



August 11, 2023

TO: CADA Board of Directors

SUBJECT: **August 18, 2023 Board Meeting**
AGENDA ITEM 5

1901 8TH STREET MIDDLE INCOME HOUSING AMENDED REGULATORY AGREEMENT

CONTACT: Danielle Foster, Executive Director

RECOMMENDED ACTION:

Staff is recommending the Board approve the attached resolution (Attachment 1), authorizing the Executive Director, or her designee, to execute the amended form of the Project Regulatory Agreement (Attachment 2), substantially consistent with the enclosed draft to provide: (1) a 15-year Regulatory Agreement to the property, with the ability for the Owner to terminate with six-month notice after Year 10, for the provision of 72 low- and moderate- income housing units for households at or below 80% and 120% of the Area Median Income (AMI); and completion of any other related documents necessary to this transaction.

BACKGROUND

At its May 19, 2023 Board Meeting, the Board approved the Middle-Income Housing Project at 1901 8th Street as its first pilot project within the Middle-Income Housing Program. Policies for the program were adopted at the June 30, 2023 Board Meeting. This project will provide 65 low income units for households at or below 80% of the Area Median Income (AMI) and 7 moderate income units for households at or below 120% of AMI. The project is expected to gain full certificate of occupancy by early September.

As the project partners continued working on financing for the project, it became a challenging project to get fully financed in the current state of financial markets. Equity investors are more risk adverse than usual right now, particularly with a newer model concept. Given these financial realities and the opportunity of this model, the project developers: Fulcrum Properties and Urban Elements have decided to stay in the project and partner with Pacific Housing directly to accomplish the goals of the project in providing low- and moderate-income housing through the Welfare Tax Exemption. This partnership will further strengthen the financing and overall stability of the housing.

As part of this shift, there became need for further flexibility due to the financing requirements of the project. The project is requesting a 15-year term in the Regulatory Agreement with the ability to terminate the Regulatory Agreement after Year 10. Termination would require a minimum of six months of notice for residents and CADA. This provides an option should the model not deliver financially and require the consideration of other leasing options. Given that

this is the first model of its kind in Sacramento, it is anticipated that this is a one-time need to assist with affordability agreement term flexibility in order to demonstrate the model's viability.

ANALYSIS

Staff supports this change as it will continue to deliver low- and moderate-income units to the downtown area through an innovative model with minimal direct subsidy. CADA's \$100,000 investment in the project will be repaid within five years, prior to the end of the term, and there will be incentive for the Owners to maintain the Regulatory Agreement and corresponding affordability in order to maintain the property tax exemption, unless the project is in dire financial straits. This is a prudent amendment to protect all parties and the ongoing quality of the housing units.

FINANCIAL IMPACT

There is no recommended change from the five-year three-percent \$100,000 loan to this project that was approved in May. These funds are already budgeted and will bridge the gap from initial lease-up to property tax exemption status.

POLICY

Provision of this housing supports CADA's work in building and serving a vibrant Capitol Neighborhood. Having a variety of housing types and affordability levels within the Downtown benefits the commercial and residential stability of downtown and furthers the community health by broadening the available range of household types and income levels that the housing is able to serve.

STRATEGIC PLAN

This project fulfills the following components of the CADA Strategic Plan: fiscal responsibility, collaboration, urban development leadership, creativity and community stewardship in the provision of mixed-income housing. Utilizing partnerships in the completion of our mission has been and continues to be a hallmark of CADA's work. The strategic plan called for studying the downtown market to identify CADA's niche, and this income band at 80% AMI is currently an underserved demographic. This proposal also further combines environmental sustainability with housing development by weaving together local workforce needs and housing options, and it supports new innovation and a complex infill concept.

ENVIRONMENTAL IMPACT

This action is exempt under the California Environmental Quality Act (CEQA) as it involves only the provision of funding for a project that has already undergone CEQA review. CEQA review of the project development itself was completed by the City of Sacramento through the planning entitlement review process.

CONTRACT AWARD CONSIDERATIONS

Not applicable.

