Four Hundred Ninety Eight Thousand And 00/100 Dollars (\$1,498,000) for the purpose of issuing a loan to the Developer (hereinafter referred to as the "Loan") in the development of that certain real property located at 6018 Service Drive, Diamond Springs, County of El Dorado, California 95619, identified by Assessor’s parcel numbers 051-461-068, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "**Property**").
- D. Pursuant to Resolution No. 049-2020, the County, with Department agreement, has approved the use of CDBG funds for the development of an 81-unit apartment complex located on the Property and known as the Diamond Village Apartments (the “**Development**”). In exchange for receiving said funds, the Developer agrees to restrict 20 of the 81 units to extremely-low income tenants earning less than thirty percent (30%) of Area Median Income, 40 of the 81 units to very-low income tenants earning less than fifty percent (50%) of Area Median Income, and 20 of the 81 units to low-income tenants earning less than 60% of the Area Median Income, as more particularly described in Section 8, below, reserving one of the 81 units for an on-site manager, pursuant to an approved affordable housing plan.
- E. The County has adopted affordable housing goals in its General Plan and Housing Element, which are being met in part by providing the Developer with financial assistance in exchange for affordability restrictions, in accordance with a County approved affordable housing plan and regulatory agreement.
- F. The County has provided the Developer with financial assistance for the Development pursuant to the terms of this Agreement, evidenced by a promissory note executed by Developer on the same date herewith, and secured by a deed of trust encumbering the Property (“Loan” or “Assistance”). Developer understands and intends that by entering into this loan Agreement and accepting the financial assistance, California Civil Code Section 1954.52 of the Costa-Hawkins Rental Housing Act does not apply to the Development.
- G. Receipt of the CDBG Grant requires the County to comply with the various applicable requirements, regulations, and restrictions, including, but not limited to, those contained in the following statutes, regulations and guidelines: California Health and Safety Code, Sections 50825, et seq.; Title 24 of the Code of Federal Regulations (C.F.R.) Part 570, Subpart I; Title 24 C.F.R. Part 58; Title 2 C.F.R Part 200, the California State CDBG Program Guidelines in effect as of October 15, 2019; and any amendments or supplements thereto (collectively, the “**Program Requirements**”). Developer acknowledges and agrees that by entering into this Agreement, Developer is obligated to comply with and is bound by all Program Requirements.

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H. As further consideration for the Loan and in furtherance of the purposes of the Program, Developer has agreed to enter into this Agreement and consent to its recordation against the Development. The purpose of this Agreement is to regulate and restrict occupancy, rent, operations, ownership and management of the Development in compliance with the Program Requirements and put such regulations and restrictions on title for the term of the Agreement. This Agreement is not to be construed as altering any zoning, building or other regulations of the County, nor is this Agreement to be considered as a development agreement.

NOW THEREFORE, based on the mutual conditions, terms and covenants recited herein and made a material part of this Agreement, the parties agree as follows:

1. **Recitals.** The foregoing recitals are a part of this Agreement and are incorporated herein by reference as if fully stated herein.

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

3. **Definitions.** Unless specifically defined in this Agreement or the context requires otherwise, the terms used in this Agreement shall be governed by the definitions set forth in the Program Requirements. As used in this Agreement, the following terms shall have the following meanings:

“Affordable Housing Plan” means that specific affordable housing plan for the Development approved by the County.

“Affordable Rent” means the rent limits calculated and approved annually as published by the California Department of Housing and Community Development (“HCD”) or by the California Tax Credit Allocation Committee (“TCAC”), as applicable to the County. In the event that the Department and TCAC discontinue publishing such determinations, the income limits shall be calculated as thirty percent (30%) of the AMI for the County, as published by the U.S. Department of Housing and Urban Development (“HUD”), or any successor thereto.

“Affordable Unit” means a dwelling unit within the Development restricted for occupancy to Eligible Households, as set forth in this Regulatory Agreement.

“Area Median Income” means the median household income determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size as published by HCD for El Dorado County.

“Developer Fee” means all funds paid at any time as compensation for developing the Development, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.

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“Development” means the new construction project for the 81 units of affordable housing known as Diamond Village Apartments, located at 6018 Service Drive, Diamond Springs, CA 95619.

“Distributions” means the amount of cash or other benefits received from the operation of the Development and available to be distributed to the Developer or any party having a beneficial interest in the Development after payment of all due and outstanding obligations incurred in connection with the Development.

“Effective Date” means the date on which this Agreement was entered into as recited above.

“Eligible Household” means a Low-Income Household, Very Low-Income Household, or Extremely Low-Income Household that qualifies on the basis of income to occupy the appropriately designated Affordable Unit set forth in this Agreement.

“Extremely Low-Income Household” means persons or families with incomes below thirty percent (30%) of the Area Median Income, calculated on the basis of local family incomes, with adjustments for household size.

“Fiscal Year” means the Fiscal Year for the Development shall mean the annual period commencing on July 1 and concluding on June 30 _____ each year.

“HCD” means the California Department of Housing and Community Development.

“Initial Operating Year” means the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed project and ending on the last day of the Fiscal Year for the Development.

“Loan” means the financial assistance provided by the County to Developer in the amount of \$1,498,000 for the Development project pursuant to the terms of this Agreement, evidenced by a promissory note, executed by Developer as Borrower therein on even date herewith, and secured by a deed of trust encumbering the Property recorded in the official records of El Dorado County.

“Low-Income Household” means persons and families whose annual incomes do not exceed eighty percent (80%) of the Area Median Income for El Dorado County.

“Market Rate” means the Rent charged to non-rent restricted dwelling units located in the Development, if applicable.

“Note” means the promissory note secured by deed of trust encumbering the Property, executed by Developer as Borrower in favor of the County on even date herewith evidencing the Loan.

“Operating Expenses” means the amount approved by the County that is necessary to pay for the recurring expenses of the Development, such as utilities, maintenance, management, taxes, licenses, and Supportive Services costs, but not including debt service or required reserve account deposits.

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“Operating Income” means all income generated in connection with operation of the Development including rental income for Affordable Units and non-Affordable Units, rental income for Commercial Space, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts other than approved reserve accounts, related to the rental housing development. “Operating Income” does not include security and equipment deposits, payments to Developer for supportive services (except for funds applied towards the cost of on-site supportive service coordination), or tax benefits received by the Developer.

“Ordinary Maintenance and Repair” means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a decent, safe, sanitary condition.

“Project Closeout Documentation” means required documentation to be submitted to the Department by the County and includes, but may not be limited to: project completion report, final activity report, recorded notice of completion, relocation report (if applicable) and a resolution from the governing body.

“Property” is defined in Exhibit A.

“Rent” means all charges, other than deposits, paid by, or on behalf of, the tenant for the use and occupancy of an Affordable Unit, and any mandatory charge for direct or supportive tenant services in a rental housing development, including a Utility Allowance.

“Restricted Unit” means an Affordable Unit and any units that are subject to Rent and occupancy restrictions that are comparable to those applicable to CDBG assisted units. Restricted Units include units subject to a California Tax Credit Allocation Committee regulatory agreement, and all units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.

“Tax Credit Compliance Period” shall have the meaning set forth in Section 42(i) of the Internal Revenue Code of 1986, (26 U.S.C. § 1, et seq.) as amended.

“Utility Allowance” means the rent allowance for approved utility services for each Affordable Unit as determined and published annually by the Housing Authority of the County of El Dorado, or successor organization responsible for establishing such rates for the Affordable Units.

“Very Low-Income Household” means persons and families whose annual incomes do not exceed fifty percent (50%) of the Area Median Income.

4. Compliance with Program Requirements. The Developer agrees that at all times its actions regarding the Development and the use of funds provided under the Standard Agreement shall be in conformity with all Program Requirements, including the requirements of this Agreement, the Standard Agreement, and all other documents which govern the Development and secure the Loan (the “Program Legal Documents”). The Developer acknowledges and agrees that it understands the Program Requirements, the requirements imposed on the Developer in the Program Legal Documents and has access to professional advice to the extent necessary to enable the Developer to fully comply with the Program Requirements and the applicable provisions of the Program Legal Documents.

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5. Term of Agreement The term of this Agreement shall commence upon the Effective Date and remain in effect exactly fifty-five (55) years from the anniversary of the date of Department acceptance of the Project Closeout Documentation hereof regardless of any prepayment of the Assistance or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the County pursuant to the terms of this Agreement or extended by the mutual consent of the parties, or unless the Loan has not then been fully repaid. In the event any sum from the Loan remains outstanding at the expiration of the Term, the County may, at its sole option and discretion, either: 1) demand payment of any unpaid principal and accrued interest pursuant to the terms of the Note; or 2) forgive any amounts of principal and accrued interest remaining due and payable under the Note if deemed in the best interest of the County..

6. Compliance with Applicable Regulations, Permits. Developer shall complete the development of Affordable Units in compliance with all applicable laws, regulations, and permits.

7. Management Plan. No later than sixty (60) days after the execution of this Agreement, Developer shall submit to the County a plan for management of and tenant selection procedures for the Development (“**Management Plan**”) for review and approval. Initial occupancy of the Development shall not be permitted until the Management Plan has been approved by the County. The County shall keep the Management Plan on file for the duration of this Agreement. In conjunction with the review of the Annual Report pursuant to Section 22, the Management Plan may be reviewed and revised at the request of the County and/or the Developer and any such revision(s) shall be submitted to and approved by the County prior to becoming effective. The Management Plan shall, among other things, contain the following information:

a. Specific actions to be taken by Developer to affirmatively market the vacant Affordable Units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and regardless of any arbitrary factor, with such affirmative marketing efforts to commence at least 90 days prior to initial occupancy and with such affirmative marketing efforts being updated and submitted to County for approval every 5 years thereafter during the term of this Agreement;

b. Reasonable criteria for the determination of tenant eligibility, including household size;

c. Requirements that Eligible Households be selected based on order of applications, lottery, or other reasonable method approved by the County;

d. Procedures specifying how tenant applicants deemed to be ineligible shall be notified of the reason for their ineligibility and opportunity to appeal this determination;

e. Methodology for maintaining a waiting list of eligible applicants;

f. Specific procedures for obtaining information regarding prospective tenants’ incomes as necessary to certify that such income does not exceed the applicable Income eligibility limit;

g. Specific utility services subject to the Utility Allowance; and

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h. A list stating the annual dates on which each report, audit or other monitoring document required by this Agreement shall be delivered to the County.

8. Designation of Affordable Units. The Development shall have a total of 80 Affordable Units designated as follows:

	Units:
Extremely Low-Income:	20
Very Low-Income:	40
Low-Income:	20
TOTAL:	80

Developer shall lease Affordable Units in the Development only to Eligible Households in accordance with the Management Plan.

9. Nondiscrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920 and United States Code 42 U.S.C section 3601 – 3019, including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing. The restriction of housing to Elderly and Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law, and only with the prior approval of the selection criteria by the County.

