

RECORDING REQUESTED BY AND  
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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

by and between the

CITY AND COUNTY OF SAN FRANCISCO

and

MERCY HOUSING CALIFORNIA 51,  
A California Limited Partnership

Dated as of October 1, 2014

Relating to:

City and County of San Francisco  
Multifamily Housing Revenue Note  
(Bill Sorro Community)  
2014 Series C

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## **REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

This REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of October 1, 2014, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, organized and existing under the laws of the State of California (together with any successor to its rights, duties and obligations, the "City"), and MERCY HOUSING CALIFORNIA 51, A California Limited Partnership (the "Owner"), owner of a leasehold interest in the land described in Exhibit A attached hereto.

### RECITALS

A. WHEREAS, pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as may be amended or supplemented (collectively, the "Act"), the City is authorized to issue revenue bonds and to execute and deliver revenue notes to finance the acquisition, construction and development of multifamily rental housing; and

B. WHEREAS, the Board of Supervisors of the City has authorized the execution and delivery of a multifamily mortgage revenue note under the Act in connection with the construction of a multifamily and special needs residential affordable rental housing development located on the site described in Exhibit A hereto and to be known as Bill Sorro Community (the "Project"), which Project shall be subject to the terms and provisions hereof; and

C. WHEREAS, in furtherance of the purposes of the Act and as a part of the City's plan of financing affordable housing, the City is executing and delivering its revenue note designated "City and County of San Francisco Multifamily Housing Revenue Note (Bill Sorro Community), 2014 Series C" (the "Governmental Lender Note") pursuant to the terms of a Funding Loan Agreement of even date herewith (the "Funding Loan Agreement"), among MUFG Union Bank, N.A., as the funding lender (the "Funding Lender"), the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"), the proceeds of which Governmental Lender Note are to be loaned to the Owner (the "Loan") pursuant to a Borrower Loan Agreement, of even date herewith (the "Borrower Loan Agreement"), among the City, the Funding Lender and the Owner; and

D. WHEREAS, the City hereby certifies that all things necessary to make the Governmental Lender Note, when executed and delivered as provided in the Funding Loan Agreement, the valid, binding and limited obligation of the City have been done and performed, and the execution and delivery of the Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms thereof, in all respects have been duly authorized; and

E. WHEREAS, the Code and the regulations and rulings promulgated with respect thereto and the Act prescribe that the use and operation of the Project be restricted in certain

respects and in order to ensure that the Project will be constructed, equipped, used and operated in accordance with the Code and the Act, the City and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the construction and operation of the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the City and the Owner agree as follows:

1. Definitions and Interpretation. Capitalized terms used herein have the meanings assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

“Act” – The Charter of the City, Article I of Chapter 43 of the Administrative Code of the City and County of San Francisco Municipal Code and Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California, as now in effect and as it may from time to time hereafter be amended or supplemented.

“Adjusted Income” – The adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the Housing Act, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act.

“Affiliated Party” – (a) a Person whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, (b) a Person who together with the Owner are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein), (c) a partnership and each of its partners (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code, and (d) an S corporation and each of its shareholders (and their spouses and minor children) whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code.

“Area” – The HUD Metro Fair Rent Market Area (HMFA), or successor area determined by HUD in which the Project is located.

“Authorized Owner Representative” – Any person who at the time and from time to time may be designated as such, by written certificate furnished to the City and the Fiscal Agent containing the specimen signature of such person and signed on behalf of the Owner by its General Partner(s), which certificate may designate an alternate or alternates.

“Available Units” – Residential units in the Project (except for one (1) unit set aside for a residential manager) that are actually occupied and residential units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a residential unit that is vacant on the later of (i) the date the Project is constructed or (ii)

the date of issuance of the Governmental Lender Note is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.

“Borrower Loan Agreement” – shall have the meaning set forth in Section C of the Recitals above.

“CDLAC” – The California Debt Limit Allocation Committee.

“CDLAC Requirements” – The requirements described in Section 8 of this Regulatory Agreement.

“CDLAC Resolution” – The Resolution described in Section 8 of this Regulatory Agreement.

“Certificate of Continuing Program Compliance” – The Certificate with respect to the Project to be filed by the Owner with the City and the Program Administrator, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit D and executed by an Authorized Owner Representative, or such other form as is provided by the City.

“Certificate of Preference” – A residential Certificate of Preference issued by the City pursuant to the City’s Certificate of Preference Program.

“City” – The City and County of San Francisco, California.

“City Median Income” – The “Maximum Income by Household Size” derived by the Mayor’s Office of Housing and Community Development and published annually, based on the unadjusted area median income for the Area, as determined annually by HUD in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination, and being adjusted for family size but unadjusted for high housing costs.

“Closing Date” – The date of the execution and delivery of the Governmental Lender Note, being \_\_\_\_\_, 2014.

“Code” – The Internal Revenue Code of 1986, as in effect on the date of execution and delivery of the Governmental Lender Note or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of execution and delivery of the Governmental Lender Note, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Commercial Space” – means approximately 2,500 square feet of ground floor space of the Project intended to be used for retail space.

“Completion Certificate” – The certificate of completion of the construction of the Project required to be delivered to the City and the Funding Lender by the Owner pursuant to Section 2 of this Regulatory Agreement, which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C and executed by an Authorized Owner Representative.

“Completion Date” – The date of completion of the construction of the Project, as that date shall be certified as provided in Section 2 of this Regulatory Agreement.

“CTCAC” – The California Tax Credit Allocation Committee.

“Facilities” – The multifamily buildings, structures and other improvements on the Site to be constructed, improved and equipped, and all fixtures and other property owned by the Owner and located on the Site, or used in connection with, such buildings, structures and other improvements.

“Fiscal Agent” – shall have the meaning assigned to such term in Section C of the Recitals above.