Attachments:

1. Resolution 23-37: Amended Regulatory Agreement
2. Amended Form of Regulatory Agreement

RESOLUTION NO. 23 - 37

August 18, 2023

Adopted by the Capitol Area Development Authority

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDED
REGULATORY AGREEMENT DOCUMENT FOR THE PROVISION OF 72 LOW- AND
MODERATE- INCOME HOUSING UNITS**

WHEREAS, the development at 1901 8th Street is a unique opportunity to test a new middle-income housing model that relies upon the welfare tax exemption and cost-efficient housing design to provide housing affordability; and

WHEREAS, the CADA Board of Directors approved a loan and regulatory agreement to the project at their May 19, 2023 meeting in order to provide 72 units to low-income and moderate-income households at 80% and 120% of the Area Median Income within the downtown;

WHEREAS, provision of this middle-income housing addresses a significant community need, supports community diversity and provides a stable workforce downtown that will support the economic vitality of the Capitol Area and the City;

WHEREAS, providing a CADA loan to this development and encumbering the property with a Regulatory Agreement ensures the ongoing affordability of the housing and its provision of middle-income housing; and

WHEREAS, the project requires a term amendment to the previously-adopted Regulatory Agreement form in order to complete the project model.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Capitol Area Development Authority that:

1. The Executive Director of CADA is authorized to take any and all actions on behalf of CADA to close on financing for the project to the 1901 8th Street Project, including execution of all necessary documents including the attached amended Regulatory Agreement, substantially consistent with the attached form document.

Ann Bailey, Chair

ATTEST:

Tara Gandara
Secretary to the Board of Directors

**[THIS DOCUMENT IS EXEMPT FROM
RECORDING FEES PURSUANT TO § 27383
OF THE CALIFORNIA GOVERNMENT CODE]**

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Capitol Area Development Authority
c/o Executive Director
1522 14th Street
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REGULATORY AGREEMENT
(The Kind Project Downtown - 1901 8th Street)

This Regulatory Agreement ("Agreement") is made _____, 2023 (the "Effective Date"), by and among between _____, a California limited partnership ("Owner"), and **Capitol Area Development Authority**, a California joint powers agency ("Authority") (collectively, the "Parties").

RECITALS

A. Owner owns that certain seventy-two (72) unit multifamily rental housing development (the "Project") located at 1901 8th Street, Sacramento, California, as legally described in Exhibit A (the "Property"), of which seventy-two (72) units shall be rented at rents affordable to Qualified Households according to the schedule contained in Exhibit B (the "Regulated Units").

B. The Authority is providing a permanent, subordinated loan to Owner for acquisition and operation of the Project pursuant to the terms of a Promissory Note secured by a Deed of Trust Assignment of Rents, Security Agreement and Fixture Filing dated the same date herewith (the "Authority Loan").

C. As further consideration for the Authority's funding and to further the public interests of Authority in seeing the Project maintained as affordable housing, Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project for the benefit of Project occupants and the surrounding neighborhood. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors-in-interest to the land for the full term of this Agreement.

NOW, THEREFORE, Owner and Authority hereby agree as follows:

1. **DEFINITIONS**

The following terms have the meanings set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **"AFFORDABLE RENTS"** shall mean the following:

1.1.1 For all Seventy-Two (72) of the units, the monthly charge for occupancy and use of a Regulated Unit shall not exceed the product of thirty percent (30%) times eighty percent (80%) of the Area Median Income or thirty percent (30%) times one-hundred twenty percent (120%) of the Area Median Income, adjusted for family size appropriate for the Unit, and then divided by twelve (12), as further shown in Exhibit B.

1.1.1.1 If Owner requires occupants of Regulated Units to reimburse Owner for utilities pursuant to this Agreement, the tenants of those units shall receive a utility allowance based on the then-current allowance established by a Utility Letter as defined within. If a Utility Letter is not available, the utility allowance shall be based on the Housing Authority of the City and County of Sacramento (or its successor) for units of a comparable size and type.