10. Rental Agreement and Occupancy Procedures

a. Each eligible Household selected to occupy a unit in the Development shall enter into a written rental or occupancy agreement with the Developer, the form of which shall be subject to approval by the County, and must be consistent with the Program Requirements. Such rental agreement shall provide for, inter alia, good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant to annually recertify household income and size.

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

11. Restricted Unit Rents and Maximum Income

a. For the full term of this Agreement, Developer shall provide within the Development, the number and income levels of Affordable Units set forth section 8, above..

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b. Rent restrictions for all Affordable Units shall be determined annually by the applicable Affordable Rent limits calculated and approved by the United States Housing and Urban Development (HUD) and published by HCD for El Dorado County.

c. Rent for Affordable Units shall not exceed the Affordable Rent minus the Utility Allowance.

d. Twenty five percent (25%) of the Affordable Units shall be occupied by Extremely Low-Income Households, fifty percent (50%) of the Affordable Units shall be occupied by Very Low-Income Households, and twenty-five percent (25%) shall be occupied by Low-Income Households.

e. Any household certified as an Eligible Household upon occupancy of an Affordable Unit but whose income increases above the income eligibility level must pay as 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, minus the utility allowance, not to exceed the Market Rate published by HCD for El Dorado County, except that tenants of Units in the Development that has been allocated low income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by said Section 42. Developer shall adjust the rent, as applicable, at the time of the annual income recertification.

f. Rent may be increased annually upon adoption by HUD of new Affordable Rent limits and published by HCD.

g. Notwithstanding the previous subparagraph, Rents for Affordable Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the CDBG Assisted Units continue to receive the rental assistance.

12. Certification of Tenant Income and Household Size.

a. The income and household size of all households occupying Affordable Units shall be certified by Developer prior to occupancy and re-certified annually thereafter in a manner approved by the County and specified in the Management Plan and in accordance with applicable rules, regulations, and procedures governing the Program.

b. Subject to Section 7.e. above, where a household occupying an Affordable Unit designated for occupancy by an Extremely-Low or Low-Income Household no longer meets the Extremely-Low or Low-Income Household qualifications at recertification but meets the qualifications as an Eligible Household for a different income level, the Rent appropriate for that income level shall be charged to the tenant.

13. Annual Operating Budget.

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a. The fiscal year for the Development shall commence on July 1 and conclude on June 30 (“**Fiscal Year**”).

b. No later than May 1 prior to the beginning of a Fiscal Year, the Developer shall submit to the County a proposed annual operating budget on a form provided by the County (“**Annual Operating Budget**”). The proposed Annual Operating Budget shall maintain the same format and budgetary line items as established in the initial Operating Budget unless specific changes are approved in advance by the County. The proposed Annual Operating Budget shall set forth the Developer’s estimate of the Development’s income, Operating Expenses and debt service for the upcoming year, reserves, proposed rent adjustments, and a year-to-date operating statement. The total Operating Expenses in the Initial Operating Year’s Annual Operating Budget shall not exceed amount as specified in the then current HCD Uniform Multifamily Housing Regulations, Title 25, Division 1, Chapter 7, Subchapter 19, section 8310, unless approved in advance by the County after review of sufficient justification thereof. Annual Operating Budgets and rent adjustments are subject to approval by the County.

c. Increases of up to the greater of five percent (5%) or the CPI adjustments in any line item of the Annual Operating Budget shall be deemed approved by the County, provided that the total Operating Expenses in the Annual Operating Budget do not exceed the maximum amount allowed in subsection (b) herein. Developer shall operate the Development in accordance with the approved Annual Operating Budget.

14. **Required Reserves.** Developer shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Developer, earn interest, and, unless otherwise approved in writing by the County, be insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. Withdrawals from the reserve accounts shall require prior written approval of the County, except as specifically noted in subparagraphs 2 and 3 below.

a. **Replacement Reserve Account:**

1) Commencing no later than the end of the second month following the initial occupancy of the Development or such other date as the County shall designate in writing, the Developer shall establish a segregated interest-bearing replacement reserve account in an F.D.I.C. or other comparable federally-insured financial institution (“**Replacement Reserve Account**”). The Developer shall make monthly deposits from Operating Income to the Replacement Reserve Account in the amount of 500 per unit per year (\$40,500 annually, or \$3,375 per month). The County may review the adequacy of these monthly deposits on an annual basis, and require adjustments, as it deems necessary.

2) Withdrawals shall only be made for capital improvements, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Development that are reasonably required to preserve the Development. Developer may withdraw, for a qualifying maintenance improvement, from the Replacement Reserve Account up to Five Thousand Dollars (\$5,000.00) per Fiscal Year or any

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amount included in the Annual Operation Budget for the Fiscal Year of the withdrawal without advance written approval from the County. All other withdrawals from the Replacement Reserve Account must be approved in advance by the County or be included in the approved Annual Operating Budget.

3) If at any time the Replacement Reserve Account balance exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), Developer shall have an independent physical inspection of the Development, conducted by a County-approved inspector and paid for from said account. Said inspection shall evaluate the condition of the Development and determine what capital improvements are required. A copy of the inspection report shall be delivered to the County. Based on the inspection report, Developer shall develop and deliver a capital improvement work plan to the County within 60 days after the date of the inspection report. Failure of Developer to make and complete approved capital improvements within one year after approval by the County of said work plan, will be deemed a default under this Agreement.

b. Operating Reserve Account:

1) Commencing no later than the end of the second month following the initial occupancy of the Development, or such later date as the County shall designate in writing, the Developer shall establish an Operating Reserve Account or sub account within the project's general operating account ("**Operating Reserve Account**"). The minimum Operating Reserve Account balance shall be [three percent (3%)] of the annual Operating Expenses from the prior year audit, or for year one, 3% of the estimated Operating Expenses. Whenever the Operating Reserve Account balance falls below said amount, Developer shall make monthly deposits from project income to fully fund the Operating Reserve Account prior to use of any cash flow to pay Distributions.

15. Developer may transfer funds from the Operating Reserve Account only to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies (greater than five percent (5%) of the total Development rental capacity), and other expenses that vary from month to month. Developer shall not withdraw or transfer funds from this account for any other purpose without the prior written approval of the County. If the Operating Reserve Account reaches a balance equal to or greater than an amount equivalent to twelve months gross income for the Development, the County may approve a reduction in payments to the Operating Reserve Account to an amount necessary to maintain the account balance at this level.

16. Records Retention. All records and books relating to the initial development phase of the Development (application through project completion) shall be retained for a minimum period of five (5) years after the Department notifies the County that the grant agreement between HUD and the State of California has been closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relating to the operational phase of the Development shall be retained for the most recent five (5) year period, until five years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the County, the Department, HUD, or its representative.

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17. Use of Income from Operations.

a. The Developer, or its management agent, shall promptly deposit all Operating Income in a segregated account established exclusively for the Development and ensured by an agency of the federal government or other comparable federal insurance program.

b. Withdrawals from said account shall be made only in accordance with the provisions of this Agreement and the Annual Operating Budget, and shall be disbursed, applied, or reserved and set aside for payment when due for the following:

1) salaries, wages, and any other compensation due and payable to the employees or agents of the Developer employed on site in connection with the maintenance, administration or operation of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;

2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums;

3) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the County;

4) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, which are secured by liens on the Property, payments on which are to be made prior to the determination of net cash flow. Without limiting the foregoing, whether the Loan from the County requires such debt service payments as set forth in this paragraph (4) shall be determined in accordance with the terms of the Note and the Program Legal Documents;

5) other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the County;

6) deposits to required reserve accounts;

7) deferred Developer Fee

8) asset management, partnership management and similar fees, to the extent such fees are specified under the terms of financing from a public entity and approved by the County, or if there is no public entity financing, asset management, partnership management and similar fees, in accordance with the UMR Section 8314(a)

9) Payment of the annual monitoring fee to the County in the amount of \$100 per affordable unit; and

10) Distributions, in accordance with paragraph 18 of this Agreement.

The withdrawals permitted under subparagraphs 17 (4), (5), (6), (7), and (8) shall also be subject to the restrictions of paragraph 14 above.

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The Developer may depart from the foregoing priorities of payment only upon the express written approval of the County. Annual Operating Income remaining after payment of the items allowed in clauses (1) through (10) of subparagraph b of paragraph 17 above (“Net Cash Flow”) shall be distributed in accordance with paragraph 19 hereto.

18. Distributions.

- a. Developer shall be limited to annual Distributions equal to fifty-percent (50%) of the annual Operating Income remaining after payment of the items allowed in clauses (1) through (10) of subparagraph b of paragraph 17 above. If the Development generates insufficient cash flow to permit payment of Distributions in a particular year, Distributions in future years shall not be increased to cover the lack of Distributions in prior years.
- b. Developer may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future Distributions shall not reduce the otherwise permitted Distributions in those subsequent years.
- c. Distributions shall be permitted for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Developer submits a complete annual report and operating budget and the County determines that the report and budget demonstrate compliance with all Program Requirements.
- d. No Distributions shall be made to Developer in the following circumstances:
 - 1) When written notice of default has been issued by any entity, (including the County) with an equitable or beneficial interest in the Development or which has a contractual relationship with the Developer regarding the Development;
 - 2) When the Developer is in default under the terms of this Agreement, or the Program Requirements as they may be amended from time to time;
 - 3) When the County determines that the Developer or its management agent has failed to comply with the County’s written notice of any reasonable requirement for proper maintenance of the Development;
 - 4) If all currently required debt service, including mandatory payments on the Assistance, and Operating Expenses have not been paid; or
 - 5) If the Replacement Reserve or Operating Reserve Accounts are not fully funded as specified herein.

19. Use of Net Cash Flow.

Net Cash Flow shall be applied to payment of interest, principal, impound fees and charges, if any, on loans which are secured by liens on the Property and which are to be paid from Net Cash Flow, such debt service from Net Cash Flow only applies to the Loan from the County in accordance with the terms of the Note and the Program Legal Documents. Upon payment in full of the loans payable from Net

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Cash Flow, all Net Cash Flow shall be used for other purposes related to the Development as approved by the County.

20. Accounting Records. In a manner subject to County approval, Developer shall maintain, on an accrual basis, a general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development. All records and books relating to this system, except the general ledger, shall be kept for a period of at least seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. The general ledger shall be kept permanently in such a manner as to ensure that it is reasonably protected from destruction or tampering. All records shall be subject to County inspection and audit.