“Funding Lender” – MUFJ Union Bank, N.A., and its successor and assigns.

“Funding Loan Agreement” – The Funding Loan Agreement, of even date herewith, among the Funding Lender, the City and the Fiscal Agent.

“General Partners” – Collectively (i) Mercy Housing California Family Properties, a California nonprofit public benefit corporation, as general partner; and/or (ii) any other Person that the partners of Owner, with the prior written approval of the Funding Lender (to the extent required pursuant to the Borrower Loan Documents), have selected to be a general partner of Owner, and any successor general partner of the Owner, in each case to the extent permitted under the Borrower Loan Documents and hereunder.

“Governmental Lender Note” – The City and County of San Francisco Multifamily Housing Revenue Note (Bill Sorro Community), 2014 Series C, executed and delivered pursuant to the Funding Loan Agreement.

“Holder” – The Person who is the owner of the Governmental Lender Note.

“Housing Act” – The United States Housing Act of 1937, as amended.

“Housing Authority” – The Housing Authority of the City and County of San Francisco and any successors.

“Housing Law” – Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“HUD” – The United States Department of Housing and Urban Development, its successors and assigns.

“Income Certification Form” – Fully completed and executed Income Certification Form substantially in the form attached to this Regulatory Agreement as Exhibit B, or such other form as may be provided by the City.

“Inducement Date” – April 3, 2014, the effective date of the Inducement Resolution.

“Inducement Resolution” – The resolution adopted by the City and approved by the Mayor on the Inducement Date, indicating its intention to issue tax-exempt obligations to finance a portion of the Project.

“Investor Limited Partner” – MUFG Union Bank, N.A., and any successor investor limited partner of the Owner.

“Loan” – The loan of the proceeds of the Governmental Lender Note made to the Owner pursuant to the Borrower Loan Agreement to provide financing for the construction of the Project.

“Median Income for the Area” – means the median gross income for the Area, as determined in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Section 142 of the Code and the Act, including adjustments for household size.

“Mortgage” – The Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Construction Trust Deed) (Multifamily Housing Back to Back Loan Program), dated for reference purposes as of the date hereof, executed by the Owner and granting a first lien on the Project for the benefit of the City and Funding Lender and assigned by the City to the Funding Lender, including any amendments and supplements thereto as permitted by the Funding Loan Agreement.

“Owner” – Mercy Housing California 51, A California Limited Partnership, and its permitted successors and assigns.

“Partnership Agreement” – The First Amended and Restated Agreement of Limited Partnership of Owner, by and among the General Partner and the Investor Limited Partner.

“Program Administrator” – A governmental agency, a financial institution, a certified public accountant, an apartment management firm, a mortgage insurance company or other business entity performing similar duties or otherwise experienced in the administration of restrictions on bond-financed multifamily housing projects, which shall be the City initially and, at the City’s election, any other person or entity appointed by the City who shall enter into an administration agreement in a form acceptable to the City.

“Project” – The Facilities and the Site.

“Project Costs” – To the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Owner with respect to the construction of the residential component



of the Project, whether paid or incurred prior to or after the Inducement Date, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal or demolition of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor's and Owner's overhead and supervisors' fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project), and interest accrued during construction and prior to the Completion Date.

“Qualified Project Costs” – The Project Costs incurred after the date which is sixty (60) days prior to the Inducement Date and that are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that only such portion of the interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs, and provided further that such interest shall cease to be a Qualified Project Cost on the Completion Date, and provided still further that if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party, and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance or costs of constructing the Commercial Space.

“Qualified Project Period” – The period beginning on the later of the Closing Date or the first day on which at least ten percent (10%) of the units in the Project are first occupied, and ending on the later of the following:

- (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;
- (b) the first date on which no tax-exempt private activity bonds with respect to the Project are Outstanding;
- (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates;
- (d) the date that is fifty-five (55) years after the Closing Date; or

(e) such later date as may be provided in Section 5 or Section 8 hereof.

“Regulations” – The income tax regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

“Regulatory Agreement” – This Regulatory Agreement and Declaration of Restrictive Covenants, together with any amendments hereto or supplements hereof.

“Restricted Unit” – A Very Low Income Unit.

“Site” – The parcel or parcels of real property described in Exhibit A, which is attached hereto, and all rights and appurtenances thereto, and in which the Owner has a leasehold interest.

“State” – The State of California.

“Tax Certificate” – The Tax Certificate and Agreement, dated the date of execution and delivery of the Governmental Lender Note, executed and delivered by the City and the Owner, as amended or supplemented from time to time.

“Tax Counsel” – An attorney or a firm of attorneys of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, who is selected by the City and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Tenant” – At any time of determination thereof, all persons who together occupy a single residential unit in the Project, and upon the occupancy of a unit by any individual in addition to the previous Tenant of such unit, such unit shall be deemed to be occupied by a new Tenant.

“Very Low Income Tenant” – Any Tenant whose Adjusted Income does not exceed fifty percent (50%) of the lower of City Median Income or Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Very Low Income Tenants. The determination of a Tenant’s status as a Very Low Income Tenant shall initially be made by the Owner on the basis of an Income Certification Form (a form of which is attached hereto as Exhibit B) executed by the Tenant upon such Tenant’s occupancy of a unit in the Project and upon annual recertification thereafter.

“Very Low Income Units” – The dwelling units in the Project required to be rented to, or designated for occupancy by, Very Low Income Tenants pursuant to Section 4 of this Regulatory Agreement.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender used in this Regulatory Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

2. Construction of the Project. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Owner has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to a third party to commence the construction of the Project, pursuant to which the Owner is or will be obligated to expend at least the lesser of (i) two and one-half percent (2.5%) of the aggregate principal amount of the Governmental Lender Note for the payment of Qualified Project Costs or (ii) \$100,000.