1.1.1.2 For purposes of this definition, "adjusted for family size appropriate for the Unit" shall mean the adjustments required in order to comply with state and federal laws and regulations governing projects receiving funds from the California Department of Housing and Community Development ("HCD") which at the time of execution of this Agreement presume a household size of number of bedrooms plus one.

1.2 "**AUTHORITY**" means the Capitol Area Development Authority, a California joint powers agency.

1.3 "**AREA MEDIAN INCOME**" ("AMI") means the median income for the Metropolitan Statistical Area which includes the City of Sacramento ("MSA"), with adjustments for household size, as determined from time to time by HCD, or such other method of median income calculation applicable to the City of Sacramento that HCD may hereafter adopt in connection with said Act. If HCD should cease making such determination, Authority may designate another fair method of calculation of AMI used by any federal or state agency and applicable to the City of Sacramento.

1.4 "**DEED OF TRUST**" means the Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing placed on the Property as security for the Loans with Owner as Trustor and Authority as Beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.5 "**LIMITED PARTNERSHIP AGREEMENT**" means that certain Partnership Agreement of Owner dated _____, 2023.

1.6 "**LOAN**" means the loan of funds provided by Authority to Owner pursuant to the Note and Deed of Trust.

1.7 "**LOAN DOCUMENTS**" means collectively this Agreement, the Note, and Deed of Trust for the Project, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments thereto.

1.8 "**NOTE**" means the Promissory Note in the amount of \$100,000, executed by Owner in favor of Authority evidencing the Loan for construction and development of the Project, as well as any amendments to, modifications of, or restatements of said Note. The Note is on file with Authority.

1.9 "**OWNER**" means _____, a California limited partnership, and all assigns, successors-in-interest, and transferees.

1.10 **"PROJECT"** means the development and operation of the Property for residential use according to the terms of the Limited Partnership Agreement and this Agreement.

1.11 **"PROPERTY"** means the real property described in the attached Exhibit A, which is hereby incorporated into this Agreement by this reference, and any buildings or improvements now or hereafter situated on such real property.

1.12 **"QUALIFIED HOUSEHOLD"** means a household in which household income does not exceed the percentage of AMI prescribed for the applicable housing unit by Exhibit B to this Agreement.

1.13 **"REGULATED UNITS"** means the seventy-two (72) rental dwelling units constructed for the Project, having the composition and affordability breakdown shown in Exhibit B.

1.14 **"SENIOR DEED OF TRUST"** means the first position Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing, for the benefit of [insert senior lender].

1.15 **"SENIOR LENDER"** means [insert senior lender], a _____.

1.16 **"SUBORDINATION AGREEMENT"** means that certain Subordination Agreement by and between Owner, Authority, and [insert senior lender], dated the same date herewith.

1.17 **"UTILITY LETTER"** means a letter produced by the applicable third-party utility company providing electricity and natural gas to the Property. The Letter will establish a reasonable utility allowance for each Regulated Unit type based on Authority-approved building plans and state energy codes.

2. **OWNER'S GENERAL OBLIGATIONS**

2.1 **COMPLIANCE WITH LOAN DOCUMENTS.** Owner's actions with respect to the Property and the use of Loan funds shall at all times be in full conformity with the requirements of the Loan Documents.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect for fifteen (15) years thereafter. The obligations in this Agreement shall remain effective and fully binding on Owner for this full term regardless of any expiration of the term of any Loan, any payment or prepayment of any loan, any assignment of a Note, any reconveyance of a Deed of Trust, or any sale, assignment, transfer, or conveyance of the Property, unless terminated earlier by Authority in a recorded writing or extended by mutual consent of the Parties or unless terminated due to foreclosure as provided in the Subordination Agreement; provided however, that the obligations in this Agreement are and shall be subordinate in all respects to the liens, terms, covenants, and conditions of the Senior Deeds of Trust, as more fully set forth to the extent and in the manner provided in the Subordination Agreement. If, due to changes in State law, the Welfare Tax Exemption from the State of California is no longer available or the Project no longer qualifies for the Welfare Tax Exemption, and there is no similar successor program or replacement State tax subsidy on terms that are at least as favorable as the Welfare Tax Exemption, then Authority agrees to

remove this Agreement from title upon Owner's full repayment of the Loan. Owner shall have a right to terminate this Agreement after the tenth (10th) anniversary of the mutual execution of this Agreement, provided that Owner first provides both Authority and all tenants with six (6) months' notice that this Agreement and the affordability period will terminate, and the date of termination.