21. Maintenance and Management.

a. Developer is responsible for all maintenance, repair, and management functions for the Development, including without limitation, selection of tenants, recertification of household income and size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Developer shall maintain all 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 Section 882.109, and the Management Plan described in Section 5 of this Agreement.

b. The initial management agent for the Development approved by the County as of the Effective Date shall be AWI Management Corporation and the County shall have the right to approve the form of the initial management agent services contract. Any such contract for management services will not relieve the Developer of responsibility for proper performance of these duties. Any such agent to be used for the management functions of the Development as identified in this Section shall have a minimum of five (5) years' experience managing affordable housing apartments in the County, or equivalent experience as deemed appropriate by the County and shall have a principal place of business in El Dorado County. If no such local entity exists or is available to act as management agent for Developer, Developer may seek approval from the County to use an alternate management agent from outside El Dorado County. Such contract shall contain a provision allowing Developer to terminate the contract without penalty upon no more than thirty days' (30) notice.

c. Developer may operate the Development and assume management functions only with prior written approval of the County. Upon a determination by the County, and notice to the Developer thereof, that the Developer has failed to operate the Development in accordance with this Agreement, the County may require the Developer to contract with a management agent to operate the Development, or to make such other arrangements as the County deems necessary to ensure performance of the requirements of this Agreement.

22. Annual Report. No later than April 1 following the end of the fiscal year, Developer shall file with the County an annual report ("**Annual Report**"). The County shall have sixty (60) days from receipt of the Annual Report to approve such Annual Report, or to request modifications or additional information as required by this Agreement. The Annual Report shall contain a certification by the Developer as to the accuracy of such information in the Annual Report including, but not limited to the following:

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- a. Any substantial physical defects in the Development, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Developer has taken in order to maintain the Development in a safe and sanitary condition in accordance with applicable housing and building codes.
- b. The occupancy of the Development indicating 1) the number of persons in the unit; 2) tenant name; 3) initial occupancy date; 4) rent paid per month; 5) annual gross income of the tenant; 6) percent of rent and utilities paid in relation to gross income; and 7) copies of those documents used by Developer to certify or re-certify the tenant.
- c. As part of the annual report, the Developer shall submit an audit of the Development prepared by an independent certified public accountant in accordance with County audit requirements, and as specified in the Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing", published April 2018, as periodically updated, located on the Department's website here: <https://www.hcd.ca.gov/grants-funding/already-have-funding/all-rental-projects.shtml>.

23. County Review and Inspections.

- a. Upon not less than 48 hours' notice to the Developer, the County or its designee may, at any time during the term of the Agreement, enter and inspect the physical premises and inspect all income verification documentation pertaining to the persons occupying the Affordable Units. Upon request by the County, the Developer shall notify occupants of upcoming inspections of their Units in accordance with State Law.
- b. The County may request any other information that it deems necessary to monitor compliance with the Program Requirements and the requirements set forth in this Agreement and the Program Legal Documents. The Developer shall promptly provide such information.

24. Non-Restricted Units and Common Areas.

- a. Developer shall maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted or non-Restricted.
- b. Tenant selection practices for non-Restricted Units shall comply with State and federal nondiscrimination laws.
- c. The exterior walls, windows, lighting, walkways, mailboxes, landscaping, nonresidential space, and other common areas of the Development shall be safe, clean, well maintained, and in good working order.

25. Right of Refusal, Restrictions on Sale, Encumbrances.

Prior to making any of the below changes or entering into any of the below agreements, Developer shall give written notice to the County and the Department of its intention to take such action no less than 60 days prior to taking any such action.

Exhibit A - Diamond Village CDBG Regulatory Agreement

a. Except with the County's prior written approval at County's sole discretion, and Department's prior written approval at the Department's sole discretion, Developer shall not:

- 1) Make any direct or indirect sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or Development or of any of Developer's interest in either of them;
 - 2) substantially add to, remodel, remove, reconstruct, or demolish any part of the Development;
 - 3) permit the use of the Development for any purpose other than that permitted by this Agreement;
 - 4) incur any liability or obligation in connection with the Property or Development, other than for current Operating Expenses, nor incur any liability, charge, assessment, or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Property provided that the County may permit refinancing or additional financing secured by the Property to the extent necessary to maintain or improve the Development's fiscal integrity, or to maintain Affordable Rents;
 - 5) enter into any contract relating to rehabilitating or managing the Development;
 - 6) enter into any lease for more than a single rental Unit, a ground lease of the Property or any interest therein, except for the rental of Commercial Space in the Development; or
 - 7) if the Developer or its successor in interest is a limited partnership, discharge or replace any general partner or amend, modify or add to its partnership agreement, or amend, modify or add to the organizational documents of the general partner; except that it may transfer limited partner interests without such approval. The withdrawal, removal, and/or replacement of a general partner of the partnership pursuant to the terms of the partnership agreement shall not constitute a default under any of the Program Legal Documents, and any such actions shall not accelerate the maturity of the Assistance, provided that any required substitute general partner is reasonably acceptable to the County and the Department, and is selected with reasonable promptness.
- b. Any and all proposed sale, transfer, conveyance of the Property or Development, or proposed refinancing of any loans for the Development, must be approved in writing by both the County, in its sole discretion, and the Department, in the Department's sole discretion. In evaluating such requests, County and the Department will consider, among other factors, the following:
- 1) The transferor Developer is in compliance with this Agreement, or the sale, transfer, conveyance or refinance will result in the cure of any existing violations of this Agreement.

Exhibit A - Diamond Village CDBG Regulatory Agreement

- 2) The transferee Developer agrees to assume all obligations of the transferor Developer pursuant to this Agreement, the other Program Legal Documents and the Program Requirements.
 - 3) The transferee Developer demonstrates to the County's satisfaction that it has the ability and capacity to own and operate the Development in full compliance with this Agreement and the Program Requirements for the duration of this Agreement.
 - 4) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the County's security or the transferee Developer's (or Developers', as applicable) ability to comply with all Program Requirements.
 - 5) The County and Department will not approve any cash payment to the selling party, or to any party related to or affiliated with the selling party. The Developer may not cash out its equity. Deferred developer fee, and seller carry back loans, cannot be cashed out from the proceeds of a sale, transfer, conveyance or refinance.
- c. The County and Department may grant its approval for a sale, transfer, conveyance or refinance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the Development or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.
 - d. If Developer or its successor in interest is a limited partnership, the execution and delivery of the purchase option and right of first refusal agreement described in the partnership agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. The prior written consent of the County and Department is required for (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and (b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations, such written consent shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the County. Subject to this consent requirement, the exercise of rights under the partnership agreement shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.
 - e. If the Developer or its successor in interest is a limited liability company, the execution and delivery of the purchase option and right of first refusal agreement described in the operating agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance

Exhibit A - Diamond Village CDBG Regulatory Agreement

thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. The prior written consent of the County and Department is required for (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and (b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations, such written consent shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the County. Subject to this consent requirement, the exercise of rights under such the operating agreement shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.

- f. If Developer or its successor in interest is a limited partnership or limited liability company and the purchase option and right of first refusal agreement described in the partnership or operating agreement, if any, is not exercised and the Development is sold subject to low-income housing use restrictions contained in this Agreement, the written consent of the County and Department is required prior to said sale, and to the assumption without penalty of Assistance obligations by the purchaser and the release of Developer from such obligations, such written consent shall not be unreasonably withheld, but may be conditioned upon, among other requirements, the execution of an operating guaranty from the Developer in form provided by the County.
- g. The Developer agrees that if it is organized as a partnership or limited liability company, Developer shall not dissolve the partnership or limited liability company prior to the expiration of the term of this Agreement, without the prior written approval of the County and the Department.

26. Violation of Regulatory Agreement by Developer.

a. In the event of a breach, violation or default in the performance of any covenant, agreement or obligation of the Developer set forth in this Agreement, including, but not limited to, Developer's covenant to perform its obligations under the Program Legal Documents, the County shall give written notice to the Developer thereof by certified mail or any express delivery service with a delivery receipt addressed to the Developer at the address stated in this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the County within the time period specified in the notice, which shall not be fewer than 30 days, the County may declare a default and may seek legal remedies including the following:

- 1) Collect all rent and income in connections with the operation of the Development and use the same and the reserve funds for the operation and maintenance of the Development.
- 2) Take possession of the Development and bring any action necessary to enforce any rights of the Developer growing out of the operation of the Development; and, operate the Development in accordance with the terms of this

Exhibit A - Diamond Village CDBG Regulatory Agreement

Agreement until such time as the County, in its sole discretion, shall determine that the Developer is again in a position to operate the Development in accordance with the terms of this Agreement.

3) Apply to any court, State or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement or for such other relief as may be appropriate until such time as the County, in its sole discretion, shall determine that the Developer is again in a position to operate the Development in accordance with the terms of this Agreement. It is agreed by the Developer that the injury to the County arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation that would provide adequate relief to the County, would be impossible to ascertain.

4) Accelerate all amounts including outstanding principal and interest, due under the terms of the Program Legal Documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note provides that the County may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

5) The County may seek such other remedies as may be available under law.

b. In the event that the breach or violation includes Rent charged to tenants or other charges in excess of those permitted under this Agreement, the County may demand that Developer immediately return all such excess Rents or other charges to the affected households. If legal action is necessary to enforce the provisions of this Agreement, the County may seek the return of such overcharges to the affected households.

c. The remedies of the County hereunder and under the other Program Legal Documents are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the County of any one or more of its other remedies.

d. In the event of either a default under this Agreement or the Program Legal Documents by the Developer, County shall provide notice of such default to the Department simultaneously with the giving of notice to the Developer.

27. Controlling Agreement

- a. Developer specifically agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement, the Program Requirements, and the Program Legal Documents shall control as to the use of the Loan proceeds and all Operating Income from the Development.

Exhibit A - Diamond Village CDBG Regulatory Agreement

- b. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the other Program Legal Documents, the terms of this Agreement shall control.

28. Assignment of County Rights. The County retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder to a County-owned or controlled entity such as its Housing Authority. In addition, the County may designate or hire an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof. In the event the County assigns all or part of its rights for the purpose of ensuring compliance and enforcement, or designates or hires an agent to act on its behalf with respect to monitoring and enforcement as described in this paragraph, the County shall remain obligated under, and ultimately responsible for fulfilling, the terms of this Agreement.

29. Hazard and Liability Insurance.

- a. The Developer 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 required by the County and as set forth in Exhibit B attached hereto and incorporated herein. 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. In the event of any fire or other casualty to the Development or eminent domain proceedings resulting in condemnation of the Development or any part thereof, Developer shall be obligated to rebuild the Development, and to use all available insurance or condemnation proceeds therefore, provided that, as determined by the County in its sole discretion, (i) such proceeds are sufficient to keep the Assistance in balance and rebuild the Development in a manner that provides adequate security to the County for repayment of the Assistance or if such proceeds are insufficient, then Developer shall have funded any deficiency (ii) the County shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (iii) no material breach or default then exists under the Program Legal Documents. If the casualty or condemnation affects only part of the Development and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Assistance in a manner that provides adequate security to the County for repayment of the remaining balance of the Assistance.

- c. In the event that the Developer fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project timely, the Department and County shall have the right, in addition to any other remedies granted in the Program Legal Documents or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default hereunder.