(b) The Owner's reasonable expectations respecting the total cost of construction of the Project and the disbursement of Governmental Lender Note proceeds are accurately set forth in the Tax Certificate, which has been delivered to the City on the Closing Date.

(c) The Owner will proceed with due diligence to complete the construction of the Project and expects to expend the maximum authorized amount of the Loan for Project Costs within three (3) years of the Closing Date.

(d) [reserved]

(e) On the Completion Date the Owner will submit to the City and the Funding Lender a duly executed and completed Completion Certificate.

(f) On the date on which fifty percent (50%) of the units in the Project are first rented, the Owner will submit to the City and the Funding Lender a duly executed and completed Certificate as to Commencement of Qualified Project Period, in the form of Exhibit E hereto.

(g) Money on deposit in any fund or account in connection with the Governmental Lender Note, whether or not such money was derived from other sources, shall not be used by or under the direction of the Owner in a manner which would cause the Governmental Lender Note to be an "arbitrage bond" within the meaning of Section 148 of the Code, and the Owner specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Governmental Lender Note from being an "arbitrage bond" under the Code.

(h) The Owner (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take any action if such action or

omission would in any way cause the proceeds from the execution and delivery of the Governmental Lender Note to be applied in a manner contrary to the requirements of the Funding Loan Agreement, the Borrower Loan Agreement, or this Regulatory Agreement.

(i) On or concurrently with the final draw by the Owner of amounts representing proceeds of the Governmental Lender Note, the expenditure of such draw, when added to all previous disbursements representing proceeds of the Governmental Lender Note, will result in not less than ninety-seven percent (97%) of all disbursements of Governmental Lender Note proceeds having been used to pay or reimburse the Owner for Qualified Project Costs and less than twenty-five percent (25%) of all disbursements having been used to pay for the acquisition of land or any interest therein.

(j) The statements made in the various certificates delivered by the Owner to the City on the Closing Date are true and correct.

(k) All of the amounts received by the Owner from the proceeds of the Governmental Lender Note and earnings from the investment of such proceeds will be used to pay Project Costs; and no more than two percent (2%) of the proceeds of the Governmental Lender Note shall be used to pay execution and delivery costs of the Governmental Lender Note, within the meaning of Section 147(g) of the Code.

(l) The Owner will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the Holder of the Governmental Lender Note (other than with respect to interest on any portion thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note or a "related person," as such terms are used in Section 147(a) of the Code), and, if it should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(m) The Owner will take such action or actions as may be necessary, in the written opinion of Tax Counsel to the City, to comply fully with the Act, the Code and all applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service to the extent necessary to maintain the exclusion from gross income for federal income tax purposes of the Holder of the Governmental Lender Note (other than with respect to interest on any portion of thereof for a period during which such portion is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note or a "related person," as such terms are used in Section 147(a) of the Code).

3. Qualified Residential Rental Property. The Owner hereby acknowledges and agrees that the Project will be owned, managed and operated as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code). The City hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code and the Owner hereby elects to comply with Section 142(d)(1)(B) of the Code. To that end, and for the term of this

Regulatory Agreement, the Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

(a) The Project is being constructed for the purpose of providing affordable multifamily and special needs residential rental property, and the Owner shall own, manage and operate the Project as a project to provide multifamily and special needs residential rental property comprised of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with applicable provisions of Section 142(d) of the Code and Section 1.103-8(b) of the Regulations, and the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the residential dwelling units in the Project will be similarly constructed units, and, to the extent required by the Code and the Regulations, each residential dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range (which may be a countertop cooking range), refrigerator and sink.

(c) None of the residential dwelling units in the Project will at any time be used on a transient basis (e.g., subject to leases that are less than thirty (30) days duration) (including use as a corporate suite), or be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, retirement house or trailer court or park.

(d) No part of the Project will at any time be owned as a condominium or by a cooperative housing corporation, nor shall the Owner take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Project and a Final Subdivision Public Report from the California Department of Real Estate, the Owner shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written opinion of Tax Counsel that the interest on the Governmental Lender Note will not become taxable thereby under Section 103 of the Code.

(e) All of the residential dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the residential dwelling units in the Project, except to the extent required, by (i) this Regulatory Agreement, (ii) any regulatory or restrictive use agreement to which the Project is subject pursuant to Section 42 of the Code, (iii) HUD, to restrict the rental of fourteen (14) units to developmentally disabled individuals in accordance with the Firm Commitment for Capital Advance Upon Project Completion (Section 811) issued by HUD with respect to the Project; (iv) any additional tenant income and rent restrictions imposed by any other federal, State or local governmental agencies, and (v) any other legal or contractual requirement not excepted by clauses (i) through (iv) of this paragraph, upon receipt by the Owner, the Trustee and the City of an opinion of Tax Counsel to the effect that compliance with such other requirement will not adversely affect the tax-exempt status of interest on the Governmental Lender Note.

(f) The Site consists of a parcel or parcels that are contiguous and all of the Facilities will comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No residential dwelling unit in the Project shall be occupied by the Owner. Notwithstanding the foregoing, if the Project contains five or more residential dwelling units, this subsection shall not be construed to prohibit occupancy of residential dwelling units by one or more resident managers or maintenance personnel any of whom may be the Owner; provided that the number of such managers or maintenance personnel is not unreasonable given industry standards in the area for the number of residential dwelling units in the Project.

(h) The Owner shall not discriminate on the basis of race, creed, religion, color, sex, source of income (*e.g.*, TANF, Section 8 or SSI), physical disability (including HIV/AIDS), age, national origin, ancestry, marital or domestic partner status, sexual preference or gender identity in the rental, lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the construction, operation and management of the Project, except to the extent required hereby.