2.3 **SECTION 50053 CONFLICT.** The parties agree and acknowledge that the affordability restrictions described in this Agreement conflict with those set forth in Section 50053 of the California Health and Safety Code, and that there is no legal requirement that the parties comply with Section 50053 of the California Health and Safety Code.

2.4 **TRANSFERS.** Owner shall provide written notice to Authority of the transfer of any interest in the Property within five (5) days of the transfer.

3. **PROJECT OCCUPANCY AND RENTS**

3.1 **OCCUPANCY OF REGULATED UNITS.** Regulated Units shall be made available to and occupied by Qualified Households at Affordable Rents according to the schedule contained in Exhibit B herein and the following requirements:

3.1.1 Initial Occupancy of Regulated Units. The income levels and other qualifications of applicants required by this Agreement shall be confirmed by Owner or its manager prior to such person's initial occupancy in conformance with Owner's management procedures manual, the Authority's rules and the California Board of Equalization rules governing income certification, as these rules may be amended from time to time, unless otherwise approved by Authority.

3.1.2 Reserved.

3.1.3 Households That Exceed Income Qualification after Initial Occupancy. Households that initially qualify as Qualified Households for Regulated Units and whose incomes exceed the qualifying income after initial occupancy will have one year to transition to other housing and may be charged at market rate rents for occupancy and use of the unit until their transition to other housing. Owner shall not be in default of this Agreement arising from continued rental to such households for such transition period, nor if Owner fails to transition within the one-year period as long as Owner continues to exercise commercially-reasonable diligence to cause such households to transition.

3.2 **RENTS FOR REGULATED UNITS.** Rents for Regulated Units shall not exceed Affordable Rents.

3.3 **CONVERSION OF PROJECT FROM RENTAL TO CONDOMINIUM.** Owner shall not convert Regulated Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Regulated Units during the term of this Agreement without the prior written consent of Authority, which consent may be withheld for any reason.

3.4 **NONDISCRIMINATION.** Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Project units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age (except to the extent necessary to qualify the tenant as a senior citizen), marital status, family status, source of

income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. Owner shall include a statement in all advertisements, notices, and signs for the availability of Project units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

3.5 MANAGEMENT RESPONSIBILITIES. Owner is specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Authority shall have no responsibility over management of the Property.

3.6 MANAGEMENT ENTITY. Authority approves of Fulcrum Property Corp., a California corporation as the management entity for the Property. Authority shall have the right to review and approve any replacement management entity chosen by Owner for the Property and subject to the rights of the Senior Lenders and the equity investors, the right to require a change in the management agent for reasonable cause at any time during the term of this Agreement. Any contracting of management services by Owner shall not relieve Owner of its primary responsibilities for proper performance of management duties.

3.7 FINAL MANAGEMENT PLAN. Within thirty (30) business days of filing this Agreement, Owner shall submit final management plan ("Final Management Plan") and marketing plans (collectively "Final Plans" or "Plans") to Authority for its review and approval, which shall not be unreasonably withheld. The Plans shall include but are not limited to provisions as set forth directly below:

3.7.1 Annual inspections of individual units to ensure continued compliance with state and local housing codes. Results of the inspections, including corrective actions, must be documented in a report, and copies may be requested by the Authority. Subject to the terms of any applicable leases and law, the Authority may also independently schedule during a calendar year, one or more property inspections;

3.7.2 Annual financial statements prepared by a certified public accountant, approved in advance, in writing, by the Authority, which reflect the status of the reserve fund for maintenance and replacement activities based on Owner's commercially-reasonable practices. Copies of annual financial statements must be provided to the Authority within ninety (90) days of the fiscal year-end date;