- d. Insurance proceeds and condemnation awards for any loss to or taking of the Project, or any portion thereof, shall be applied or utilized by Developer as provided in the Deed of Trust, executed by Developer and referred to in the Recitals hereof.

Exhibit A - Diamond Village CDBG Regulatory Agreement

30. Amendment. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of all of the parties hereto.

31. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

32. Binding on Successors. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transfers, successors in interest and assigns, provided, however, that the Developer may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the County. The term "Developer" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary, or possessory interest of Developer in the Development.

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

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

35. Recording Conditions, Covenants and Restriction. This Agreement shall run with and burden the Property and on terms, conditions, exceptions, obligations, reservations and restrictions hereby imposed, shall be deemed covenants and restrictions running with the land, and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Developer and all its successors in interest and assigns.

36. Indemnification of County. Waiver

- a. To the fullest extent permitted by law, Developer and its successors in interest, shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, demands, judgments, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Developer or its officers, agents, or employees in rendering the services, operations, or performance hereunder, including, but not limited to, any of the following: (1) the making of the Loan to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the County's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum.

Exhibit A - Diamond Village CDBG Regulatory Agreement

Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the County and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the County, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the County. Developer's duty to indemnify and defend the County shall survive the term of this Agreement.

- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: "A general release does not extend to claims that the creditor OR RELEASING PARTY does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party".

37. Indemnification of Department; Waiver.

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

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

c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as

Exhibit A - Diamond Village CDBG Regulatory Agreement

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

38. Waiver. No waiver by the County or Department of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation hereof or default hereunder. All waivers must be in writing signed by the party making the waiver in order for such waiver to be effective.

39. Third-Party Beneficiaries.

The Developer and the County expressly agree and acknowledge that the Department is an intended third-party beneficiary to the provisions of this Agreement. Among other things, the performance of this Agreement benefits the Department by creating, rehabilitating, or otherwise making available, affordable housing units within the State of California, and allows the Department to ensure compliance with applicable program requirements governing the Development. The Department is the sole third-party beneficiary and no other parties are intended or should be deemed as such.

40. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of this Agreement.

41. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California and the United States of America. All code references herein refer to the California state statutes, unless specifically indicated otherwise.

42. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

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

To County:

County of El Dorado
Long Range Planning / HCED Program
2850 Fairlane Court, Bldg. C
Placerville, CA 95667
Phone: (530) 621-5355
Email: planning@edcgov.us

Exhibit A - Diamond Village CDBG Regulatory Agreement

To Developer:

Diamond Village Apartments, LP

16935 W Bernardo Dr, Suite 238
San Diego, CA 92127
Attention: Sergei Oleshko
Phone: (916) 949-8882
Email: Sergei@SNOFoundation.org

43. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to reasonable attorneys' fees and costs as determined by the trier of fact in that forum.

44. County's Approval. Whenever this Agreement or any of the other Program Legal Documents requires the approval, consent, or other determination by the County, the County shall act reasonably and in good faith.

45. Compliance with IRC Section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department and County agree to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.

46. 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 Developer 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.

47. Special Conditions. The parties acknowledge that there are no special conditions imposed.

48. Contract Administration. The County Planning and Building Department Director, or designee, is the Contract Administrator and shall have authority to issue interpretations, approvals, waivers, and amendments, relating to this Agreement that do not change the material terms of the Agreement. All other waivers or amendments shall require the approval of the Board of Supervisors. Approval by the County as required in this Agreement shall be approval by the County Planning and Building Department Director, or designee, unless specifically stated otherwise.

49. Authorized Signature. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

50. Exhibits. The Exhibits to this Agreement, as itemized below, are attached hereto and incorporated herein:

- Exhibit A: Legal Description of Property

Exhibit A - Diamond Village CDBG Regulatory Agreement

- Exhibit B: Insurance Requirements
- Exhibit C: RIDER TO REGULATORY AGREEMENT

(Signatures on Following Page)

Exhibit A - Diamond Village CDBG Regulatory Agreement

WITNESS, the County and the Developer have executed this Agreement as of the date first above written.

DEVELOPER

DIAMOND VILLAGE APARTMENTS, LP
a California Limited Partnership

By: _____,
Name: Sergei Oleshko,
Trustee, SNO Foundation
Its Administrative General Partner

By: _____,
Name: Robert W. Lang,
PSCDC Diamond Valley LLC
Its Managing General Partner

[Signatures Continued on Following Page]

Exhibit A - Diamond Village CDBG Regulatory Agreement

County

County Of El Dorado,
a political subdivision of the State of California

By: _____
Name: Karen L. Garner
Title: Planning and Building Department Director

[Notary Acknowledgments on Following Pages]

NOTARY ACKNOWLEDGMENTS

[SEE ATTACHED]

Exhibit A - Diamond Village CDBG Regulatory Agreement

Exhibit "A" to Regulatory Agreement

REAL PROPERTY DESCRIPTION

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

A portion of the South 1/2 of Section 19, and the North 1/2 of Section 30, T.10N., R.11E.,
M.D.M., being Tract 1 of RS 23-64, more particularly described as follows:

Parcel A, of Parcel Map entitled Diamond Springs Village Apartments, filed June 2, 2022, in book
52, page 80 of Parcel Maps.

APN 051-461-068

Commonly known as 6018 Service Drive, Diamond Springs, California 95619.

Exhibit A - Diamond Village CDBG Regulatory Agreement

Exhibit "B" to Regulatory Agreement

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).

Developer, Contractors, and Subcontractors shall comply with all insurance requirements outlined herein. These requirements are in addition to, and not in lieu of, any other insurance coverages required elsewhere in the Regulatory Agreement and elsewhere in the Standard Agreement. References to Developer includes Contractors and Subcontractors as appropriate. Prior to construction loan closing, the Developer, Contractors, and Subcontractors shall procure and maintain, and provide proof of, all required insurance coverages 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 Developer, his agents, representatives, employees, and any 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 CDBG Program and the County.

Developer's coverage is required to be in full force and effect for the complete affordability period for the Development.

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
Community Development Block Grant Program (CDBG)
2020 West El Camino Drive, Suite 200
Sacramento, CA 95833

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

El Dorado County
c/o Planning and Building Department, HCED

Exhibit A - Diamond Village CDBG Regulatory Agreement

2850 Fair Lane Court, Bldg. C
Placerville, CA 95667

A. General Provisions Applying to All Policies

- 1) Coverage Term –The Developer’s coverage needs to be in force for the complete affordability period of each Approved Project. The Developer’s coverage needs to be in force until a certificate of occupancy is issued for each Approved Project. No work may be performed by Developer, or a contractor or subcontractor, until and unless all insurances required by this Agreement are in full force and effect. If insurance expires during the term of the Agreement/affordability period/certificate of occupancy issuance, as applicable, a new certificate must be received by the County and the Department at least thirty (30) days prior to the expiration of said insurance. Any new insurance must comply with the original terms of this Regulatory Agreement.
- 2) Policy Cancellation or Termination & Notice of Non-Renewal –Developer is responsible to notify County and the Department within fifteen (15) business days prior to any actual or proposed cancellation, non-renewal or material change that affects required insurance coverage. No policy may be cancelled upon less than thirty (30) days’ prior written notice from the insurer to the insured, the County, and the Department. New certificates of insurance are subject to the approval of the County and the Department and the Developer agrees no services will be commenced or performed prior to obtaining such approval. In the event Developer fails to keep in effect at all times the specified insurance coverage, the County may, in addition to any other remedies it may have, terminate this Regulatory Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Regulatory Agreement.
- 3) Premiums, Assessments and Deductibles – Developer for each Approved Project is responsible for the payment of all premiums, policy assessments, deductibles or self-insured retentions associated with their respective insurance programs.
- 4) Primary Clause – Any required insurance contained in this Regulatory Agreement shall be primary, and not excess or contributory, to any other insurance carried by the County or the Department.
- 5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VII. In the event the insurer’s A.M. Best rate declines below an A:VII rating, Developer is required to provide a replacement policy from another acceptable insurer within 10 business days. If Developer and/or contractors

Exhibit A - Diamond Village CDBG Regulatory Agreement

are self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Acceptance of self-insurance is within the sole discretion of the Department and the County, and the Department and the County reserve the right to require insurance from third-party commercial insurers.

- 6) Endorsements – Any required endorsements requested by the County or the Department must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate the Developer’s or contractor’s obligations under this Regulatory Agreement or the terms specific to the relevant Approved Project, nor does the availability or limits of any insurance policies required herein in any way limit the liability of any Developer or contractor, to the County and the Department hereunder, nor does it in any way limit the liability of such parties to the County and the Department in regards to any indemnification obligations of such parties herein.
- 8) Available Coverages/Limits – All coverage and limits available to the Developer shall also be available and applicable to the County and the Department.
- 9) Satisfying an SIR - All insurance required by this Agreement and any required by the terms specific to the relevant Approved Project must allow the Department to pay and/or act as the Developer’s agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Developer’s agent in satisfying any SIR is at the Department’s discretion.
- 10) Use of Contractors and Subcontractors - Developer’s insurance shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates of insurance and endorsements for all contractors and subcontractors, equal to the policies, coverages, and limits required of Developer, to the Department and County for review and approval.

MINIMUM SCOPE OF INSURANCE AND MINIMUM LIMITS OF INSURANCE

B. Developer’s Insurance Requirements

Developer and/or contractor(s) shall provide the following certificates of insurance evidencing the below coverages. No work shall be commenced on any Approved Project prior to such coverages being in effect and the required certificate(s) have been provided to the County and the Department. Developer shall have insurance coverage that shall be at least as broad as:

Exhibit A - Diamond Village CDBG Regulatory Agreement

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.

The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Developer's or contractor's limit of liability.

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, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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). Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the relevant Approved Project involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

California Department of Housing and Community Development, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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.

Exhibit A - Diamond Village CDBG Regulatory Agreement

Developer shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Agreement and the relevant Approved Project. In addition, employer's liability limits of \$1,000,000 are required. By signing this Agreement, Developer acknowledges compliance with these regulations. A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California and El Dorado County must be attached to the certificate.

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

California Department of Housing and Community Development, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, to be named as certificate holders.

5. Course of Construction/Builder's Risk Insurance - Course of Construction insurance covering all risk of physical damage or all risks of loss, , on the structure, materials on and offsite, and materials in transit, for an amount equal to the full amount of the construction contract(s) with no coinsurance penalty provisions. This coverage must include coverage for flood if the Property is located in a Special Flood Hazard Area as determined by the Federal Emergency Management Agency. Additionally, Developer or Developer's general contractor must obtain a builder's risk installation floater for coverage of the contractor's labor, materials, and equipment to be used for completion of work performed under the construction contract(s). The minimum amount of coverage to be carried must be equal to the full amount of the construction contract(s).

Course of Construction/Builder's Risk Insurance must be provided on an "all risk" basis insuring the interests of the Department, the County, the Developer, contractors and material suppliers. The Developer 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.

6. Property Insurance – The Developer shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, including all risk coverage or standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of full replacement value of the Development for the duration of the term of the Affordability Period. Coverage amount may be adjusted for fluctuation in replacement values. This coverage is required upon completion of construction of the Development, or upon closing of the financing for the Development if it is a rehabilitation

Exhibit A - Diamond Village CDBG Regulatory Agreement

project.

7. Flood Insurance

Developer shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). Developer shall obtain flood insurance coverage for the Approved Project if required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Developer shall obtain flood insurance under the National Flood Insurance Program for activities located in any area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards. Such insurance shall be obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation). Developer shall obtain such coverage for the duration of the Affordability Period in an amount equivalent to the lesser of:

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

C. Contractor's and Subcontractors Insurance Requirements

Contractors and Subcontractors shall be subject to all of the same insurance policy, endorsement, coverage, and limit requirements as the Developer for the following insurance requirements:

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

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, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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).

California Department of Housing and Community Development, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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.

Exhibit A - Diamond Village CDBG Regulatory Agreement

California Department of Housing and Community Development, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, to be named as certificate holders.

D. 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, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, 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, its officers, officials, agents and employees, and the County of El Dorado, its officers, agents and employees, 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

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

California Department of Housing and Community Development, its officers, officials, agents and employees, and the County of El Dorado, its officers, officials, agents and employees, to be named as certificate holders.

E. Deductibles and Self-Insured Retentions

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

Verification of Coverage

Developer 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 County and 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 expiration of the Affordability Period.

F. 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, agents, 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 Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations.
2. County of El Dorado, its officers, officials, agents, 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 Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations.
3. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the Department and/or the County, their officers, officials, agents, employees, and volunteers.

Exhibit A - Diamond Village CDBG Regulatory Agreement

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.

G. 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 Developer shall obtain a separate Railroad Protective Liability policy acceptable to the County and the Department.

H. Pollution Legal Liability Insurance

If Pollution Legal Liability coverage is required, Developer 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.

Exhibit B - Diamond Village Deed of Trust

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

Recording requesting by,
and when recorded mail to:
El Dorado County
Planning and Building Department
ATTN: HCED
2850 Fair Lane Court, Bldg. C
Placerville, CA 95667

Space above this line for Recorder's use

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND
FIXTURE FILING
(Acquisition and Administration of Real Property for Multifamily Housing Project)
LOAN NUMBER 21-CDBG-HK0098

THIS DEED OF TRUST is dated as of _____, 2023, and is made by Diamond Village Apartments, LP, a California Limited Partnership with its principal office at 16935 W Bernardo Drive, Suite 238, San Diego, CA 92127 ("Borrower"), to Placer Title Company, a California corporation, as trustee (the "Trustee"), whose address is 301 University Ave, Suite 120, Sacramento, CA 95825, for the benefit of the County of El Dorado, a political subdivision of the State of California (the "Beneficiary" or "Lender"), whose address is 2850 Fair Lane Court, Bldg. C, Placerville, CA 95667.

A. Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, conveys, transfers and assigns to Trustee, in trust, with power of sale and right of entry and possession, all of Borrower's rights, title and interest now held or hereafter acquired in and to the following: (1) All of that certain real property located at 6018 Service Drive, Diamond Springs, County of El Dorado, California 95619, identified by Assessor's parcel numbers 051-461-068, County of El Dorado, and more fully described in Exhibit A, attached hereto and made a part hereof (the "Property"); (2) All buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the Property and owned by Borrower or in which Borrower has an interest; (3) All rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances,

CDBG Deed of Trust
Dev.: Diamond Village Apartments, LP
Contract No.: 21-CDBG-HK0098

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furniture, shades, awnings, screens, Venetian blinds and other furnishings, now or hereafter attached to the Property; and (4) all accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds arising from or related to the Property; together with all replacements, proceeds, additions and accessions to the foregoing, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said Property are herein referred to as the "Property and Improvements." The listing of specific rights or property shall not be interpreted as a limit of the general terms of this Deed of Trust.

B. The interests herein conveyed are for the purpose of securing to Lender (1) the repayment of the indebtedness evidenced by Borrower's note dated on or about even date herewith, in the principal sum of One Million Four Hundred Ninety Eight Thousand And 00/100 Dollars (\$ \$1,498,000) (the "Note"), or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Beneficiary, together with interest thereon according to the terms of the Note, and any and all amendments, modifications, extensions or renewals of the Note; (2) the performance of the covenants and agreements of Borrower herein contained, or contained in the Note, the Standard Agreement between Beneficiary and the California Department of Housing and Community Development dated December 23, 2022 (the "Standard Agreement"), the Regulatory Agreement by and between the Borrower and Beneficiary dated on or about even date herewith (the "Regulatory Agreement"); and (3) any other obligation of Borrower to Beneficiary now or hereafter created, whether acquired by assignment from third parties or otherwise, where such obligation specifically recites that it is secured by this Deed of Trust.

1. The Note is evidence of the loan made by Beneficiary to Borrower (the "CDBG Loan") pursuant to the Community Development Block Grant ("CDBG Program") for the construction of an 81-unit rental project located at 6018 Service Drive, Diamond Springs, County of El Dorado, California 95619, identified by Assessor's parcel numbers 051-461-068, County of El Dorado (the "Project").

2. The CDBG Loan is further subject to the provisions of the Standard Agreement, and the Regulatory Agreement (collectively, the "Loan Documents"). The Loan Documents, among other things, govern, regulate and restrict development and construction of the Project.

C. Borrower covenants that Borrower has the right to grant and convey the Property and Improvements, and that Borrower will warrant and defend generally the title of the Property and Improvements against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest, on the indebtedness evidenced by the Note. All payments received by Lender under the Note shall be applied by Lender first to interest payable on the Note, and second to principal due on the Note, except for the last payment which is due at the

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end of the term and shall be any outstanding principal balance of the Note and any interest accrued but not yet paid.

2. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this Paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall pay when due all encumbrances, charges and liens, with interest in accordance with the term thereof, on the Property or any portion which are inferior or superior to this Deed of Trust. Borrower shall have the right to contest, in good faith, any claim or lien provided that Borrower does so in a diligent manner, without prejudice to the Lender, and without any delays in the completion of the construction work. Borrower shall provide a bond or surety satisfactory to Lender in an amount adequate, as determined by Lender, to cover any amounts disputed by the Borrower.

3. Hazard Insurance.

a. Borrower shall keep the improvements now existing or hereafter erected or placed on the Property, insured against loss of fire or flood, as required, or hazards under a policy approved by Lender and which provides "special form" coverage in an amount at least equal to the replacement value of the structure. In addition, Borrower shall insure against loss all furniture, equipment, and other personal property owned by Borrower related to the operation of the Property as a residential facility. The foregoing requirements shall apply to any and all structures now or hereafter placed on the Property.

b. The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier, or in a manner agreed to by the Lender.

c. All insurance policies and renewals thereof shall be with loss payable to the Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

d. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not hereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired,

Exhibit B - Diamond Village Deed of Trust

subject to the rights of senior lienholders, if any, the insurance proceeds shall be applied to the sums secured by this Deed of Trust with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

e. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the payment or payments specified in the Note or change the amount of such payments. If under Paragraph 19 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

f. In the event the Borrower fails to maintain insurance coverage, Lender may purchase insurance in such amounts and in such coverages as it may elect and all amounts paid therefore shall become part of the principal of the loan and shall be secured by this Deed of Trust. Purchase of insurance by the Lender shall not be considered a waiver of any right to appropriate remedies under this Deed of Trust.

4. Liability Insurance. Borrower shall keep general liability insurance for the Property and Improvements in the amount and type as required by Lender. The insurance carrier shall be chosen by the Borrower subject to approval by the Lender; provided, that such approval shall not be unreasonably withheld. All premiums shall be paid by Borrower. Lender shall be named as an additional loss payee.

5. Preservation and Maintenance of Property. Borrower agrees: (a) to keep the Property and Improvements in decent, safe, sanitary and tenantable condition and repair and permit no waste thereon or thereto; (b) not to commit or suffer to be done or exist on or about the Property or Improvements any condition causing the Property to become less valuable; (c) not to construct any buildings or improvements on the Property other than the buildings and improvements contemplated by the Loan Documents or add to, remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property other than as contemplated by the Loan Documents; (d) to repair, restore, or rebuild promptly any buildings or improvements on the Property which may become damaged or be destroyed while subject to the lien of this Deed of Trust; (e) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or Improvements, or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor any covenant, condition or restriction affecting the Property; (f) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the

Exhibit B - Diamond Village Deed of Trust

Property or Improvements without the Lender's prior written consent; and (g) not to alter the use of all or any part of the Property without prior written consent of Lender.

6. Protection of Lender's Security.

a. Borrower shall appear and defend any action or proceeding purporting to affect the security hereof or the rights of the Lender. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property or Improvements, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or descent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs.

b. Any amounts disbursed by Lender pursuant to this Paragraph 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the legal rate of interest. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder.

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

8. Condemnation.

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the rights of senior lienholders. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, subject to any claims of prior lienholders, with the excess, if any, paid to Borrower. In the event of the partial taking of the Property, unless Borrower and Lender otherwise agree in writing, and subject to any claims of prior lienholders, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

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b. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

c. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of payment or payments specified in the Note or change the amount of such payments.

9. Awards and Damages. All judgments, awards of damages, settlements, claims paid and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property or Improvements by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or Improvements or any part thereof by insured casualty, and (c) any other taking, injury or damage to all or any part of the Property or Improvements, are hereby assigned to and shall be paid to the Lender. The Lender is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Lender shall determine at its option. The Lender shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Lender may be released to Borrower upon such conditions as the Lender may impose for its disposition. Application of all or any part of the amounts collected and received by the Lender or the release thereof shall not cure or waive any default under this Deed of Trust. Any and all rights granted to Lender by this Paragraph shall specifically be subject to the rights of the holders of senior liens and encumbrances approved by Lender.

10. Uniform Commercial Code Security Agreement, Financing Statement and Fixture Filing.

a. This Deed of Trust is a security agreement and financing statement under the Uniform Commercial Code for the benefit of Lender as secured party for any of the items specified above as part of the Property or Improvements which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. This Deed of Trust is filed as a fixture filing and covers goods which are or are to become fixtures. The address of the principal place of business of Lender (secured party) from which information concerning the security interest may be obtained and the mailing address of Borrower (debtor) are set forth in this Deed of Trust. The types or items of collateral are described in Paragraph A of this Deed of Trust. Borrower agrees that the Lender may file any appropriate document in

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the appropriate index as a financing statement for any of the items specified above as part of the Property or Improvements. In addition, Borrower agrees to execute and deliver to the Lender, upon the Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as the Lender may require to perfect a security interest with respect to said items. Borrower also agrees to execute and deliver to Lender, upon Lender's request, any and all documents in such form as the Lender may require to perfect a security interest in any structure placed on the property. Borrower shall pay all costs of filing such financing statements or recording Lender's legal interest in any structure, and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record or title searches for financing statements, liens, and releases thereof, as the Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except as otherwise expressly permitted by Lender. Upon an acceleration as provided in Paragraph 19 hereof, the Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at the Lender's option, may also invoke the other remedies provided in this Deed of Trust, in the Note and in Loan Documents as to such items. In exercising any of said remedies, the Lender may proceed against the items of real property and any items of personal property specified above as part of the Property and Improvements separately or together and in any order whatsoever, without in any way affecting the availability of the Lender's rights or remedies under the Uniform Commercial Code or of the other remedies provided in this Deed of Trust, in the Note, in the Loan Documents, or by law.

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

c. Similarly, the mention in any such financing statement of (1) compensation for damage to or destruction of the Property or Improvements by insured casualty, or (2) any judgment, award, or other compensation for a taking of the Property and/or Improvements by eminent domain, or (3) the rents, royalties, issues, accounts and profits of the Property and Improvements under leases, shall never be construed as in any way altering any of the Lender's rights as determined by this Deed of Trust or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Lender in the event that any court or judge shall at any time hold with respect to (1), (2), or (3) of this

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Paragraph that notice of the Lender's priority of interest to be effective against a particular class of person, including without limitation the federal government or any subdivision or entity thereof, must be filed as provided for in the Uniform Commercial Code.

11. Borrower Not Released. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment by reason of any demand made by the original Borrower or Borrower's successors in interest.
12. Forbearance by Lender not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.
13. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.
14. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.
15. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands and communications between the Lender and the Borrower shall be sufficiently given if, and shall not deemed given unless dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with the delivery receipt, to the address of the Lender shown below. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date upon which delivery was attempted. For the purposes of this section the address of the Lender is:

El Dorado County
Planning and Building Department
ATTN: HCED
2850 Fair Lane Court, Bldg. C
Placerville, CA 95667

Exhibit B - Diamond Village Deed of Trust

Either the Borrower or Lender may designate another address for service of notices, demands or other communications by notice to the other party in the manner provided herein.

16. Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of California. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, except as set forth in the Note and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

17. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

18. Transfer of the Property; Assumption.

a. If all or any part of the Property or Improvements, or an interest therein, is sold or transferred by Borrower without Lender's prior written consent, excluding exceptions set forth in the Note or Regulatory Agreement, if any, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property or Improvement is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this Paragraph and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

b. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Paragraph 15 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraph 19 hereof.

Exhibit B - Diamond Village Deed of Trust

19. Acceleration; Remedies.

a. Except as provided in Paragraph 18 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, the Note, including the covenants to pay when due any sums secured by this Deed of Trust, or the Loan Documents, Lender shall mail notice to Borrower as provided in Paragraph 15 hereof specifying: (a) the breach; (b) the action required to cure such breach; (c) a date, no less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (d) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property and Improvements. However, in the event of a nonmonetary breach which cannot reasonably be cured within the time period set forth in such notice, the loan may not be accelerated hereunder if within said designated time period Borrower has given written notice to Lender of Borrower's intention to cure said breach, has commenced to cure such breach and has diligently prosecuted and effected such cure which shall be completed no later than 60 days from the date notice of such breach is given. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph, including, but not limited to, reasonable attorneys' fees.

b. If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property and Improvements to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property and Improvements at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property and Improvements at any sale.

c. Trustee shall deliver to the purchaser Trustee's deed conveying the Property and Improvements so sold without any covenant or warranty, expressed

Exhibit B - Diamond Village Deed of Trust

or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (1) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (2) to all sums secured by this Deed of Trust; and (3) the excess, if any, to the person or persons legally entitled thereto as determined by Trustee.

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

a. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property and Improvements, provided that Borrower shall, prior to acceleration under Paragraph 19 hereof or abandonment of the Property, have the right to collect such rents as they become due and use them in accordance with the provisions of the Loan Documents.

b. Upon acceleration under Paragraph 19 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and Improvements and to collect the rents of the Property and Improvements including those past due. All rents collected by Lender or the Receiver shall be applied first to payment of the costs of management of the Property and Improvements and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received. The provisions of this Paragraph and Paragraph 19 shall operate subject to the claims of prior lienholders.

21. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and Improvements and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property and Improvements without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

22. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property and Improvements, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

23. Request for Notice. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address.

24. Statement of Obligation. Lender may collect a fee not to exceed \$25 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

Exhibit B - Diamond Village Deed of Trust

25. Use of Property. Borrower shall not permit or suffer the use of any of the Property or Improvements for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

26. Regulatory Agreement Controls. In the event of any inconsistencies between the terms set forth in the Regulatory Agreement and the terms of this Deed of Trust, the terms of the Regulatory Agreement shall control.

27. Tax Credit Requirement. Notwithstanding anything to the contrary contained herein or in any documents secured by this deed of trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the property encumbered by this deed of trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended ("Code"), shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

28. Authorized Signature. The Borrower and the undersigned individuals hereby represent that the undersigned individuals executing this Agreement on Borrower's behalf are fully authorized to do so by law or other appropriate instrument and to bind upon Borrower the obligations set forth herein.

(Signatures on Following Page)

Exhibit B - Diamond Village Deed of Trust

In Witness Whereof, Borrower has executed this Deed of Trust on the date first set forth above.

BORROWER

BORROWER'S ADDRESS

*Diamond Village Apartments, LP,
a California Limited Partnership*

*16935 W Bernardo Drive, Suite 238,
San Diego, CA 92127*

By: _____,
Name: Sergei Oleshko,
Trustee, SNO Foundation
Its Administrative General Partner

By: _____,
Name: Robert W. Lang,
PSCDC Diamond Valley LLC
Its Managing General Partner

All signatures must be acknowledged

Exhibit B - Diamond Village Deed of Trust

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

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

A portion of the South 1/2 of Section 19, and the North 1/2 of Section 30, T.10N., R.11E., M.D.M., being Tract 1 of RS 23-64, more particularly described as follows:

Parcel A, of Parcel Map entitled Diamond Springs Village Apartments, filed June 2, 2022, in book 52, page 80 of Parcel Maps.

APN 051-461-068

Commonly known as 6018 Service Drive, Diamond Springs, California 95619.

Exhibit C - Diamond Village Promissory Note

EL DORADO COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

PROMISSORY NOTE

SECURED BY A DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT & FIXTURE FILING

(Acquisition and Administration of Real Property for Multifamily Housing Project)
(Residual Receipts Loan)

\$1,498,000

Date: _____, 2023

Loan No. 21-CDBG-HK0098

FOR VALUE RECEIVED, the undersigned, Diamond Village Apartment LP, a California Limited Partnership with its principal office at 16935 W Bernardo Drive, Suite 238, San Diego, CA 92127 (the "Borrower"), hereby promises to pay to the order of the County of El Dorado (hereinafter the "County") a political subdivision of the State of California, in care of the Planning and Building Department, with its principal office at 2850 Fair Lane Court, Bldg. C, Placerville, California 95667, a principal amount equal to One Million Four Hundred Ninety Eight Thousand And 00/100 Dollars (\$1,498,000) or so much thereof as may be advanced by the County to the Borrower pursuant to a Regulatory Agreement dated of even date herewith by and between the Borrower and the County (the "Regulatory Agreement"), and a Standard Agreement 21-CDBG-HK0098 between the County and the Department of Housing and Community Development (hereinafter the "Department"), a public agency of the State of California with its principal office at 2020 W. El Camino Avenue, Suite 200, Sacramento, California 95833 (mailing address: P.O. Box 952054, Sacramento, CA 94252-2054) dated June 29, 2022 (the "Standard Agreement"), together with interest thereon as specified herein. The obligation of the Borrower in respect of all such advances is subject to the terms of (a) the Regulatory Agreement, (b) this Note, (c) the Deed of Trust and Assignment of Rents dated of even date herewith securing this Note (the "Trust Deed"), and (d) the Standard Agreement. (Hereinafter, the Trust Deed, the Regulatory Agreement and the Standard Agreement are collectively referred to as the "Loan Documents".)

1. This Note evidences the obligation of the Borrower to the County for the repayment of funds loaned to the Borrower from the County for the purpose of assisting the Borrower to develop the Diamond Springs Village Apartments which is a proposed new construction 81-unit family apartment complex. The project will consist of ten multifamily residential buildings consisting of a total 80 residential units, including 20 one-bedroom, 40 two-bedroom and 20 three-bedroom apartments. A 3,800± square foot community building will include an office, laundry room, food prep area, community room and an art room, as well as an on-site manager's apartment. The balance of the site will include paved access, 190 parking spaces (65 covered) two play areas and landscaping, as more fully described in the Regulatory Agreement (the

Exhibit C - Diamond Village Promissory Note

“Development”) and to be located on that particular property described in the Trust Deed (the “Property”).

2. The Borrower agrees to pay the entire unpaid principal amount advanced under the Loan Documents and this Note, together with all accrued but unpaid interest thereon, if any, as follows:
 - a. The entire unpaid principal balance together with all accrued but unpaid interest thereon shall be due and payable in full on the fifty-fifth (55th) anniversary of the date first set forth above.
 - b. Interest on the unpaid principal balance advanced under the Loan Documents and this Note shall accrue from the date of such advance at the simple interest rate of three percent (3%) per annum with interest payments deferred as set forth in paragraph a, above.
3. The amount due and payable under this Note and the Trust Deed is payable at the principal office of the County set forth above, or at such other place or places as the County may designate to the Borrower in writing from time to time, in any coin or currency of the United States of America which on the respective date of payment thereof shall be legal tender for the payment of public and private debts.
4. All covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Note. If any installment under this Note is not paid when due or any default occurs in the agreements contained in this Note or the Loan Documents, the entire principal amount outstanding and any accrued interest thereon shall become due and payable immediately at the option of the County. All amounts past due shall bear interest at the legal rate of interest. The date specified for payment shall not be less than thirty days from the date such notice is mailed. The County may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. In the event of default, the County may at its option, exercise all of its rights and remedies enumerated herein, which rights are in addition to and not in limitation of any other rights the County may have under applicable law. If suit is brought to collect this Note, the County shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees and costs. The following shall also constitute default under this Note: occurrence of (a) the Borrower's becoming insolvent or bankrupt or being unable or admitting in writing its' inability to pay its' debts as they mature or making a general assignment with creditors; (b) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower which proceedings are not dismissed within sixty (60) days of institution; (c) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against the Borrower which proceedings are not dismissed within sixty (60) days of institution; or (d) dissolution of the corporate or partnership structure of the Borrower.

Exhibit C - Diamond Village Promissory Note

5. No delay or failure of County in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by County or Department shall be deemed a waiver of any such right or remedy.
6. The Borrower hereby agrees to pay all costs and expenses, including reasonable attorneys' fees and costs, which may be incurred by the County in the enforcement of this Note, the Trust Deed, or any term or provision thereof. Each maker, endorser, surety, and guarantor of this Note hereby jointly and severally waives demand, protest, presentment, notice of nonpayment, notice of protest, notice of dishonor, and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of said amount may be extended from time to time by the County without notice. After the Trust Deed is executed, the obligations under this Note shall be without recourse against the Borrower and any partners, general or limited, of the Borrower.
7. Any notice to the Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to the Borrower at the address stated below, or to such other address as the Borrower may designate by written notice to the County. Any notice to the County shall be given by mailing such notice by certified mail, return receipt requested, to the County at the address stated above, or at such other address as may have been designated by written notice to Borrower.
8. This Note shall be binding upon the Borrower and its successors and assigns. The Borrower shall not make any sale, assignments, or conveyance, or transfer in any other form, of the Development referred to above or any part thereof or of any of its interest therein other than in accordance with the terms of the Loan Documents and with the prior written approval of the County.
9. The Borrower shall not be entitled to pay the indebtedness evidenced by this Note, or any part thereof, prior to or in advance of the time for payment, without the prior written consent of the County.
10. This Note shall be construed in accordance with and be governed by the laws of the State of California.
11. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby unless, in the sole discretion of the County, the invalidity, illegality, or unenforceability of the provision negates the program purpose and/or threatens the security of the County.
12. In the event of any inconsistencies between the terms set forth in the Loan Documents and the terms of this Note, the terms of the Loan Documents shall prevail.
13. The Borrower hereby certifies to the County that this is the Note described in and secured

Exhibit C - Diamond Village Promissory Note

by the Trust Deed covering the real and personal property therein described.

14. The Borrower and the undersigned individuals hereby represent that the undersigned individuals executing this Agreement on Borrower's behalf are fully authorized to do so by law or other appropriate instrument and to bind upon Borrower the obligations set forth herein

Executed in the County of El Dorado, California.

BORROWER

Diamond Village Apartment LP,
a California Limited Partnership

BORROWER'S ADDRESS

16935 W Bernardo Dr. Suite 238
San Diego CA 92127

By: _____,
Name: Sergei Oleshko,
Trustee, SNO Foundation
Its Administrative General Partner

By: _____,
Name: Robert W. Lang,
PSCDC Diamond Valley LLC
Its Managing General Partner

RIDER TO REGULATORY AGREEMENT

State of California
Department of Housing and Community Development (Department)
Community Development Block Grant Program

DIAMOND VILLAGE APARTMENTS, LP

Pursuant to that certain Standard Agreement number 21-CDBG-HK-00098, entered into on the 29th day of June 2022, by and between the California Department of Housing and Community Development (“Department”) and County of El Dorado (“County”) (“Standard Agreement”), the County and Diamond Village Apartment LP (“Developer”) entered into that certain Regulatory Agreement, dated _____, _____, 2023, defined as the legal instrument that conveys the Project Funds to the development (“Regulatory Agreement”). This RIDER TO REGULATORY AGREEMENT (“RIDER”) is incorporated into and made a part of the Regulatory Agreement to include terms required by the Department for the multifamily affordable housing development project proposed by Developer located at 6018 Service Drive, Diamond Springs, County of El Dorado, California 95619 consisting of 80 CDBG restricted units and one on-site manager unit (the “Development”).

The Development is subject to the terms of the Regulatory Agreement, this Rider, the Program Requirements, the Standard Agreement, and the Program Legal Documents. The County and Developer agree to abide by the following terms required by the Department and applicable to the Development.

1. Priority of Use of Funds

Developer must utilize funds available under the Regulatory Agreement to supplement rather than supplant funds otherwise available. To the extent available, Developer should disburse funds available to the Development from, among other sources, program income, rebates, refunds, contract settlements, audit recoveries, insurance and condemnation proceeds and interest earned on such funds before disbursing CDBG funds.

2. Method of Payment

Payments will be made directly to County as reimbursements based on the documented and satisfactory completion of Approved Project activities. The Department shall not authorize payments or reimbursements unless it has determined the activities indicated in the Financial Report have been performed in compliance with the terms of the Standard Agreement and any other agreements executed by the parties in connection herewith.

A. Reimbursements for costs incurred

- 1) The County may use Project Funds for reimbursement by the Department of Eligible Expenses as defined in the Standard Agreement, applied to Approved Projects.
- 2) To receive reimbursement for Approved Project activities, the County must timely submit all required Department forms via Grants Network. Financial Reports must include the level of documentation specified by the Department in the Department’s most recent version of the Grant Administration Manual located on the Department’s website, in order to be reviewed and processed.
- 3) Developer shall provide County with documentation as requested to evidence expenditure of eligible costs on the Approved Project.

3. *INTENTIONALLY OMITTED*

4. Developer Responsibilities

- A. Developer shall be responsible for all project management functions of the

Exhibit D - Diamond Village Rider

Development, including project design and development, construction and/or rehabilitation, maintenance, selection of tenants, annual recertification of Household income and size, and management of the Development and units in accordance with local requirements, the most recent version of the CDBG Policies and Procedures Manual, the requirements of the CDBG Program, Standard Agreement, the Regulatory Agreement, this RIDER, and the Program Legal Documents for the duration of the affordability period.

- B. Developer shall be responsible for all repair and maintenance functions of the Development, including ordinary maintenance and repair, and replacement of capital items. "Ordinary maintenance and repair" means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure so that the Development is in decent, safe, and sanitary condition at all times. Developer shall ensure maintenance of residential units, commercial space and common areas in accordance with all federal, state, and local health, building, and housing codes, and the Management Plan described below.
- C. If Developer hires a separate entity to manage the property after construction is complete, Developer shall ensure that the Development is managed by an entity approved by the County that is actively in the business of managing affordable housing. Any property management contract entered into for this purpose shall be subject to County approval and must contain a provision allowing Developer to terminate the contract upon 30-days' notice. Developer shall terminate said contract as directed by County upon a determination that management does not comply with CDBG Program requirements and/or the provisions of any recorded regulatory agreement for the Development.
- D. Developer shall develop a management plan for the Development ("Management Plan") subject to County approval prior to the start of construction. Any change to the Management Plan shall be subject to the approval of County. The Management Plan shall be consistent with program requirements and must include provisions addressing the following:
 - 1) The role and responsibility of Developer and the delegation of its authority;
 - 2) Personnel policy and staffing arrangements including key personnel and lines of authority;
 - 3) Plans and procedures for publicizing and achieving early and continued occupancy by eligible extremely-, very-low-, and low-income tenants;
 - 4) Procedures for determining tenant eligibility and selecting tenants and for certifying and annually recertifying Household income and size;
 - 5) Plans for carrying out, and budgeting for, an effective maintenance and repair program including ordinary maintenance and repair, and a capital needs assessment prepared every 5 years, except that for newly constructed projects, this requirement shall apply beginning with year 10;
 - 6) Rent collection policies and procedures;
 - 7) Policies and Procedures for managing funds that meet generally accepted accounting principles;
 - 8) A program for maintaining adequate accounting records and handling necessary forms and vouchers;
 - 9) Plan for safeguarding all tenant personally identifiable information (PII) such as social security numbers, names and birthdates, against possible identity theft as applicable.
 - 10) Plans for enhancing tenant-management relations;

Exhibit D - Diamond Village Rider

- 11) The property management contract if any;
 - 12) Provisions for periodic update of the Management Plan;
 - 13) Appeal and grievance procedures;
 - 14) Policies and procedures for collections for tenant-caused damages, processing evictions and terminations; and
 - 15) A supportive services plan for approved projects serving Special Needs Populations, including Supportive Housing and/or providing supportive services to the general tenant population.
- E. Annually, during the term of the Standard Agreement, County shall perform monitoring of Developer and the Development to ensure compliance with federal and state requirements, timely project completion and the terms of the Regulatory Agreement. Developer shall be required to resolve any monitoring findings to the County's satisfaction by the deadlines set by the County.

Developer shall retain all books, records, accounts, documentation, and all other materials relevant to this RIDER and the initial development phase of this Development for a minimum period of five (5) years after the Department notifies the County that the grant agreement between HUD and the State of California has been closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relevant to this RIDER and the operational phase of this Development shall be retained for the most recent five (5) year period, until five years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the County, the Department, HUD, federal Office of the Inspector General or their respective representatives.

County may charge Developer a reasonable annual fee for compliance monitoring during the term of affordability period. The fee must be based upon the average actual cost of performing the monitoring of CDBG-assisted Approved Projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project underwriting.

Should Developer fail to perform its duties as described above, including a failure constituting a material default pursuant to the Regulatory Agreement, such that the Development's ability to meet its stated goals under the CDBG Program is materially impaired or wholly prevented, or that materially impacts the delivery of an eligible and compliant project on a timely basis, such failure shall constitute a default under this RIDER.

The Developer shall not be removed or substituted with a new developer entity without the prior written consent of both the Department and the County. No Developer may be listed on any state or federal debarment list and must be in good standing with the Department and the State of California. Any proposed cure of such default must be provided to the Department in writing for approval prior to implementation.

5. INTENTIONALLY OMITTED

6. Suspension and Debarment

By executing this RIDER, Developer verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs. Developer further agrees to verify that its partners, contractors, and subcontractors have not been suspended or debarred from participating or receiving federal government contracts, subcontracts, loans, grants, or other assistance programs. County and the Department each reserve the right to request documented confirmation that Developer and its partners, contractors and subcontractors have not been

Exhibit D - Diamond Village Rider

suspended or debarred from receiving federal government contracts, subcontracts, loans, grants or other assistance programs, and are in good standing with the Department and the State of California.

7. Compliance with State and Federal Laws and Regulations

County and Developer shall comply with all local, state, and federal laws, statutes, and regulations, as well as the CDBG Program Guidelines as may be amended from time to time.

8. Authority to Impose Additional Special Conditions

In accordance with 2 CFR 200.208, Department reserves the right and authority to impose additional special conditions within any Standard Agreement under any of the following circumstances:

- A. When, in the Department's sole discretion, Department finds that County or Developer has a history of failure to comply with the general or specific terms and conditions applicable to the CDBG funds allocated under the Standard Agreement, this RIDER, or to other awards of Federally-funded grant or loan assistance passed through the Department.
- B. When County or Developer fails to meet expected performance goals under this RIDER.
- C. When County or Developer poses an increased risk for noncompliance based on factors including, but not limited to, financial stability, quality of management systems, history of performance under Federal awards, history of timeliness under Federal awards, history of conformance with terms and conditions of previous federal awards, and reports and findings from audits.
- D. When, in the Department's sole discretion, such conditions are necessary to ensure timely and compliant performance under the Federal award.

Such specific special conditions may include withholding of reimbursement of project costs until receipt of evidence of acceptable performance within a given period of performance, requiring additional detailed financial reports, requiring additional project monitoring, requiring the County or Developer to obtain technical or management assistance, establishing additional prior approvals, or any other condition the Department deems reasonable and necessary to safeguard Federal funds.

Such additional specific special conditions shall be included in the Standard Agreement for the Approved Project and shall include the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the action needed to remove the additional requirement (if applicable), the time allowed for completion of the actions (if applicable), and the method for requesting reconsideration of the additional requirements imposed.

9. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3):

Developers and Developer's Contractors shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) ("Section 3") and implementing regulation at 24 CFR, Part 75. The responsibilities outlined in 24 CFR Part 75.19 include:

- A. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.
- B. Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 Clause set forth below in all solicitations and contracts in excess of \$100,00 as required at 24 CFR 75.27.

Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 2 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

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- C. Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of October 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.
- D. Documenting actions taken to comply with the foregoing requirements, the results of those actions taken and impediments, if any.

10. Assurance of Compliance with the “Violence Against Women Reauthorization Act of 2013” (VAWA) (S.47 - 113th Congress (2013-2014)) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603. See also 81 CFR 80724:

VAWA provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home, they can feel safe in.

VAWA applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistently with all nondiscrimination and fair housing requirements. VAWA now expands housing protections to HUD programs beyond HUD’s public housing program and HUD’s tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking.

During the performance of this Approved Project, Developer shall assure that all requirements of VAWA are complied with (including but not limited to):

- A. Domestic Violence survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking.
- B. It will implement an ‘emergency transfer plan’, which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety.
- C. It will provide “Protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”
- D. It will implement a ‘Low-barrier certification process’ where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

11. Procurement of Recovered Materials

In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Developer shall cause contractor to procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Developer shall cause contractors to procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the

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contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

This clause shall apply to items purchased under this RIDER where: (1) the contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

12. Construction Standards

The Developer shall ensure that all Approved Projects comply with the following requirements:

A. California Building Codes (CBC) (Cal. Code Regs., Title 24)

All residential construction projects shall comply with the housing construction codes of the State of California, including all units developed under the CDBG Program.

B. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157)

The Architectural Barriers Act (ABA) stands as the first measure by Congress to ensure access to the built environment for people with disabilities. The law requires that buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968 be accessible.

C. California Green Buildings Standards Code (CALGreen) (Title 24, Part 11 of the California Code of Regulations)

All new construction of residential buildings or reconstruction of substantially damaged buildings must incorporate California Green Buildings Standards Code (CALGreen).

D. Sustainability Requirements

All rehabilitation, reconstruction, and new construction must be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Wherever feasible, Developers and contractors must follow best practices, such as those provided by the U.S. Department of Energy, Home Energy Professionals: Professional Certifications and Standard work specifications.

E. National Floodplain Elevation Standards

Developer, and contractors must comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to residential structures in flood hazard areas. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of 83 FR 5850 and 83 FR 5861.

F. Wildland-Urban Interface building codes (WUI codes)

All Approved Projects under this program that are located in a CAL FIRE high fire zone must comply with applicable WUI codes, found in Title 24, Chapter 7a of the California Building Code, which offer specific material, design and construction standards to maximize ignition- resistance.

13. Federal Labor Standards Provisions

The Developer shall at all times comply, and cause all Approved Project contractors to comply, with applicable federal labor standards, including without limitation, the following:

- A. Davis-Bacon Act (40 U.S.C. §§ 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. §§ 51-58): The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. § 3702) requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5, are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

Developer shall provide and County shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such request.

14. State Prevailing Wages

- A. Developer shall comply with the requirements of California Labor Code (LAB), Chapter 1, commencing with Section 1720, Part 7 [LAB Section 1720-1743] pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met. Projects may be exempt from these requirements under State Prevailing Wage rules.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "Construction Contract"). Where the Construction Contract will be between the Developer and a licensed building contractor, the Developer shall serve as the "awarding body" as that term is defined in the LAB. Where the Developer will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the "awarding body."
- C. The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in LAB Section 1770-1784 or the Davis-Bacon Wage Determination.

15. Agreements with Developers and Contractors

- A. The Developer shall not enter into any agreement, written or oral, with any contractor, Developer or other party without the prior determination that the contractor, Developer or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.
 - 1) The terms "other party" is defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive Grant Funds from Department to undertake Approved

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Projects.

B. An agreement between the Developer and any contractor, developer or other party shall require:

- 1) Compliance with all State and federal requirements described in this RIDER including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace, and prevailing wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
- 2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the Approved Project activities.
- 3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the Approved Project activities.
- 4) Compliance with the applicable Equal Opportunity Requirements described in Section 17 of this Rider.

C. Developer, contractors, and subcontractors shall:

- 1) Perform the Approved Project activities in accordance with federal, state and local housing and building codes, as are applicable.
- 2) Provide security to assure completion of the Approved Project(s) by furnishing the County and Developer with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual project will be required.

D. Developer, contractors and subcontractors: Drug-Free Workplace Act of 1988

- 1) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
- 2) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- 3) Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
- 4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- 5) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
- 6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

16. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

A. Use of Explosives: When the use of explosives is necessary for the

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prosecution of the work, Developer shall ensure the contractor observes all local, state and federal laws in purchasing and handling explosives. Developer shall ensure contractors take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

The Developer shall notify or cause contractors to notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Developer or contractors or their Surety for damages that may be caused by such use.

- B. Danger Signals and Safety Devices: Developer shall cause contractors to make all necessary precautions to guard against damages to property and injury to persons. Contractors shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case contractors fail or neglect to take such precautions, the Developer may have such lights and barricades installed and charge the cost of this work to the contractor. Such action by the Developer does not relieve the contractor of any liability incurred under these specifications or contract.
- C. Protection of Lives and Health: The Developer shall exercise proper precautions and cause contractors to exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Developer and its contractors and their subcontractors shall take or cause to be taken, such additional safety and health measures as the Developer may determine to be reasonably necessary.

17. Equal Opportunity Requirements and Responsibilities

The obligations undertaken by Developer include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

- A. **Title VI of the Civil Rights Act of 1964**: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
- B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)**: This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
- C. **Restoration Act of 1987**: This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.
- D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]**: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

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- E. **The Fair Housing Amendment Act of 1988:** This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.
- F. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- G. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- H. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- I. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- J. **Executive Order 12259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- K. **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- L. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
- M. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- N. **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

18. Affirmatively Furthering Fair Housing

The Developer shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C 2000a, et seq.), and the Fair Housing Act (42 U.S.C. 3601, et seq.), according to 42 U.S.C. 5306, et seq. and in compliance with California Gov. Code sections 65583, et seq. and 8899.5, et seq.), as each may be amended from time to time. Developer shall also comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430), as may be amended from time to time.

19. Reporting Requirements

- A. Project Completion Report: At the completion of construction and once an Approved Project is placed in service, the Developer must submit a Project Completion Report that includes the total number of units built and leased, affordable units built and leased, CDBG units built and leased, an accomplishment narrative, and the tenants' names, demographics and income for each CDBG unit.
- B. Annual Beneficiary Report: Once an Approved Project is placed in service and through the Affordability Period described in Exhibit D, Section 4 of the Standard Agreement, the County must submit an Annual Beneficiary Report providing the tenants names, demographics, and income for each CDBG unit. Information shall be derived from documentation submitted by Developer to County for review and approval.

20. Inspections of Project Activities

The Department reserves the right to inspect any Approved Project activities performed hereunder to verify that the Approved Project activities are being and/or have been performed in accordance with the applicable federal, state and/or local requirements and this RIDER.

- A. Access by the County, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Developer, contractors or subcontractors which are directly pertinent to that specific contract for the purpose of monitoring, making audit, examination, excerpts, and transcriptions pursuant to 2 CFR 200.336 shall be permitted. Developer shall include in its agreements with contractors, or subcontractors, as applicable, provisions requiring such parties to provide access to its records for the purposes specified above.

21. Signs

If Developer places signs stating that the Approved Project is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the Approved Project that the Department is a source of financing through the CDBG Program.

22. Anti-Lobbying Certification

The Developer certifies and shall include the language of this certification in all contracts or subcontracts entered into in connection with the Approved Project(s). This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

23. Conflict of Interest

Pursuant to 24 CFR § 570.489(h), no member, officer, or employee of the Developer, or its designees or agents, no member of the governing body of the locality in which the Approved Project is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-DR activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, including members and delegates to the Congress of the United States, may obtain a financial interest or benefit from a CDBG-DR-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-DR-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter.

24. Energy Policy and Conservation Act

This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the federal Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

25. State Contract Manual Requirements (Section 3.11, Federally Funded Contracts (Rev. 3/03):

- A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:
- 1) It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
 - 2) This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the purpose of this Program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
 - 3) The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
 - 4) The Department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.
- B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.
- C. Gov. Code § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain

Federally required financial and compliance audits.

26. Indemnification

Developer and its contractors and subcontractors, at their sole cost and expense, shall jointly and severally indemnify, defend, and hold harmless the Department and the County, their respective officers, officials, employees, representatives, attorneys, agents, and their respective successors, heirs, and assigns (collectively, the "Department and County Indemnified Parties") from and against any and all claims, demands, actions, costs, losses, damages, and liabilities, whether direct or indirect (collectively, "Damages"), and regardless of their nature or source, which in any way relate to or arise from the actions or inactions of Developer, or its contractors, subcontractors, agents, or representatives (collectively, the "Developer Parties") in connection with this RIDER, the Regulatory Agreement and any other agreement or instruments executed in connection herewith. The obligations of the Developer Parties under this Section shall apply to all actions or omissions of Developer Parties as described above which cause or are alleged to have caused Damages in connection with the Project. Further, the obligations of the Developer Parties under this Section shall survive the expiration or earlier termination of the Regulatory Agreement or this RIDER.

27. Conflicting Provisions

Should any of the provisions of this RIDER be found to be in conflict with any other provision of the Regulatory Agreement to which this RIDER is attached, the terms of this RIDER shall prevail.

28. Third Party Beneficiaries

The Developer and County expressly agree and acknowledge that the Department is an intended third-party beneficiary to the provisions of the Regulatory Agreement and this RIDER. Among other things, the performance of the Regulatory Agreement and this RIDER benefit the Department by creating, rehabilitating, or otherwise making available, affordable housing units within the State of California. The Department is the sole third-party beneficiary and no other parties are intended or should be deemed as such.

DEVELOPER

DIAMOND VILLAGE APARTMENTS, LP

a California Limited Partnership

By: _____,
Name: Sergei Oleshko,
Trustee, SNO Foundation
Its Administrative General Partner

By: _____,
Name: Robert W. Lang,
PSCDC Diamond Valley LLC
Its Managing General Partner

[Signatures Continued on Following Page]

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County

County Of El Dorado,
a political subdivision of the State of California

By: _____
Name: Karen L. Garner
Title: Planning and Building Department Director