(i) Should involuntary noncompliance with the provisions of Section 1.103-8(b) of the Regulations be caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the City from enforcing the requirements of the Regulations, or condemnation or similar event, the Owner covenants that, within a "reasonable period" determined in accordance with the Regulations, it will either prepay the Governmental Lender Note or, if permitted under the provisions of the Mortgage and the Funding Loan Agreement, apply any proceeds received as a result of any of the preceding events to reconstruct the Project to meet the requirements of Section 42(d) of the Code and the Regulations.

(j) The Owner agrees to maintain the Project, or cause the Project to be maintained, during the term of this Regulatory Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof such that the Project shall be in substantially the same condition at all times as the condition it is in at the time of the completion of the construction of the Project with the proceeds of the Governmental Lender Note. Notwithstanding the foregoing, the Owner's obligation to repair or rebuild the Project in the event of casualty or condemnation shall be subject to the terms of the Borrower Loan Agreement and the Mortgage.

(k) The Project will have sixty-seven (67) residential dwelling units, one of which will be a manager's unit.

(l) The Owner will not sell dwelling units within the Project.

4. Restricted Units. The Owner hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

(a) Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, Project shall comply with the income and rent restrictions of this Section 4(a), and any conflict or overlap between any two or more of such provisions shall be resolved in favor of the most restrictive of such provisions.

(i) Very Low Income Units. All of the 67 units in the Project (excluding the manager's unit) shall be rented to and continuously occupied by households who qualify as Very Low-Income Tenants. The monthly rent charged for all the Very Low Income Units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 50% of the Median Income for the Area.

(ii) Income Restrictions Pursuant to the Code. Pursuant to the requirements of Section 142(d) of the Code, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or twenty-seven (27) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. The Owner shall satisfy the requirements of this Section 4(a)(ii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 142(d)(1)(B) of the Code.

(iii) Income and Rent Restrictions Pursuant to the Act. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, for the Qualified Project Period, not less than forty percent (40%) of the total number of completed units in the Project (excluding the manager's unit), or twenty-seven (27) units, shall be designated as affordable units and during the Qualified Project Period shall be rented to and continuously occupied by Tenants whose Adjusted Income does not exceed sixty percent (60%) of Median Income for the Area; provided, however, if all the occupants of a unit are students (as defined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not be qualified Tenants pursuant to this sentence. Pursuant to the requirements of Section 52080(a)(1)(B) of the Housing Law, the monthly rent charged for such units shall not exceed one-twelfth of the amount obtained by multiplying 30% times 60% of the Median Income for the Area. The Owner shall satisfy the requirements of this Section 4(a)(iii) by complying with the requirements of Section 4(a)(i), to the extent such compliance meets the requirements of Section 52080(a)(1)(B) of the Housing Law.

(iv) CDLAC Requirements. To the extent the income and rent restrictions contained in the CDLAC Requirements are more restrictive, the Owner shall comply with the CDLAC Requirements.

(b) Over-Income Tenants. Notwithstanding the foregoing provisions of Section 4(a), no Tenant who satisfies the applicable income limit for a Restricted Unit upon

initial occupancy shall be denied continued occupancy of such Restricted Unit in the Project because, after admission, the aggregate Adjusted Income of all Tenants in the Restricted Unit increases to exceed the qualifying limit for such Restricted Unit.

However, should the aggregate Adjusted Income of Tenants in a Restricted Unit, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for such Restricted Unit occupied by the same number of Tenants, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Tenant satisfying the applicable income limit for such Restricted Unit. The unit occupied by such Tenants whose aggregate Adjusted Income exceeds such applicable income limit shall continue to be treated as occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit for purposes of the requirements of Section 4(a) hereof unless and until an Available Unit of comparable or smaller size is rented to persons other than Tenants satisfying the applicable income limit for such Restricted Unit. Moreover, a unit previously occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit and then vacated shall be considered occupied by a Tenant who satisfies the applicable income limit for such Restricted Unit until reoccupied, other than a reoccupation for a temporary period, at which time the character of the unit shall be re-determined. In no event shall such temporary period exceed thirty-one (31) days. Because all of the units (except the manager's unit) in the Project are required to be Very Low Income Units pursuant to Section 4(a), hereof, each next available unit must be rented to or held vacant for a Very Low Income Tenant.

(c) Income Certifications. The Owner will obtain, complete and maintain on file an Income Certification Form for each Tenant (i) immediately prior to the initial occupancy of a Restricted Unit by such Tenant, and (ii) thereafter, annually, in each case in the form attached hereto as Exhibit B, together with such information, documentation and certifications as are required therein or by the City, in its discretion, to substantiate the Tenant's Income Certification Form. In addition, the Owner will provide such further information as may be required in the future by the State, the City (on a reasonable basis), the Program Administrator and by the Act, Section 142(d) of the Code or the Treasury Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code.

(d) Certificate of Continuing Program Compliance. Upon the commencement of the Qualified Project Period, and on each February 1st thereafter (or such other date as shall be requested in writing by the City or the Program Administrator) during the term of this Regulatory Agreement, the Owner shall advise the Program Administrator of the status of the occupancy of the Project by delivering to the Program Administrator (with a copy to the Funding Lender) a Certificate of Continuing Program Compliance (a form of which is attached hereto as Exhibit D). The Owner shall also timely provide to the City such information as is requested by the City to comply with any reporting requirements applicable to it with respect to the Governmental Lender Note or the Project under any federal or State law or regulation, including without limitation, CDLAC regulations.



(e) Recordkeeping. The Owner will maintain complete and accurate records pertaining to the Restricted Units, and will permit any duly authorized representative of the City, the Program Administrator (if other than the City), the Funding Lender, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the Project upon reasonable notice during normal business hours, including those records pertaining to the occupancy of the Restricted Units, but specifically excluding any material which may be legally privileged.