3.7.3 A maintenance and replacement schedule for the common areas and housing units;

3.7.4 A marketing strategy to outline methods to be used to achieve full and continuing lease up of the housing units on the Property and conformance with any applicable state and federal affirmative fair housing marketing guidelines;

3.7.5 A plan for certifying the eligibility of the households, including annual verification of tenant income and measures to take in the event a tenant exceeds the maximum income;

3.7.6 A tenant selection process that includes but is not limited to the following:

3.7.6.1 Review of the following criteria in tenant selection:

3.7.6.1.1 history of habitual rent delinquencies or evictions;

3.7.6.1.2 history of drug or alcohol abuse;

3.7.6.1.3 history of criminal or drug-related offenses, including but not limited to assault, battery, abuse, destructive or violent behavior;

3.7.6.2 Prospective tenants will be required to fill out an application form, verify income/employment, attend a private interview with the property management firm, consent to a credit check and agree to abide by property management rules for Property;

3.7.6.3 Selected tenants will be given a set of “rules and regulations” for the Property, and

3.7.6.4 Leases with tenants will provide that non-compliance with building rules shall be an Event of Default on the lease and grounds for eviction;

3.7.7 On-site management of the Project;

3.7.8 The duties of the manager regarding operation of the Project;

3.7.9 Tenant occupancy rules and regulations; and

3.7.10 A sample lease form.

3.7.11 Authority shall have the right to review and approve any changes to the management company, any new management contracts, and any substantive changes in the Final Management Plan during the term of this Agreement. Authority may also require the Owner to update the Final Management Plan not more than once every three (3) years. If Authority has not responded to any submission of the Final Management Plan or management contract (including amendments) by Owner within thirty (30) days of receipt of such Plan or contract by Authority, the Plan or contract (including amendments) shall be deemed approved by Authority.

4. **PROJECT OPERATIONS**

4.1 **MAINTENANCE AND SECURITY.**

4.1.1 Owner shall at its own expense maintain the Property in good condition, in good repair, and in decent, safe, sanitary, habitable, and tenantable living condition for the benefit of Project occupants consistent with similarly-situated projects. Owner shall not commit or permit any waste on or to the Property, and shall use commercially-reasonable efforts to prevent and/or rectify any physical deterioration of the Property. Owner shall provide adequate ongoing security equipment and services for Project occupants, as deemed necessary by Owner and its management company. Owner shall maintain the Property in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Final Management Plan.

4.1.2 In the event Owner fails to maintain the Property in accordance with these standards and after thirty (30) days' prior written notice to Owner (or such longer period as reasonably may be required to remedy any alleged failure to maintain up to ninety (90) days provided that Owner has diligently commenced curing such failure within such 30-day period), and subject to the rights of the Senior Lenders and equity partners, Authority or its agent may, but shall be under no obligation to, enter upon the Property, make such repairs or replacements as are deemed necessary in Authority's reasonable discretion, and provide for payment thereof. Any amount advanced by Authority to make such repairs, together with interest thereon from the date of such advance at the same rate of interest as specified in the Note for the Project (unless payment of such an interest rate would be contrary to applicable law, in which case interest shall accrue at the rate then allowed by applicable law), shall become an additional obligation of Owner to Authority and shall be secured by the Deed of Trust.

4.2 **UNIT VACANCIES.** Owner shall use its best efforts to fill vacancies in the Regulated Units as quickly as possible.

4.3 **INSPECTION AND RECORDS.** Owner shall maintain records which clearly document Owner's performance of its obligations to operate the Property under the terms of this Agreement. Owner shall submit any records to Authority within twenty (20) business days of Authority's request. Owner shall permit Authority to enter and inspect the Property for compliance with obligations under this Agreement upon seven (7) days' prior written notice of such visit by Authority to Owner or Owner's management agent and to tenants of any inspected Project units, subject to any lease provisions regarding inspection and entry rights.

4.4 **ANNUAL REPORT.**

4.4.1 Owner shall submit an annual report to Authority, which shall include at a minimum for each Regulated Unit the initial and current rental rates and the income and household size of each tenant household at the time of initial occupancy. The income information required under this report shall be supplied by the tenant in a certified statement on a form provided by Authority. Owner shall complete any additional monitoring or other form provided by Authority, and shall provide Authority a copy of the annual reports submitted to the County Assessor's office. [Review Note: Please provide example certification form.]

4.4.2 Owner shall pay to Authority an annual monitoring fee of \$7,500.00 (the "Monitoring Fee") which amount shall be due and payable in advance commencing on the Effective Date and on each [May 1] thereafter.

4.5 **FEES, TAXES, AND OTHER LEVIES.** Without limiting its right to require the same to be reimbursed by tenants (but subject to Owner's obligation to provide tenants of Regulated Units the utility allowance referred to in Section 1.1.1.1), Owner shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) the legality thereof is being contested in good faith and by appropriate proceedings, and (b) Owner maintains reserves adequate to pay any contested liabilities.

4.6 **INSURANCE COVERAGE.** Owner shall cause to have in full force and effect during the term of this Agreement insurance coverage as required in the Deed of Trust.

4.7 PROPERTY DAMAGE OR DESTRUCTION. Subject to the terms and conditions of the Senior Deed of Trust, and subject to the availability of insurance proceeds, if any building or improvements erected by Owner on the Property is damaged or destroyed, Owner shall, at its own cost and expense, repair or restore the Property consistent with the original Plans and Specifications for the Project or as otherwise required or permitted by applicable law. Also, subject to the terms and conditions of the Senior Deed of Trust, such work shall commence within thirty (30) days, as may be extended upon written approval of Authority, but in no event more than one hundred eighty (180) days after the damage or loss occurs and shall be completed within a timely manner thereafter, as agreed to with the Authority. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

5. GENERAL PROVISIONS

5.1 INTENTIONALLY OMITTED.

5.2 DEFAULT AND REMEDIES. In the event of any breach or violation of any agreement, obligation, or warranty under this Agreement, Authority shall give written notice to Owner by specifying: (a) the nature of the breach or violation; (b) the action required to cure the breach or violation, if an action to cure is possible; and (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice, by which such action to cure must be taken, if an action to cure is possible, provided that Owner shall have up to one hundred eighty (180) days to cure such defect if reasonably necessary and if Owner has commenced curing such defect during such initial ninety (90) day period. Prior to exercising any remedies hereunder, Authority shall give Senior Lenders and equity investors of Owner simultaneous written notice of such breach or violation and they shall have the same cure rights as the Owner. If Owner fails to cure the breach or violation within the time frame specified in the notice, or if a cure is not possible, Authority may proceed with any of the following remedies:

5.2.1 Bring an action for equitable relief seeking the specific performance by Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

5.2.2 Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property, and continue in possession until such time as Authority determines that Owner is in a position to operate the Property in compliance with this Agreement;

5.2.3 After notice provided for herein, make such repairs or replacements to the Property as are necessary and provide for payment thereof; or

5.2.4 For violations of Owner's obligations with respect to occupancy restrictions, Project maintenance, impose as liquidated damages a charge upon Owner in an amount of Three Hundred Dollars (\$300.00) per day for each Project unit that is not operated in compliance with this Agreement after any notice and cure period has expired; or

5.2.5 For violations of Owner's obligations with respect to Project rents, impose as liquidated damages a charge upon Owner in an amount equal to three times the actual amount Owner has collected from any Qualified Household in excess of the Affordable Rent; or

5.2.6 Pursue any other remedy allowed at law or in equity.

The Parties agree that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages Authority is likely to suffer from violations of the respective terms. Owner agrees to pay in full any accrued liquidated damages to Authority within thirty (30) business days of a written demand by Authority for such payment.

5.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS.** No member, official, director, employee, or agent of Authority shall be personally liable to Owner or third-party beneficiaries for any obligation created under the terms of this Agreement.

5.4 **INDEMNITY.** Notwithstanding the insurance coverage required herein, Owner shall indemnify and hold Authority, its members, officials, directors, employees, and agents harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Authority may incur as a result of (a) Owner's failure to reasonably perform any material obligations as required by this Agreement; (b) a failure of any of Owner's representations or warranties under this Agreement to be true and complete in any material respect when made; or (c) any material breach, act or omission by Owner, management agent, Owner's contractors, subcontractors, or suppliers with respect to the Project or the Property, except if the loss is caused by the sole negligence or willful misconduct of Authority. Owner shall pay immediately upon Authority's demand any amounts owing under this indemnity. The duty of the Owner to indemnify includes the duty to defend Authority in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Owner's duty to indemnify Authority shall survive the term of this Agreement.

5.5 **GOVERNING LAW.** This Agreement shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. However, the laws of the State of California shall not be applied to the extent that they would require or allow the court to use the laws of another state or jurisdiction. Owner agrees that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of California, except that Lender, in its sole discretion, may elect that all such actions or proceedings be tried and litigated in the County of Sacramento or the United States District Court for the Eastern District of California.

5.6 **ATTORNEYS' FEES AND COSTS.** In the event that a legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

5.7 **TIME.** Time is of the essence in this Agreement.

5.8 **CONSENTS AND APPROVALS.** Unless otherwise stated to the contrary herein, any consent or approval required under this Agreement shall not be unreasonably withheld.

5.9 **NOTICES, DEMANDS, AND COMMUNICATIONS.** Formal notices, demands, and communications between Owner and Authority shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Owner and Authority as follows, or if any such office is relocated, to the new address specified by the relocated party:

Owner: _____

Attention: _____

With a copy
To: _____

Authority: Capitol Area Development Authority
1522 14th Street
Sacramento, CA 95818
Attn: Executive Director

5.10 BINDING UPON SUCCESSORS. Except as set forth in the Subordination Agreement, all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and Authority, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the Loan or Note, any reconveyance of the Deed of Trust, or any conveyance or transfer of the Property. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all the duties and obligations imposed on Owner under this Agreement for the full term of this Agreement.

5.11 RELATIONSHIP OF PARTIES. The relationship of Owner and Authority for this Project during the term of this Agreement shall not be construed as a joint venture, equity venture, or partnership. Authority neither undertakes nor assumes any responsibility or duty to Owner or to any third party with respect to the operation of the Property or the actions of Owner. Except as Authority may specify in writing, Owner shall have no authority to act as an agent of Authority or to bind Authority to any obligation.

5.12 WAIVER. Any waiver by Authority of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by Authority to act on any breach or default of Owner or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by Authority to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Authority's written consent to future waivers.

5.13 OTHER AGREEMENTS. Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Agreement without a written waiver by Authority, which shall not be unreasonably withheld.

5.14 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be effective only if executed by both Owner and Authority.

5.15 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

OWNER:

_____,
a _____

By: _____
Name: _____
Title: _____

AUTHORITY:

Capitol Area Development Authority,
a California joint powers agency

By: _____
Danielle Foster, Executive Director

APPROVED AS TO FORM:

By: _____
Jeffrey Mitchell, legal counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

)ss

COUNTY OF SACRAMENTO)

On _____, 202_, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENT

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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ACKNOWLEDGEMENT

[illegible]

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

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT A
TO THE REGULATORY AGREEMENT**

LEGAL DESCRIPTION

The land herein in the City of Sacramento, County of Sacramento, State of California, described as follows:

**EXHIBIT B
TO REGULATORY AGREEMENT**

**OCCUPANCY AND RENT RESTRICTIONS
1901 8th Street Apartments**

Unit Mix and Affordability				
	Studio	1-Bedroom	2-Bedroom	Total Units
Less than 80% AMI	51	14	0	65
Less than 120% AMI	0	0	7	7
Total	51	14	7	72*

*Rather than having a manager's unit, one unit's resident will receive a stipend for after-hours management company response.