

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: 051-461-059-000

(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 Apartment LP

in respect to

Community Development Block Grant (CDBG) Program

THIS AFFORDABLE HOUSING REGULATORY AGREEMENT ("Agreement") is made this ____ day of _____, 22__, 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**").

RECITALS

- A. Pursuant to the Standard Agreement between the Department of Housing and Community Development, a public agency of the State of California (the "Department") and the County with respect to the Community Development Block Grant Program (hereinafter referred to as 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 6035 Service Drive, Diamond Springs, County of El Dorado, California 95619, identified by Assessor's parcel numbers 051-461-XXX, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Property").

- B. Pursuant to Resolution No. _____, the County has approved the use of Community Development Block Grant (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 60 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 eighty percent (80%) of Area Median Income, reserving one of the 81 units for an on-site manager, pursuant to an approved affordable housing plan.
- C. 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.
- D. The County has provided the Developer with financial assistance for the Development pursuant to the terms of a loan agreement, evidenced by a promissory note executed by Developer on the same date herewith, and secured by a deed of trust encumbering the Property. Developer understands and intends that by entering into said 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.
- E. Receipt of the CDBG Grant requires the County to comply with the various applicable requirements, regulations, and restrictions, including those contained in the following statutes: California Health and Safety Code, Sections 50825-50834; 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; and any amendments or supplements thereto (collectively, the “Program Requirements”).
- F. The purpose of this Agreement is to regulate and restrict occupancy, rent, operations, ownership and management of the Development pursuant to the approved affordable housing plan. 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. **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 24 CFR Part 570, and 25 Cal. Code of Regulations, Chapter 7, Subchapter 2, Sections 7050-7126. 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.

“**Development**” means the new construction project for the 81 units of affordable housing known as Diamond Village Apartments, located at 6035 Service Drive, Diamond Springs, CA 95619.

“**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.

“**HCD**” means the California Department of Housing and Community 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 a loan agreement, evidenced by a promissory note, executed by Developer as Borrower therein on even date herewith, and secured by 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.

“**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.

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

“**Operating Expenses**” means the amount approved by the County, pursuant to HCD limitations.

“**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.

“**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.

“**Residual Receipts**” means project funds remaining after payment of expenses as described in Paragraph 13 of this Agreement.

“**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.

2. 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 Effective Date, 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, the term of the Agreement shall not expire.

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

4. 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 16, the Management Plan may be reviewed and revised at the request of the County or the Developer and such revision shall be submitted to and approved by the County prior to initial occupancy. 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;

b. Reasonable criteria for the determination of tenant eligibility;

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 Low- or Very Low-Income Household eligibility limit;

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

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.

5. 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.

6. Nondiscrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of race, religion, sex, age, disability, marital status, or any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing. Housing, which is intended to benefit, and is therefore limited to senior citizens, is permitted only with the prior approval of the selection criteria by the County.

7. Rent.

a. 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.

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

c. 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.

d. Any household certified as an Eligible Household upon occupancy but whose income increases above the eligibility level must pay as Rent the lesser of the amount payable by the tenant under State or local law, or 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.

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

8. 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.

b. Subject to Section 7.d. above, where a household occupying an Affordable Unit designated for occupancy by a Low-Income Household no longer meets the Low-Income Household qualifications at re-certification 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.

9. Annual Operating Budget.

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 Annual Operating Budget shall not exceed \$____.00 per unit per month or other amount as specified in the then current CDBG Program Underwriting Standards (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 per unit allowed in subsection (b) herein.

Developer shall operate the Development in accordance with the approved Annual Operating Budget.

10. Required Reserves.

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 \$___ per unit per year (\$_____ annually, or \$_____ 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 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. 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 distribution of residual receipts.

2) 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.

11. 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 with an F.D.I.C. or other comparable federally-insured financial institution.

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) Approved Operating Expenses;
- 2) Deposits to Replacement Reserve and Operating Reserve and Accounts;
- 3) Payment of mandatory debt service as follows:
 - i. First, payment of permanent financing obligations consisting of \$_____ principal with an annual payment of fifty percent (50%) of residual receipts as documented in the annual audit.
 - ii. The amount of said payments may be changed upon the written approval of both the County and HCD;
- 4) Payment of a Developer Fee as approved in the Annual Operating Budget;
- 5) Payment of an asset management fee as approved in the Annual Operating Budget, not to exceed \$_____;
- 6) Payment of the annual monitoring fee to the County in the amount of \$_____; and

7) Payment of the annual monitoring fee to HCD, if any.

c. The balance of Operating Income remaining after the payments described in this Paragraph shall be deemed “**Residual Receipts**” to be paid and applied as provided in Paragraph 12 below.

12. Residual Receipts and Distributions.

a. Residual Receipts shall be distributed as follows:

1) [Twenty-five percent (25%)] to Developer;

2) [INCLUDE IF APPLICABLE:] [Twenty-five percent (25%)] to _____ in satisfaction of the promissory note, dated _____, _____, securing the loan related to the Existing Affordability Restrictions, with a principal balance of \$ _____;

3) [Fifty percent (50%)] to the County in satisfaction of the Loan as required by, and subject to, the provisions of the Note.

4) [INCLUDE IF APPLICABLE:] If _____ is paid in full before the CDBG Funds are repaid in full to the County, [seventy-five percent (75%)] to County, and [twenty-five percent (25%)] to Developer.

b. Developer shall receive Distributions only once for each fiscal year of the Development and only; (1) upon approval by the County of the Annual Report submitted for that year, and (2) upon determination by the County that the Developer is in compliance with all Loan documents and all CDBG Program requirements.

c. No Distributions shall be made to Developer in the following circumstances:

1) When written notice of default has been issued by any entity with an equitable or beneficial interest in the Development;

2) 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;

3) If all currently required debt service and Operating Expenses have not been paid; or

4) If the Replacement Reserve or Operating Reserve Accounts are not fully funded as specified herein.

13. 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.

14. 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 _____ 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.

15. 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:

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 Borrower to certify or re-certify the tenant that include, a. the number of persons in the unit; b. tenant name; c. initial occupancy date; d. rent paid per month; e. annual gross income of the tenant; f. percent of rent and utilities paid in relation to gross income; and g. copies of those documents used by Borrower to certify or re-certify the tenant.

16. 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 requirements set forth in this Agreement. The Developer shall promptly provide such information.

17. Non-Affordable Units and Common Areas.

a. Developer shall maintain and repair both Affordable and non-Affordable Units equally without regard to their designation as Affordable or non-Affordable.

b. Tenant selection practices for non-Affordable 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.

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

a. Developer shall not transfer, convey, sell or agree to sell Developer's interest in the Property without first offering the Property to the County, except for a conveyance or transfer by gift, bequest, or inheritance. After a conveyance or transfer by gift, bequest, or inheritance, the right of first refusal granted in this Agreement shall remain in effect against the person holding title or any other interest in the Property.

b. Before Developer sells or agrees to sell the Property, Developer shall offer to sell the Property to the County, in writing and on terms and conditions substantially identical to those proposed for the sale of the Property to a third party ("**First Offer**"). The First Offer shall, at a minimum, include the following information:

1) The purchase price proposed for the sale to the third party and method of purchase price payment including the amount and terms of any proposed grantor financing in connection with the proposed purchase, if any;

2) The amount of any earnest money deposit;

- 3) The time and location for the close of escrow;
- 4) The name of the proposed purchaser; and
- 5) The other material terms and conditions of the proposed sale of the Property.

c. The County shall have 60 days from the date of the First Offer to accept the First Offer (“**Acceptance Period**”).

d. If the County declines to accept the First Offer, Developer shall not assign, sell, otherwise transfer any interest in the Property without prior written approval of County, which shall not be unreasonably withheld provided the following conditions are met:

- 1) The existing Developer is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of the Agreement;
- 2) The successor in interest to the Developer agrees to assume all obligations of the existing Developer pursuant to this Agreement.
- 3) The successor in interest demonstrates to the County’s satisfaction that it can own and operate the Development in full compliance with the requirements of this Agreement; and
- 4) Terms of the sale, transfer or conveyance shall not threaten the successor in interest’s ability to comply with all requirements of this Agreement.

19. Violation of Regulatory Agreement by Developer.

a. In the event of a breach or violation of the provisions of this Agreement, the County may 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. If the breach or violation is not cured to the satisfaction of the County within the time period specified in the notice, which shall not be 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 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. 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) 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, and seek as an additional remedy, the return of such excess Rent or other charge to the affected household.

c. The remedies of the County hereunder 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.

20. 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. In addition, the County may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

21. 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 set forth in Exhibit B to the Loan Agreement and the Affordable Housing Plan. . All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the County. Property insurance policies shall name the County as additionally insured in a manner approved by the County.

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

22. 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.

23. 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.

24. Binding on Successors. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, 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.

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

26. 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.

27. 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.

28. Indemnity. 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, 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, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Developer to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

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

30. 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.

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

32. Notice. 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

To Developer:

Diamond Village Apartments, LP _____

Attention: _____

Phone: (____) ____ - ____

Email: _____

With a copy to: _____

Attention: _____

Phone: _____

Email: _____

33. 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.

34. 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.

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

36. Contract Administration. The County Planning and Building Department Director, or designee, 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 written consent of the County Chief Administrative Officer. 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.

37. 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.

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

- Exhibit A: Legal Description of Property
- Exhibit B: Insurance Requirements
- Exhibit C: Construction Phasing Plan

(Signatures on Following Page)

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]

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” 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:

[Property Description here]

APN 051-461-XXX

Commonly known as 6035 Service Drive, Diamond Springs, California 95619.

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).

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

All insurance certificates must include the following:

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

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

The Department of Housing and Community Development
Community Development Block Grant Program (CDBG)
P.O. Box 952054
Sacramento, CA 94252-2054

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

El Dorado County
c/o Planning and Building Department, HCED
2850 Fair Lane Court, Bldg. C
Placerville, CA 95667

Acceptability of Insurers

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

MINIMUM SCOPE OF INSURANCE AND MINIMUM LIMITS OF INSURANCE

Borrower's Insurance Requirements

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

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

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

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

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

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

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

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

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

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

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

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

Workers' Compensation: Statutory Limits

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

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

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

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

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

Course of Construction policies shall contain the following provisions:

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

Contractor's Insurance Requirement

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

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

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

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

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

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

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

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

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

Workers’ Compensation: Statutory Limits

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

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

Architect, Engineer and Other Licensed Professionals Insurance Requirements

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

All coverages for Architects, Engineers and subcontractors shall provide:

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

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

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

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

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

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

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

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

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

Workers’ Compensation: Statutory Limits

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

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

Deductibles and Self-Insured Retentions

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

Verification of Coverage

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

Other Insurance Provisions

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

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

Railroad Protective Liability Insurance

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

Pollution Legal Liability Insurance

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

Flood Coverage

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

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