(f) Annual Certification to Secretary of Treasury. The Owner shall submit to the Secretary of the Treasury annually on or before March 31 of each year, or such other date as is required by the Secretary of the Treasury, a completed Internal Revenue Service Form 8703, and shall provide a copy of each such form to the Program Administrator and the Funding Lender. Failure to comply with the provisions of this paragraph will subject the Owner to penalty, as provided in Section 6652(j) of the Code.

(g) Lease Provisions Regarding Income Certification Reliance. All leases pertaining to Restricted Units do and shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (1) certifies the accuracy of the statements made in the Income Certification; (2) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Owner or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (3) acknowledges that the Owner has relied on the Income Certification and supporting information supplied by the Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether intentional or otherwise) will be cause for immediate termination of such lease or rental agreement; and (4) agrees that the Tenant's income is subject to annual certification in accordance with Section 4(c) hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner pursuant to Section 4(d) above may provide grounds for termination of the lease.

(h) Maintenance of Tenant Lists and Applications. All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business which is unrelated to the Project and shall be maintained, as required from time to time by the Program Administrator on behalf of the City, in a reasonable condition for proper audit and subject to examination during normal business hours by representatives of the Project, the City or the Funding Lender. Failure to keep such lists and applications or to make them available to the City shall be a default hereunder.

(i) Tenant Lease Subordination. All tenant leases or rental agreements shall be subordinate to this Regulatory Agreement.

(j) No Encumbrance, Demolition or Non-Rental Residential Use. The Owner shall not take any of the following actions:

(i) encumber any portion of the Project or grant commercial leases (except to the Commercial Space) of any part thereof, or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (i) pursuant to the provisions of this Regulatory Agreement and on a basis subordinate to the provisions of this Regulatory Agreement, to the extent applicable, (ii) upon receipt by the Owner, the Funding Lender, and the City of an opinion of Tax Counsel that such action will not adversely affect the tax-exempt status of interest on the Governmental Lender Note, or (iii) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Regulatory Agreement;

(ii) demolish any part of the Project or substantially subtract from any real or personal property of the Project (other than in the ordinary course of business); or

(iii) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

(k) Compliance with Regulatory Agreement. The Owner shall exercise reasonable diligence to comply with the requirements of this Regulatory Agreement and shall notify the City within fifteen (15) days and correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence, unless such noncompliance is not reasonably susceptible to correction within sixty (60) days, in which event the Owner shall have such additional time as may be reasonably necessary to effect such correction provided the Owner has commenced such correction after discovery and is diligently prosecuting such correction.

#### 5. Additional Requirements of the City.

(a) Minimum Lease Term. The term of the lease for any Restricted Unit shall be not less than one (1) year.

(b) Limitation on Rent Increases. Annual rent increases on an occupied Restricted Unit shall be limited to the percentage of the annual increase in the City Median Income or applicable Median Income for the Area, whichever is lower, for that Restricted Unit. Rent increases which are permitted but not made in a given year may not be carried forward and made in any subsequent year.

(c) Appointment of Program Administrator. The Owner acknowledges that the City may appoint a Program Administrator (other than the City), at the sole cost and expense of the City, to administer this Regulatory Agreement and to monitor performance by the Owner of the terms, provisions and requirements hereof. In such event, the Owner shall comply with any reasonable request by the City to deliver to any such Program Administrator, in addition to or instead of the City, any reports, notices or other documents required to be delivered pursuant hereto, and to make the Project and the books and records with respect thereto available for inspection during normal business hours with reasonable notice by the Program Administrator as an agent of the City. The Owner shall have the right to rely on any consent or direction given by the Program Administrator on the same basis as if given by the City.

(d) Management Agent. The Owner shall not enter into any agreement providing for the management or operation of the Project with any party other than Mercy Housing Management Group, a Nebraska not-for-profit corporation, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

(e) Certificate of Preference Program. To the fullest extent permitted by law, the Owner shall comply with the City's Certificate of Preference Program pursuant to San Francisco Administrative Code Section 24.8, to the extent such compliance is not in conflict with any other requirements imposed on the Project pursuant to Section 142(d) of the Code, the Act, the CDLAC Resolution, or CTCAC.

(f) Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar State or local governmental assistance program. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owner shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed two (2) persons for a studio unit; three (3) persons for a one-bedroom unit; five (5) persons for a two-bedroom unit and seven (7) persons for a three-bedroom unit. The Owner shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all tenants. The Owner shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owner shall not discriminate against tenant applicants on the basis of legal source of income (*e.g.*, TANF, Section 8 or SSI), and the Owner shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (*i.e.*, ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

(g) Overincome Provisions after Expiration of Qualified Project Period. Notwithstanding the provisions of Section 4(b), from and after the expiration of the Qualified Project Period, in the event that Owner's certification of the Very Low Income Tenant's income, pursuant to Section 4(c), indicates that the Very Low Income Tenant's income exceeds one hundred twenty percent (120%) of the Median Income for the Area, the Owner shall terminate such lease upon one hundred twenty (120) days' prior written notice to the Tenant, and the lease for each Restricted Unit shall contain a statement to the foregoing effect. Notwithstanding the foregoing, the Owner shall not be required to terminate said Very Low Income Tenant's lease if any regulation or statute governing the Project or the financing thereof prohibits the termination of said Tenant's lease in this manner.

(h) Consideration for Restrictions. It is hereby acknowledged and agreed that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to Section 142(d) of the Code or the Act are at the request of the Owner, and that the Owner has voluntarily agreed to such additional restrictions in order to

obtain financial assistance from the City and an allocation of private activity bond volume cap from CDLAC.

(i) Marketing Plan. Owner will market the Restricted Units in accordance with the marketing plan approved by the City, if any.

(j) Extension of Qualified Project Period. Notwithstanding any other provision herein, the Qualified Project Period shall not expire earlier than, and the requirements of this Section 5 shall be in effect until, the date that is fifty-five (55) years after the Closing Date.

6. Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 4(a)(i) and of Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner or expressly waived by the City in writing, but no such waiver by the City shall, or shall be deemed to, extend to or affect any other provision of this Regulatory Agreement except to the extent the City and the Funding Lender have received an opinion of Tax Counsel to the effect that any such provision is not required by the Code or the Act and may be waived without adversely affecting the tax exempt status of interest on the Governmental Lender Note except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. Any requirement of Section 4(a)(i) or Section 5 shall be void and of no force and effect if the City and the Owner receive a written opinion of Tax Counsel to the effect that compliance with such requirement would be in conflict with the Act or any other applicable state or federal law.

7. Additional Requirements of State Law. In addition to the requirements set forth above, the Owner hereby agrees that it shall also comply with each of the requirements of Section 52080 of the Housing Law, including the following:

(a) Tenants Under Section 8 of the Housing Act. The Owner shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

(b) Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times.

(c) Binding Covenants and Conditions. The covenants and conditions of this Regulatory Agreement shall be binding upon successors in interest of the Owner.

(d) Recordation of Regulatory Agreement. This Regulatory Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the names of the Owner as grantor and to the name of the City as grantee.

(e) Restricted Income Units of Comparable Quality. The Restricted Units shall be of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be distributed throughout the Project. Notwithstanding the foregoing, the parties agree that this Section 7(e) shall have no practical effect because one hundred percent (100%) of the units in the Project are required to be Restricted Units pursuant to Section 4(a).

(f) Availability Following Expiration of Qualified Project Period. Following the expiration or termination of the Qualified Project Period, except in the event of foreclosure, repayment of the Governmental Lender Note, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units reserved for occupancy as required by Section 4(a)(iii) shall remain available to any eligible Tenant occupying a Restricted Unit at the date of such expiration or termination, at the rent determined by Section 4(a)(iii), until the earliest of (1) the household's income exceeds one hundred twenty percent (120%) of the maximum eligible income specified therein, except as specified in Section 5(g), (2) the household voluntarily moves or is evicted for good cause, as defined in the Housing Law, (3) fifty-five (55) years after the date of the commencement of the Qualified Project Period, or (4) the Owner pays the relocation assistance and benefits to households if required by, and as provided in, Section 7264(b) of the California Government Code.

(g) Availability Preceding Expiration of Qualified Project Period. During the three (3) years prior to the later of (i) the expiration of the Qualified Project Period or (ii) the date that is fifty-five (55) years after the date of commencement of the Qualified Project Period, the Owner shall continue to make available to eligible households Restricted Units that have been vacated to the same extent that non-Restricted Units, if any, are made available to non-eligible households.

(h) Notice and Other Requirements. The Owner shall comply with all applicable requirements of Section 65863.10 of the California Government Code, including the requirements for providing notices in Sections (b), (c), (d) and (e) thereof, and shall comply with all applicable requirements of Section 65863.11 of the California Government Code.

(i) Syndication of the Project. As provided in Section 52080(e) of the Housing Law, the City hereby approves the syndication of tax credits with respect to the Project, pursuant to Section 42 of the Code, to the Investor Limited Partner, or any affiliate thereof or successor thereto, pursuant to the terms of the Owner's Partnership Agreement. Any syndication of tax credits with respect to the Project to an affiliate of the Investor Limited Partner shall not require the prior written approval of the City if the Owner's Partnership Agreement will not be amended, modified or supplemented in connection with such syndication except to reflect such transfer of limited partnership interests; provided, however, that the Investor Limited Partner shall provide to the City, at least five (5) business days prior to the effective date of any such syndication, written notice of such syndication certifying that no other amendment, modification or supplement to the Owner's Partnership Agreement will be effected in connection with such syndication, together with copies of any assignments of limited partnership interests and any other syndication documents. Any other or subsequent syndication of the Project shall be subject to the prior written approval of the Director of the Mayor's Office of Housing and Community Development of the City, which approval shall be

granted only after the City determines that the terms and conditions of such syndication (1) shall not reduce or limit any of the requirements of the Act or regulations adopted or documents executed pursuant to the Act, (2) shall not cause any of the requirements of the City set forth in this Section 7 hereof to be subordinated to the syndication agreement, and (3) shall not result in the provision of fewer Restricted Units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

8. CDLAC Requirements. The Owner hereby agrees that the construction, equipping and operation of the Project and the financing thereof is and shall be in compliance with the conditions set forth in Exhibit A to CDLAC Resolution No. 14-80 adopted on July 16, 2014, attached hereto as Exhibit F (the "CDLAC Resolution"), which conditions are incorporated herein by reference and are made a part hereof. The Owner shall annually on February 1, and as otherwise requested by CDLAC, prepare and submit to the City a Certificate of Compliance in substantially the form attached hereto as Exhibit G, executed by an Authorized Owner Representative.

9. Indemnification. The Owner hereby releases the City, the Funding Lender and their respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City and the Funding Lender and the officers, members, directors, officials, agents and employees of each of them (collectively, the "Indemnified Parties," and each an "Indemnified Party") from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Governmental Lender Note, or the execution or amendment of any document relating thereto; (b) arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Loan or otherwise, including without limitation, any advances of the Loan, or any failure by the Funding Lender, as defined in the Funding Loan Agreement, to make any advance thereunder; (c) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Loan or the Project; (d) arising in connection with the issuance and sale, resale or reissuance of any bonds or any certifications or representations made by any person other than the City or the party seeking indemnification in connection therewith and the carrying out by the Owner of any of the transactions contemplated by the Funding Loan Agreement and this Regulatory Agreement; (e) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, installation, or construction of, the Project or any part thereof; and (f) arising out of or in connection with the exercise by the Funding Lender or the Fiscal Agent of their powers or duties under the Funding Loan Agreement, this Regulatory Agreement or any other agreements in connection therewith to which either of them is a party; provided, however, that this provision shall not require the Owner to indemnify (i) the Funding Lender from any claims, costs, fees, expenses or liabilities arising from the gross negligence or willful misconduct of the Funding Lender, or (ii) the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be

sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel selected by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Notwithstanding the foregoing, no indemnification obligation shall give rise to an obligation to pay principal and interest on the Loan, which is not otherwise set forth in the Funding Loan Documents, as defined in the Funding Loan Agreement, the Governmental Lender Note or any other agreement relating to the Governmental Lender Note.

The Owner also shall pay and discharge and shall indemnify and hold harmless the City and the Funding Lender from (i) any lien or charge upon payments by the Owner to the City and the Funding Lender hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City or the Funding Lender shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party in such party's reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between Owner's defense and the interests of any Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the reasonable fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another Owner in accordance with the provisions of Section 12 of this Regulatory Agreement, the Owner shall remain obligated to indemnify the City pursuant to this Section 9 if such subsequent Owner fails to so indemnify the City, unless at the time of transfer the City has consented to the transfer to the extent such consent is required hereunder.

The provisions of this Section 9 shall survive the term of the Governmental Lender Note and this Regulatory Agreement, including termination of this Regulatory Agreement pursuant to the second paragraph of Section 13 below.

The obligations of the Owner under this Section are independent of any other contractual obligation of the Owner to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owner to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owner. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which it is entitled to indemnity.

In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

10. Consideration. The City has executed the Governmental Lender Note and delivered the Loan to provide funds for the purpose of financing the Project, all for the purpose, among others, of inducing the Owner to acquire, construct, equip and operate the Project. In consideration of the making of the Loan by the City, the Owner has entered into this Regulatory Agreement and has agreed to restrict the use of the Project on the terms and conditions set forth herein.

11. Reliance. The City and the Owner hereby recognize and agree that the representations, warranties, covenants and agreements set forth herein may be relied upon by all persons interested in the legality and validity of the Governmental Lender Note, and in the exclusion from gross income for federal income tax purposes of the interest on the Governmental Lender Note. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, the Very Low Income Tenants, and upon audits of the books and records of the Owner pertaining to the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

12. Sale or Transfer of the Project. The Owner intends to hold the Project for its own account, has no current plans to sell, transfer or otherwise dispose of the Project (except in accordance with the Right of First Refusal and Option (as defined in the Partnership Agreement), and, except as expressly otherwise provided herein), and hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder and/or pursuant to the aforementioned option) or interest therein, including any interest in the Owner, without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld, and receipt by the City of (i) evidence satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, the Owner's duties and obligations under this Regulatory Agreement, (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee, (iii) evidence acceptable to the City that either (A) the purchaser or assignee has experience in the ownership, operation and management of rental housing projects in the City such as the Project without any record of material violations of discrimination restrictions or other state or federal laws or regulations applicable to such projects, or (B) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subparagraph (A) above or (C) if the purchaser or assignee does not have management experience, the City may cause the Program Administrator to provide on-site training in program compliance if the City determines such training is necessary, (iv) evidence satisfactory to the City that no event of default exists under this Regulatory Agreement, the Loan Agreement or any document related to the Loan, and payment of all fees and expenses of the City and the Fiscal Agent due under any of such documents is current, and (v) an opinion of Tax Counsel to the effect that such transfer will not, in itself, cause interest on the Governmental Lender Note to become includable in the gross income of the recipients thereof for federal income tax purposes except to the extent held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 12 shall be null, void and without effect, shall cause a



reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Nothing in this Section 12 shall affect any provision of any other document or instrument between the Owner and any other party which requires the Owner to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Not less than sixty (60) days prior to consummating any sale, transfer or disposition of any interest in the Project, the Owner shall deliver to the City a notice in writing explaining the nature of the proposed transfer. Notwithstanding the foregoing, the provisions of this Section 12 shall not apply to the transfer of all or any portion of (a) the limited partner interest of the Investor Limited Partner in the Owner (which is instead subject to Section 7(i)), (b) the Managing General Partner interest to an affiliate of the Managing General Partner, or (c) the transfer of any non-managing member interest in the Investor Limited Partner.

13. Term. Subject to the following paragraph of this Section 13, Section 9 hereof and to any other provision expressly agreed herein to survive the termination of this Regulatory Agreement, this Regulatory Agreement and all of the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for the longer of (a) the Qualified Project Period or (b) fifty-five (55) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date, which prevents the City from enforcing such provisions, or (ii) foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, transfer of title by assignment of the leasehold interest in the Project, or condemnation or a similar event, but only if, in case of the events described in either clause (i) or (ii) above, within a reasonable period, either the Governmental Lender Note is paid in full or cancelled or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, exercise of power of sale, or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Owner hereby agrees that, following any foreclosure, exercise of power of sale, transfer of title by deed in lieu of foreclosure, transfer of title by assignment of the leasehold interest in the Project or similar event, neither the Owner nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Notwithstanding any other provisions of this Regulatory Agreement to the contrary, this entire Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the City and the Owner subject to compliance with any of the provisions contained in this Regulatory Agreement only if there shall have been received an opinion of Tax Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Governmental Lender Note or the exemption from State personal income taxation of the interest on the Governmental Lender Note. The Owner shall provide written notice of any termination of this Regulatory Agreement to the City.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

14. Covenants to Run With the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. No breach of any of the provisions of this Regulatory Agreement shall defeat or render invalid the lien of a mortgage made in good faith and for value encumbering the Site.

15. Burden and Benefit. The City and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The City and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Very Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Governmental Lender Note was executed and delivered.

16. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Site.

17. Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days (the "cure period") after written notice thereof shall have been given by the City to the Owner (and a copy of such notice shall also be given to the Funding Lender, provided however that the failure of the City to provide such copy to the Funding Lender shall have no effect on the sufficiency of the notice to the Owner). The City may, at its sole option, extend the cure period if the default is of the nature which would reasonably require more than sixty (60) days to cure and if the Owner provides the City, if requested by the City, with an opinion of Tax Counsel to the effect that such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note), then the City may declare an "event of default" to have occurred hereunder, and, subject to the provisions of the Funding Loan Agreement, may take any one or more of the following steps:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder; or

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; or

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder, subject, however, to those limits on accelerating the Borrower Note and commencing foreclosure proceedings under the Mortgage as described in Section 7.29 of the Borrower Loan Agreement.

Notwithstanding anything contained in this Regulatory Agreement to the contrary, the City agrees that any cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

18. Recording and Filing. The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the City and County of San Francisco and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

19. Payment of Fees. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Funding Loan Agreement and/or the Borrower Loan Agreement, the Owner shall continue to pay the City's annual administrative fee as calculated and described below. Upon the occurrence of an event of default hereunder, the Owner shall continue to pay to the City compensation for any services rendered by the City hereunder and reimbursement for all expenses incurred by it in connection therewith.

The Owner shall pay to the City (i) an initial issuance fee of \$93,750 (which is equal to one quarter of one percent (0.25%) of the maximum par amount of the Governmental Lender Note) and (ii) an annual administrative fee not to exceed one eighth of one percent (0.125%) of the maximum principal amount of the Governmental Lender Note then outstanding, but no less than \$2,500, commencing on the Closing Date and thereafter on each anniversary date of the Closing Date thereafter during the term of this Regulatory Agreement.

In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Regulatory Agreement, the Owner agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the City, the Funding Lender, and/or the Program Administrator in connection with such action.

20. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California.

21. Amendments. To the extent any amendments to the Act, the Treasury Regulations or the Code shall, in the written opinion of Tax Counsel filed with the City, the

Fiscal Agent and the Owner, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement which must be complied with in order to maintain the tax-exempt status of interest on the Governmental Lender Note, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements. Otherwise, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the City and County of San Francisco, provided that any amendment to the CDLAC Requirements shall also be subject to the consent of CDLAC.

22. City Contracting Provisions. The Owner covenants and agrees to comply with the provisions set forth in Exhibit H to this Regulatory Agreement, which is incorporated in and made a part of this Regulatory Agreement by this reference.

23. Notice. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the date personally delivered or on the second day following the date on which the same have been mailed by first class mail, postage prepaid, addressed as follows:

If to the City: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316  
San Francisco, California 94102  
Attention: City Controller

With copies to: City and County of San Francisco  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140  
San Francisco, California 94102  
Attention: City Treasurer

City and County of San Francisco  
Mayor's Office of Housing and Community  
Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attention: Director

Office of the City Attorney  
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, California 94102  
Attention: Finance Team

If to the Owner: Mercy Housing California 51  
1360 Mission Street, Suite 300  
San Francisco, CA 94103  
Attention: Asset Management  
Telephone: (415) 355-7199

With a copy to:	Gubb & Barshay LLP 505 14 <sup>th</sup> Street, Suite 1050 Oakland, California 94612 Attention: Natalie Gubb, Esq. Telephone: (415) 781-6600
If to the Investor Limited Partner:	MUFG Union Bank, N.A. 200 Pringle Avenue, Suite 355 Walnut Creek, CA 94596-3570 Attention: CDF Manager Re: Bill Sorro Community
If to the Funding Lender:	MUFG Union Bank, N.A. Commercial Real Estate Loan Administration 3151 E. Imperial Highway, 1 <sup>st</sup> Floor Brea, California 92821 Attention: Manager Re: Bill Sorro Community
With copies to:	MUFG Union Bank, N.A. Community Development Finance Department 200 Pringle Avenue, Suite 355 Walnut Creek, CA 94596-3570 Attention: Rebecca Koch Telephone: (925) 947-2449
If to the Fiscal Agent:	U.S. Bank National Association One California Street, Suite 1000 Mail Code: SF-CA-SFCT San Francisco, CA 94111 Attention: Andrew Fung, Vice President Telephone: (415) 677-3593

Any of the foregoing parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

24. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

25. Multiple Counterparts. This Regulatory Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

26. Third-Party Beneficiaries. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are entered into for the benefit of various parties, including CDLAC. The parties hereto acknowledge that the Funding Lender is a third party beneficiary of this Regulatory Agreement. CDLAC shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, in accordance with Section 17 hereof, the terms hereof and the terms of the CDLAC Resolution. In addition, CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. Notwithstanding the above, CDLAC shall be entitled solely to enforce the terms of the CDLAC Resolution, and any enforcement of the terms and provisions of the CDLAC Resolution by CDLAC shall not adversely affect the interests of the Funding Lender, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Regulatory Agreement. Pursuant to Section 52080(k) of the Housing Law, the provisions of Section 4 hereof may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by the Owner's failure to comply with that Section.

[Signatures appear on next page]

IN WITNESS WHEREOF, the City and the Owner have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Olson Lee, Director  
Mayor's Office of Housing and Community  
Development

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Kenneth Roux  
Deputy City Attorney

[Signatures continue on following page.]

[REGULATORY AGREEMENT SIGNATURE PAGE]

Date: \_\_\_\_\_

OWNER:

MERCY HOUSING CALIFORNIA 51,  
A California Limited Partnership

By: Mercy Housing California Family Properties,  
a California nonprofit public benefit corporation,  
its general partner

By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

All that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows: