

Return To:  
Washington State Housing Finance Commission  
Low-Income Housing Tax Credit Division  
1000 Second Avenue, Suite 2700  
Seattle, Washington 98104-1046  
Attn: Scott Ryan Vederoff



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Kathy Hill, Skagit County Auditor  
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Document Title: **Regulatory Agreement (Extended Use Agreement)**

Grantor(s): **Salem Village Limited Partnership, A Washington Limited Partnership**

Grantee: **Washington State Housing Finance Commission**  
FIRST AMERICAN TITLE CO.  
53295

Legal Description (abbreviated form):  
**Lot 2 of Short Plat No. MV-8-94 and a portion of Lot 3**  
**of Short Plat No. MV-8-94.**

Additional legal description in Exhibit "A" of document.

Assessor's Property Tax Parcel Account Number(s): **P24136**

Reference numbers of related documents: 1) **N/A**  
2)

AFTER RECORDING, RETURN TO:  
Washington State Housing Finance Commission  
Low-Income Housing Tax Credit Division  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104-1046  
Attn: Scott Ryan Vederoff

**REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)**

**Between**

**WASHINGTON STATE HOUSING FINANCE COMMISSION**

**And**

**Salem Village Limited Partnership, A Washington Limited Partnership**

**Dated as of October 26, 1999**

**WASHINGTON STATE HOUSING FINANCE COMMISSION  
LOW-INCOME HOUSING TAX CREDIT PROGRAM**

**(Salem Village Apartments Project)  
TC or OID NUMBER (As Applicable) 97-44H**



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**REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)**

**Washington State Housing Finance Commission**

**Salem Village Apartments Project  
TC or OID Number (As Applicable) 97-44H**

THIS REGULATORY AGREEMENT (EXTENDED USE AGREEMENT) ("Agreement"), dated for convenience of reference as of **October 26, 1999** is between the WASHINGTON STATE HOUSING FINANCE COMMISSION, a public body corporate and politic (the "Commission"), and **Salem Village Limited Partnership, A Washington Limited Partnership**, a Washington Limited Partnership, (the "Owner").

**RECITALS**

WHEREAS, the Commission was designated by the governor of the state of Washington by Executive Order 94-05 as the sole housing credit agency authorized to allocate the federal low-income housing tax credit (the "Credit") for Residential Rental Property located in Washington, in accordance with Section 42 of the Code; and

WHEREAS, the Owner submitted an Application dated **April 21, 1997**, which is incorporated herein by this reference, wherein the Owner requested that the Commission issue a Credit Reservation and/or Allocation to the Project; and

WHEREAS, the Commission assigned the Project number **97-44H** to assist in the orderly tracking and administration of the Project (if the Project is a Qualified Tax-Exempt Bond-Financed Project in which the bonds are issued by the Commission, the number is a Project Official Intent Declaration number; otherwise, the number is a Project tax credit number); and

WHEREAS, the Owner and the Commission entered into a Credit Reservation Contract, dated **October 9, 1997**, which is incorporated herein by this reference, wherein subject to the terms and conditions stated therein, the Commission agreed to issue an Allocation to the Project (as described in Section 1 below, a Credit Reservation Contract may not have been entered into for a Qualified Tax-Exempt Bond-Financed Project); and



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WHEREAS, the Owner acquired, constructed or rehabilitated, and equipped, a Residential Rental Property commonly known as **Salem Village Apartments** (the "Project") located on the property or properties legally described in Exhibit "A", attached hereto and incorporated herein by reference, (the "Land"); and

WHEREAS, the Commission has determined that the Project, if completed and operated in accordance with Section 42 of the Code and the representations and agreements made in the Application and the Credit Reservation Contract would qualify for an Allocation of Credit which will be apportioned to each Qualified Building at the time such Building is Placed-In-Service and the Commission issues IRS Form 8609 for each such Building; and

WHEREAS, as a condition of having an effective Allocation of Credit and as required by WAC 262-01-130(9)(b), the Owner must enter into an agreement with the Commission that imposes on the Land and improvements thereon, covenants that each Building in the Project shall be subject to certain requirements and restrictions for a certain period of time; and

NOW THEREFORE, the Owner does hereby impose upon the Project the following covenants, restrictions, charges and easements, which shall run with the Land and shall be binding and a burden on, (i) the Project and all portions thereof; (ii) any successor in interest, purchaser, grantee, transferee, developer, owner or lessee (other than a Resident) of any portion of the Project; (iii) any other person or entity having any right, title or interest therein; and (iv) the heirs, executors, administrators, legal representatives, devisees, successors and assigns of any of the foregoing persons or entities, for the length of time and to the extent provided for in this Agreement. The persons and entities listed in (ii) through (iv) above are referred to herein as "Bound Party(ies)." Any successor in interest to the Owner shall be deemed to be the "Owner" for all purposes of this Agreement.

## AGREEMENT

### 1. Definitions; Conflicting Terms

For the purposes of this Agreement and the related documents and agreements entered into with respect to the Project, capitalized terms shall have the meanings set forth in Exhibit "D", attached hereto and incorporated herein by reference, and otherwise as set forth in the *Policies* in effect as of the effective date of the Credit Reservation Contract for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation Contract, the *Policies* in effect as of the date the Owner submitted the Application to the Commission. The Owner acknowledges that in addition to this Agreement, it is a party to other contracts and agreements with the Commission for the

T:\Masters\Contract\1999 Regulatory Agreement Packet REGULATORY AGREEMENT (Extended Use Agreement)  
August 2, 1999 version Salem Village Apartments (TC or OID # 97-44H)

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October 26, 1999



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Project (all such documents, including this Agreement, being referred to in this Section 1 as the "Program Documents") and that it is subject to the *Policies* and provisions of Section 42 of the Code and the regulations thereunder. The Owner understands that any particular provision of the Program Documents, the *Policies* or Section 42 of the Code may impose upon the Owner a more restrictive or otherwise more onerous definition, term or condition than is set forth in the other Program Documents, the *Policies* or Section 42 of the Code and the Owner agrees that it shall be bound by and shall comply with the more restrictive or more onerous definition, term or condition as determined by the Commission. The Owner further understands that the *Policies* are subject to revision as a consequence of developments in federal, state, or local law or action by the Commission, and that it is the Owner's obligation to stay informed of, and comply with, such revisions, as applicable.

This Agreement has references to a Credit Reservation Contract and/or a Carryover Allocation Contract. A Credit Reservation Contract and Carryover Allocation Contract may not have been executed in connection with a Qualified Tax-Exempt Bond-Financed Project unless the Project receives an Allocation of Credit subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process). Therefore, references in this Agreement to the Credit Reservation Contract and the Carryover Allocation Contract are inapplicable if the Project is a Qualified Tax-Exempt Bond-Financed Project that did not receive a competitive Allocation of Credit and, with regards to such Project, the provisions in this Agreement referencing those contracts should be read and interpreted in a manner consistent with such inapplicability.

## 2. Credit Allocation

2.1 Credit is allowable to each qualifying Building in the Project as the result of an Allocation. The Commission has made or will make a determination as to the amount of Credit necessary for the financial feasibility of the Project and viability as a Qualified Low-Income Housing Project throughout the Credit Period.

2.2 Such determination is based solely on information provided by the Owner or the Owner's designees, representatives or agents in connection with the Application. The determination is not intended to benefit any third party, does not in any way constitute a representation, warranty, guaranty, advice or suggestion by the Commission as to the qualification of any Building for the Credit, or the feasibility or viability of the Project, and may not be relied on as such by any applicant, owner, developer, investor, resident, lender, or other person or entity for any reason.



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2.3 The determination by the Commission of the maximum amount of Credit for a Project is subject to the Program Limits in the *Policies*. Further, as part of the Commission's Credit determination for a Project, the Commission has reviewed or will review the reasonableness of the development and operating expenses associated with the Project as well as the market need and demand. The Commission may require that you submit documentation to substantiate that any or all of a Project's costs are reasonable and appropriate. The Commission reserves the right, in its sole judgment and discretion, to limit or exclude any development or operating expense included in the Total Project Costs or pro forma for a Project as part of the Commission's financial feasibility review and Credit determination for the Project.

2.4 The actual amount of Credit allocated to any Qualified Building in the Project as reflected on an IRS Form 8609 issued with respect to such Building will be available each year for a total of ten (10) taxable years, provided that such Building remains a Qualified Building. In order for a Building which is Placed-In-Service to be issued an IRS Form 8609 by the Commission, the Owner must provide the information and materials required in the *Policies* and the Credit Reservation Contract by the deadlines established therein for the Commission to prepare the IRS Form 8609 by the end of the calendar year that such Building is Placed-In-Service, regardless of when any other Building in the Project is Placed-In-Service or the fact that the Project received a Carryover Allocation. The use of any of the Credit by any taxpayer is subject to examination by the IRS, and the Commission does not certify that any Building in the Project will qualify for the Credit.

### 3. Compliance: Owner's Obligation

Except as otherwise provided herein, the Owner shall correct any Noncompliance within thirty (30) days after the date the Commission gives the Owner written notice of such Noncompliance; provided, however, the Commission may, in its sole discretion, extend the thirty (30) day correction period for up to six (6) months, but only if the Commission determines there is good cause for granting the extension. Provided, further, in the event of a foreclosure, deed in lieu of foreclosure or similar transfer of the Project, the correction period for the successor for an existing event of Noncompliance shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the project. To the extent that the Noncompliance is not corrected within the period established by the Commission including extensions, if any, granted by the Commission, an event of default shall be deemed to occur and the Commission may exercise its rights under this Agreement, including but not limited to Sections 8 and 9 below. If there is an event of Noncompliance under this Section 3 which also is an event of Noncompliance under the Credit Reservation Contract, then the Commission may elect to proceed under



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the terms of this Section 3, under the terms of the Credit Reservation Contract, or both. Provided, the Commission will report to the IRS events of Noncompliance as required by the Tax Credit Program, Section 42 of the Code, the regulations thereunder and applicable law (as amended from time to time). The Owner understands that the Commission is required to report such events of Noncompliance to the IRS regardless of whether the Noncompliance is timely corrected by the Owner. The Owner further understands that Noncompliance with Section 42 of the Code or the regulations thereunder may result in the loss and recapture of Credit, in addition to the Commission exercising its rights and remedies under the Tax Credit Program and this Agreement. The procedures set forth for the Commission to report Noncompliance to the IRS are not intended to and shall not limit or restrict any other rights and remedies available to the Commission under this Agreement, the Credit Reservation Contract, the other Program Documents, the Tax Credit Program, the *Policies*, or law.

The Owner understands and acknowledges that under certain circumstances the Owner (and other parties related to the Project) may be barred from participating in the Commission's Tax Credit Program. The debarment rules and procedures are set forth in WAC 262-03-040. The rights and remedies of the Commission under this Agreement, the Credit Reservation Contract, the Carryover Allocation Contract, the other Program Documents, the Tax Credit Program, the *Policies*, or law for breach and/or Noncompliance are in addition to, and not in lieu of, the rights and remedies the Commission has authority to exercise by statute, rule or regulation, including but not limited to the debarment rules.

#### **4. Owner's Representations, Warranties and Covenants**

In consideration of the Allocation of Credit to the Project and as a pre-condition to a Building being able to qualify for a portion of such Credit, the Owner makes the following representations, warranties and covenants, which shall extend throughout the Project Compliance Period, unless otherwise specifically limited herein:

4.1 The Owner acknowledges that the Commission is neither underwriting the Project nor certifying that any Building in the Project meets the requirements necessary to qualify for the Credit. The Owner further acknowledges that the Commission has not performed an independent investigation as to the qualification of any Building for the Credit and will not perform such investigation of the Building for eligibility for the Credit in the future. The Commission has adopted procedures pursuant to Section 42(m)(1)(B)(iii) of the Code that it or its designee will follow in monitoring for Noncompliance with provisions of the Code and the Tax Credit Program and in notifying the IRS of such Noncompliance. Such procedures and any regulations promulgated by the IRS now provided or which may



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hereafter be provided are expressly incorporated herein and shall be binding upon the Owner.

**The Commission makes no representation concerning the applicability of the Credit to any Building or the ability of any owner or investor to utilize such Credit.**

4.2 The Owner acknowledges that there are numerous technical rules governing a Building's qualification for the Credit as established under the Code and the Commission's Tax Credit Program, the amount of such Credit, and an Owner's or investor's ability to utilize such Credit to offset federal income taxes. The Owner further acknowledges that the Owner is solely responsible for qualifying each Building in the Project for Credit, for determining the amount of the Credit and the Owner's ability to utilize the Credit, for maintaining each Building in compliance, and in notifying the Commission of any changes to a Building or the Project with respect to the information submitted in the Application.

4.3 The Owner acknowledges that the Commission does not and will not make any representation concerning the applicability of the Credit to a Building or a particular taxpayer. The Owner acknowledges that it has been advised to consult with its own legal counsel, tax advisors and professionals in connection with this Agreement, the Owner's federal income tax situation, the Owner's participation in the Tax Credit Program, whether this Project or any Building qualifies for Credit, whether Credit may be utilized by the Owner or any investor, and with regard to the commercial feasibility and viability of any Building in the Project. The Owner acknowledges that it fully understands the risks and issues of developing a Project which will most likely constitute a Tax Shelter and the terms, conditions and obligations of participating in the Tax Credit Program.

4.4 The Owner acknowledges and agrees that any determination by the Commission as to an Allocation of Credit to the Project, the apportionment of such Credit to any Building or as to any other matter related to the Program with respect to the Project does not constitute and cannot be relied upon by the Owner or any other person or entity as a representation or warranty as to the qualification of any Building for the Credit, the financial feasibility of the Project or viability as a low-income housing project or the ability of any investor to use the Credit.

4.5 The Owner shall ensure that each Building in the Project qualifies for the Credit. The Owner acknowledges and agrees that it is responsible for all loss and recapture of Credit with respect to any Building, which loss and recapture shall be determined under the Code as it applies to any Building, the Owner, or any taxpayer, whether due to reduction in the amount of Credit allocated to any Building, noncomplying use of any Building, transfer of any Building, termination of the Credit Reservation Contract or this Agreement,



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execution, delivery or recording of documents related to such termination or otherwise. The Owner agrees that the Commission shall have no liability to the Owner for any matters relating to the Commission's Allocation of the Credit to the Project, the Commission's apportionment of Credit to any Building, or for any Credit loss or recapture.

4.6 The Owner represents and warrants that the amount of the Credit Reservation and/or Allocation is necessary for the financial feasibility and viability of the Project throughout the Credit Period as a Qualified Low-Income Housing Project within the meaning of Section 42 of the Code. The Owner hereby acknowledges that the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement are necessary to ensure that the Project will be operated in accordance with the Code and the Tax Credit Program, and that the Commission has relied on the Owner's agreement to execute this Agreement as a recorded restrictive covenant that touches and concerns the Land, the Project and any portion thereof, in determining whether to issue a final Allocation to the Project, and whether each Building in the Project will qualify for Credit.

The Owner further acknowledges and agrees that this Agreement must be binding on all Bound Parties, whether through sale, assignment, foreclosure or any other transfer. If any lien (including any mortgage, deed of trust, construction lien or judgment lien) or other encumbrance exists on the Project property that, if foreclosed or enforced, would impair or eliminate this Agreement (collectively, "Prior Liens") (but not including easements that do not require a use incompatible with that required hereby or non-monetary encumbrances), such Prior Liens must be subordinated to this Agreement. The Owner acknowledges that no final Allocation will be made to any Project or Building that is a part thereof unless all Prior Liens are subordinated. Specifically, the Owner and the holder of such Prior Liens must execute and record a subordination agreement in a form acceptable to the Commission in which the holder of the Prior Lien agrees that the Prior Lien is subordinate to this Agreement. If the Owner is leasing the Land on which the Project is located, then for the purposes of this Agreement the owner/lessor of the Land shall be treated as a holder of a Prior Lien.

The Owner represents and warrants that it notified or it shall notify in writing all lenders, financing sources and holders of Prior Liens that as a condition of obtaining Credit, this Agreement must be recorded in first position or each lender or holder must subordinate its liens and security interest(s) in the Project to the interests of the Commission as reflected in this Agreement. Each lender or holder must acknowledge in writing receipt of such notification and must include such acknowledgment as a term of any loan commitment.



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4.7 The Commission and the Owner hereby declare their express intent that the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth herein shall be covenants running with the Land and shall, except as provided herein, pass to and be binding on the Bound Parties. This Agreement shall run for the benefit of the Commission and its successors or assigns. Except as provided in this Agreement, each and every contract, deed or other instrument hereafter executed that encumbers or conveys the Project or any portion thereof or interest therein shall contain an express provision making such encumbrance or conveyance subject to the terms, conditions, obligations, covenants and restrictions set forth herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth or incorporated by reference in such contract, deed or other instrument. This paragraph 4.7 shall not apply to leases and rental agreements between the Owner and Residents.

4.8 The Owner represents and warrants that there have been no changes in the Project which would alter or amend the representations or agreements made in the Application and the Credit Reservation Contract and/or Carryover Allocation Contract except as the documents and agreements have been previously amended by the Owner or its predecessor in interest with the written approval of the Commission. The Owner and each Building in the Project shall comply with all representations and agreements made in the Application and the Credit Reservation Contract and/or Carryover Allocation Contract with respect to each Building in the Project unless the Owner submits a written request to approve a modification or change prior to the Commission's issuance of IRS Form 8609 for such Building and such request is approved in writing by the Commission. Notwithstanding the representations and agreements made in the Application and the Credit Reservation Contract and/or Carryover Allocation Contract to the extent any prior agreement or document conflicts with the provisions hereof, this Agreement shall control.

The Owner may not change the Project as originally described and submitted in the Application without the prior written approval of the Commission. The Commission will approve only such changes as are permitted by the *Policies*. A change, even if approved by the Commission, may reduce the amount of Credit Reservation and/or Allocation to the Project to the extent the change results in a decrease in the Equity Gap for the Project or in the Eligible Basis or Qualified Basis of a Building(s) in the Project. Failure of the Owner to obtain prior written approval of the Commission for a change shall be an event of default under Sections 8 and 9 below.

4.9 The Owner represents and warrants that each Certification submitted with the Application and the Credit Reservation Contract and/or Carryover Allocation Contract is currently true, correct and complete and requires no modification, change or amendment.



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and that the Commission may rely upon such Certifications as if executed as of the date hereof. Further, if the Owner, a General Partner, a party to the Joint Venture, or, in the case of a Limited Liability Company, a Managing Member or, if there is no Managing Member, a Company Member, as applicable (the "Contributing Party") is to provide equity for the Project to use as part of the Project's permanent financing (excluding construction or bridge financing or equity from Credit) or to acquire Credit for its own account, then with respect to the *Certification of Ability to Contribute Equity to the Project*, the Owner represents and warrants that the Contributing Party has a Net Worth equal to or greater than the amount of equity which is to be contributed by it to the Project and that the Contributing Party shall maintain such Net Worth until the equity is paid into the Project.

4.10 The Owner shall provide the Commission with the name(s) of its legal counsel for the Project and shall provide prompt written notice of any changes of such legal counsel. The Owner shall not engage or use the same legal counsel as the Commission in any matters relating to the Project, including but not limited to, representing the Owner in regard to:

- (1) the acquisition or lease of any Land or Buildings intended to be part of the Project;
- (2) the organization of the ownership entity;
- (3) the preparation of any tax opinion;
- (4) participation in the financing or syndication process; and
- (5) the Commission's:
  - (i) administrative rules and policies;
  - (ii) project evaluation, review, recommendation, selection, monitoring, and/or cancellation; and
  - (iii) establishment, administration, or enforcement of any contract, including this Agreement.

Further, the Owner shall provide the Commission the names of its Developer, project management Consultant, property management Consultant, architect, tax advisor, accountant, and syndicator. The Commission shall have the right to require the Owner to retain representatives, including legal counsel, that are in addition to, or different than, such parties, if the Commission believes that any of the current or proposed parties lack sufficient experience with the Tax Credit Program or if they have made misrepresentations or misstatements to the Commission or have manipulated or abused the Tax Credit Program to further themselves or their clients by taking excessive fees or advocating positions that are insupportable given the terms, conditions, and requirements in the *Policies* and in the Code.



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4.11 The Owner, its designee, representative or agent and/or any syndicator or broker has included or shall include a notice in any loan application, syndication agreement, offering circular, prospectus, or other information provided to potential **lenders or investors** in the same form as set forth below and provided or shall provide the Commission with a copy of such notice and with a copy of the application, agreement, circular, prospectus, or other information in which such notice is required to appear.

### INVESTOR AND LENDER NOTICE

The Washington State Housing Finance Commission ("Commission") has determined, based solely upon the information submitted in an application prepared by (enter the name of the Owner) (the owner), a (enter the type of entity), that the low-income housing project, if completed as proposed in the application and consistent with Section 42 of the Internal Revenue Code and the Commission's Tax Credit Program *Policies*, will be entitled to receive an allocation of low-income housing tax credit. The Commission is neither underwriting the project nor certifying that any building will actually meet the requirements necessary to qualify for the low-income housing tax credit. The Commission has not performed any independent investigation of the applicant, the owner, or any other party connected with the project, nor as to the qualification of any building in the project for the low-income housing tax credit, and will not perform such investigation or otherwise monitor any building in the project for its eligibility for the low-income housing tax credit in the future except as required by law. The Commission makes no representation concerning the applicability of the low-income housing tax credit to any building in the project or the ability of any owner, lender, or investor in the project to utilize such low-income housing tax credit. The Commission has neither performed any review nor makes any representations of the commercial viability of any building in the project.

The Commission bears no liability to any owner, investor, resident, lender, or any other person or entity for any claim arising out of this project, the financing or syndication of this project or the low-income housing tax credit program. The credit reservation, carryover allocation, and/or final allocation and the terms and provisions of the Credit Reservation Contract, the Carryover Allocation Contract, and/or the Regulatory Agreement (Extended Use Agreement), as applicable, for the project are not for the benefit of third



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parties and may not be relied on by third parties. The applicant, developer, and owner of this project are not the agents of the Commission and have no authority to act on behalf of or to bind the Commission or the Commission's members, officers, employees, agents, and representatives. Lenders and investors are cautioned that the actual amount of low-income housing tax credit available to the project and any building is subject to change or reduction by the Commission up to the date of issuance of IRS Form 8609, *Low-Income Housing Credit Certification*.

**Lenders and investors should consult with their personal tax and/or investment counsel to determine whether this project qualifies for low-income housing tax credit; whether an investor (or a lender, upon foreclosure) may utilize the low-income housing tax credit, if any; and the commercial viability and feasibility of any building in the project.**

4.12 The Owner agrees to notify the Commission in writing within five (5) business days of first acquiring actual or constructive knowledge of any of the following:

- (1) A default in payment of any indebtedness incurred in connection with the development of any multifamily housing project or any other real estate development by a Covered Party or any declared default by a Covered Party of any loan incurred in connection with the development of any multifamily housing project;
- (2) A default, or alleged default, by a Covered Party in meeting federal, state, or local requirements regarding any low-income housing tax credit project in Washington or any other jurisdiction;
- (3) The filing of an action, in which a Covered Party is a defendant, to foreclose upon a real estate lien or the transfer by a Covered Party of an interest in real estate by a deed in lieu of foreclosure or similar instrument;
- (4) The application for or consent to an appointment of a receiver or trustee, (a) for a Covered Party or, (b) over any portion of the property of a Covered Party; an assignment by a Covered Party for the benefit of creditors; the seizure of any part of the assets of a Covered Party by a judgment creditor; an admission in writing by a Covered Party of its inability to pay its debts as they become due; the insolvency of a Covered Party; or a petition being filed by any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended;



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(5) A petition being filed against any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended, or an attachment or sequestration of any property of any Covered Party where the same is not discharged or bonded within ninety (90) days [items (3), (4) and (5) collectively being referred to as the "Bankruptcy" of a Covered Party];

(6) That a representation or disclosure made to the Commission or to any other low-income housing tax credit allocating agency by any Covered Party is materially false or misleading on the date when such representation or disclosure was made, whether or not that representation or disclosure appears in this Agreement, or that a Covered Party failed to provide any information that makes any such representation or disclosure materially false or misleading;

(7) A default by a Covered Party on any financial obligation to any person or entity in excess of \$100,000.00;

(8) A material adverse change in the condition (financial or otherwise), operations, business, or properties of any Covered Party or the Project;

(9) A pending or threatened lawsuit or claim against a Covered Party which could have a material adverse impact, financial or otherwise, on the operations, business or properties of a Covered Party or the Project; or

(10) The filing of legal action against, commencement of an examination by, or a formal investigation by any governmental office or authority, including but not limited to the IRS, RD or HUD, of a Covered Party for fraud, theft, misappropriation of funds, false certifications, financial improprieties, or similar wrongdoing, including but not limited to an action alleging securities fraud in connection with a low-income housing tax credit program or an action, examination or investigation in which the IRS, RD or HUD is seeking or may seek criminal penalties.

The failure of the Owner to give timely notice to the Commission as required above and the Bankruptcy of the Owner shall each constitute an event of default for the purpose of Sections 8 and 9 below and provisions of Section 3 above allowing the Owner a period to correct Noncompliance shall not apply in those instances.

Further, the occurrence of any of the events described in items (1) through (10) above also may constitute an event of default for the purposes of Sections 8 and 9 below (notwithstanding the fact that timely notice of such event is given by the Owner to the Commission as required above). In lieu of the provisions of Section 3 above, upon the



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occurrence of such an event the Commission shall have the right to demand that the Owner provide to the Commission adequate assurance that (i) the development and operation of the Project will not be materially impaired or potentially harmed and (ii) the Owner is and will be able to fully perform without default all of its obligations under the Credit Reservation Contract, the Carryover Allocation Contract, this Agreement and any related documents. If the Owner fails to provide such adequate assurance within ten (10) days from the date that the demand for written assurance is given by the Commission, the Commission may, without further notice or opportunity to cure, declare an event of default and exercise its rights and remedies under Sections 8 and 9 below.

For the purposes of this paragraph 4.12, "Covered Party" and "Covered Parties" means:

- (i) the Owner;
- (ii) if the Owner is a Partnership, each General Partner of the Owner;
- (iii) if the Owner is a Joint Venture, each party to the Joint Venture;
- (iv) if the Owner is a corporation, any party Affiliated With such corporation;
- (v) if a corporation is (a) a General Partner of the Owner/Partnership, (b) a Managing Member of the Owner/Limited Liability Company or, if there is no Managing Member, a Company Member of the Owner/Limited Liability Company, or (c) a party to a Joint Venture/Owner, any party Affiliated With such corporation;
- (vi) if the Owner is a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager;
- (vii) any other Partnership or Limited Liability Company organized or doing business within or without the state of Washington in which the Owner or any of the foregoing parties, or any party Affiliated With any of the foregoing parties, is a General Partner or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager; and
- (viii) the Developer for the Project.

The parties identified above are referred to herein collectively as the "Covered Parties" and individually as a "Covered Party."

4.13 The Owner represents and warrants that the Project is not nor will be Federally Subsidized; or to the extent that the Project is Federally Subsidized that the Owner has either reduced the Applicable Percentage as described in Section 42(b)(2)(B) of the Code or elected to reduce the Eligible Basis pursuant to Section 42(h)(8)(2)(B) of the Code.



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4.14 The Owner represents and warrants that the Project has not nor will be the recipient of Federal Funding which constitutes a Grant whether such Grant is made with respect to any Building or the operation thereof at any time throughout the Compliance Period; or to the extent the Project has received or will receive Federal Funding which constitutes a Grant, the Owner has reduced or will reduce the Eligible Basis in the manner required by Section 42 of the Code.

4.15 The Owner represents and warrants that, in the case of a Project with financing received or provided under the HOME Investment Partnership Act ("HOME Funds") or project based assistance from the Section 8 SRO Moderate Rehabilitation Program, any net cash flow from operations of the Project in excess of ten percent (10%) of the Project's gross operating income (on an annual calendar year basis) shall be applied to prepay the HOME Funds financing and any other financing obtained from a local, state or federal government entity or source.

4.16 In the case of a Project which would be considered to be a Federal Action, Federally Subsidized, financed with Federal Funding or require federal approval or a permit, as those terms are defined and interpreted under federal environmental laws, including but not limited to: the National Environmental Policy Act of 1969; the Clean Water Act; the Clean Air Act; the National Historic Preservation Act; the Lead Based Paint Poisoning Prevention Act; and/or the Flood Disaster Protection Act of 1973, the Owner shall at all times comply with any and all applicable federal environmental laws.

4.17 In the case of a Project which receives Federal Funding, the Owner shall at all times comply with any and all applicable federal labor laws, including but not limited to: the Davis Bacon Act; Copeland Anti-Kickback Act; Contract Work Hours and Safety Standards; Hatch Act; and the Conflict of Interest Provisions set forth in 24 CFR 570.611.

4.18 The Owner represents and warrants that it has and shall continue to comply with the limits established by the Commission pertaining to the amount of Developer Fee and Consultant Fees as set forth in the *Policies*. The Owner further represents and warrants that it has made all disclosures required by the Commission with respect to the Owner, each Developer, each General Partner, each party to a Joint Venture, and/or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as the case may be, being a Related Party, having an Identity of Interest, being Affiliated With, or Controlled By or In Control Of other members of the Development Team and Management Team as more fully described in the *Policies*. The Owner further agrees to immediately notify the Commission in writing if there is any change in the Project with respect to the Owner, each Developer,



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each General Partner, each party to a Joint Venture, and/or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as the case may be, being a Related Party, having an Identity of Interest, being Affiliated With, or Controlled By or In Control Of other members of the Development Team and Management Team.

4.19 The Owner acknowledges that the Commission will monitor compliance with the Code and the Tax Credit Program, and with the terms, conditions and obligations set forth in this Agreement, throughout the Project Compliance Period. For this monitoring, the Owner agrees to pay a nonrefundable Annual Compliance Monitoring Fee in the amount of Twenty Nine and No/100 Dollars (\$29.00) per Low-Income Housing Unit per year, with a minimum nonrefundable Annual Compliance Monitoring Fee of Two Hundred Ninety Eight and No/100 Dollars (\$298.00). The Owner acknowledges that the Commission reserves the right to increase the Annual Compliance Monitoring Fee and the Owner agrees to pay the increased Annual Compliance Monitoring Fee throughout the remainder of the Project Compliance Period.

For Qualified Tax-Exempt Bond-Financed Projects in which the bonds are issued by the Commission, the Annual Compliance Monitoring Fee shall be waived until the expiration or termination of the regulatory agreement between the Commission and the Owner with respect to the bonds. At such time, the Owner shall begin to pay the Annual Compliance Monitoring Fee in an amount equal to the fee currently in effect for other Placed-In-Service Tax Credit Program projects. This fee shall begin on January 1 immediately following the expiration or termination date described above and shall be due on each successive January 1 throughout the remainder of the Project Compliance Period.

For Qualified Tax-Exempt Bond-Financed Projects in which the bonds are not issued by the Commission, the Owner agrees to pay the Annual Compliance Monitoring Fee annually throughout the Project Compliance Period.

Any amounts not paid to the Commission in accordance with this Agreement shall bear interest at the rate of 1.5% per month accruing from the due date until finally paid.

In addition to and not in lieu of such other rights the Commission may exercise in connection with compliance monitoring pursuant to the *Policies*, the Commission's *Low-Income Housing Tax Credit Compliance Manual*, and Section 42 of the Code, the Commission may perform on-site inspections of the Project, interview Residents, review Residents' applications and financial information, and review the Owner's books and records relating to the Project. The Owner shall provide the Commission reasonable access to the Project and the Owner's books and records in order to allow the Commission



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to perform compliance monitoring. In connection therewith, the Owner shall take all action as may be reasonably necessary to allow the Commission to inspect Housing Units occupied by Residents.

4.20 The Owner shall own and operate each Building in the Project as Residential Rental Property with a minimum of **forty six (46)** Housing Units in the Project. If this Agreement terminates with respect to any Building in accordance with the terms set forth herein, the minimum number of Housing Units in the Project shall be reduced by the number of Housing Units in such Building at the time of such termination. Notwithstanding the foregoing, the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth herein shall remain in full force and effect throughout the term of this Agreement with respect to each Building in the Project unless terminated in conformance with this Agreement.

4.21 The Owner made an irrevocable Commitment in the Application for the Project to participate under the Credit Set-Aside category for **Qualified Nonprofit Organization**. The Commitment to comply with the requirements of the *Policies* for the selected Credit Set-Aside category is binding upon the Owner and all successors in interest regardless of whether the Project received a Credit Reservation and/or Allocation under the selected Credit Set-Aside category or the balance of the Annual Authority remaining after the Credit Set-Asides.

4.22 The Owner shall maintain a Minimum Low-Income Housing Set-Aside of at least **forty percent (40%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction) for Residents with incomes at or below **sixty percent (60%)** of Area Median Gross Income. The Minimum Low-Income Housing Set-Aside shall apply to all Low-Income Housing Units included in the Project. To this end, at least **forty six (46)** Housing Units, which constitutes at least **one hundred percent (100%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be occupied by households whose Income is at or below **sixty percent (60%)** of the Area Median Gross Income, shall be Rent-Restricted, and shall satisfy the requirements of a Qualified Low-Income Housing Unit (referred to herein as the "Low-Income Housing Set-Aside").

4.23 The Owner shall maintain an Additional Low-Income Housing Set-Aside of at least **thirty six (36)** Housing Units, which constitutes at least **seventy six percent (76%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction). The Additional Low-Income Housing Set-Aside Housing Units shall be occupied by households whose Income is at or below **forty percent (40%)** of the Area



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Median Gross Income, shall be Rent-Restricted, and shall satisfy the requirements of a Qualified Low-Income Housing Unit.

4.24 The Applicable Fraction for each Building shall not be less than the Applicable Fraction specified below for such Building(s), all of which are located on the Land described in Exhibit "A":

Building (BIN)	Street Address (or, if none is available, the legal description included in Exhibit "A")	Applicable Fraction
WA-97-00141	2619 North LaVenture Road Mt. Vernon	100.00%

4.25 The Owner shall rent all Housing Units necessary to maintain the Applicable Fraction of Housing Units devoted to low-income housing only to Residents who are Income eligible for the Low-Income Housing Set-Aside at the time of their initial occupancy of the Housing Unit. For the Additional Low-Income Housing Set-Aside, the Owner shall rent all Housing Units necessary to comply with the Additional Low-Income Housing Set-Aside only to Residents who are Income eligible for the selected Additional Low-Income Housing Set-Aside at the time of their initial occupancy of the Housing Unit. This requirement(s) applies to all Housing Units necessary to comply with the Applicable Fraction and, if applicable, the Additional Low-Income Housing Set-Aside for the initial occupancy and each subsequent vacancy throughout the duration of the Project Compliance Period. **The Owner must keep the applicable Housing Units vacant until a Resident is selected who is Income eligible for the Low-Income Housing Set-Aside and/or the Additional Low-Income Housing Set-Aside as appropriate.**

4.26 If the Owner made a Commitment in the Application or otherwise that the Project shall be subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside, then the Owner shall operate the Project in compliance with the Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside. For each Year in the Project Compliance Period, the Owner shall operate the Project by renting the appropriate percentage of Housing Units included in the selected Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside (based on the lesser of the Unit Fraction or Floor Space Fraction) to Residents who meet the eligibility requirements for the specific selected Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside.

4.27 The Project is subject to the Special-Needs Housing Set-Aside(s) and/or the Farmworker Housing Set-Aside described below:



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4.27.1 At least **zero (0)** Housing Units, which constitutes at least **zero percent (0%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be subject to the Special-Needs Housing Set-Aside for Large Households and, subject to the terms of paragraph 4.30 below, occupied by Large Households. All Housing Units in this set-aside must be Low-Income Housing Units;

4.27.2 At least **ten (10)** Housing Units, which constitutes at least **twenty percent (20%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be subject to the Special-Needs Housing Set-Aside for persons with Disabilities and, subject to the terms of paragraph 4.30 below, occupied by Residents with Disabilities; and

4.27.3 At least **forty six (46)** Housing Units, which constitutes at least **one hundred percent (100%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be subject to the Special-Needs Housing Set-Aside for persons who are Elderly and occupied by Residents who are Elderly. If this set-aside is selected, the Project shall be operated as an Elderly Housing Project. The Owner has elected, and by execution of this Agreement, elects to operate the Project in compliance with subsection (i) of the definition of Elderly Housing Project in Exhibit "D." The election may be changed only with prior written consent of the Commission.

4.27.4 At least **zero (0)** Housing Units, which constitutes at least **zero percent (0%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be subject to the Special-Needs Housing Set-Aside for Transitional Housing and meet the conditions of Section 42(i)(3)(B)(iii). All Housing Units in this set-aside must be Low-Income Housing Units. Each Building in which Transitional Housing is located shall be exclusively used for Transitional Housing.

4.27.5 At least **zero (0)** Housing Units, which constitutes **zero percent (0%)** of all Housing Units in the Project (based on the lesser of the Unit Fraction or Floor Space Fraction), shall be subject to the Farmworker Housing Set-Aside and, subject to the terms of paragraph 4.30 below, occupied by Farmworkers. All Housing Units in this set-aside must be Low-Income Housing Units.

4.28 If the Project is subject to the Special-Needs Housing Set-Aside for Elderly persons and/or if one hundred percent (100%) of the Housing Units in the Project are subject to the Special-Needs Housing Set-Aside for Transitional Housing and the Project is subject to



one or more additional Special-Needs Housing Set-Asides, the same Housing Units may be used for more than one Special-Needs Housing Set-Aside, so long as the actual Resident is eligible for more than one. A minimum of twenty percent (20%) of all Housing Units in the Project must be used for each additional Special-Needs Housing Set-Aside. If less than one hundred percent (100%) of the Housing Units in the Project are subject to the Special-Needs Housing Set-Aside for Transitional Housing and the Project is subject to the Special-Needs Housing Set-Aside for persons with Disabilities and/or the Special Needs Housing Set-Aside for Large Households, the same Housing Units shall not be used for more than one Special-Needs Housing Set-Aside, regardless of whether a Resident is eligible for more than one. Further, a minimum of twenty percent (20%) of all Housing Units in the Project must be used for each additional Special-Needs Housing Set-Aside selected. Further, if the Project is subject to the Special-Needs Housing Set-Aside for Transitional Housing, none of the Housing Units included in any Building with any Housing Unit that is used for Transitional Housing may be used for the additional Special-Needs Housing Set-Aside(s).

4.29 For any Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside, the Owner shall have in effect and maintain a Referral and Marketing Agreement in a form acceptable to the Commission with at least one established and unrelated Nonprofit Organization for each Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside. The Owner shall notify each Nonprofit Organization with which the Owner maintains a Referral and Marketing Agreement of each vacancy of a Housing Unit.

4.30 For any Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside, the Owner shall undertake good faith efforts to actively market any vacant Housing Units which are necessary to comply with the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside to the appropriate group(s) for a minimum of thirty (30) days. The Owner shall not rent any of the Housing Units necessary to comply with the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside to anyone who is not eligible for the appropriate Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside during this thirty (30) day period. In the event the Owner is unable to secure a Resident who is eligible for the appropriate Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside after thirty (30) days of active marketing, it may rent the Housing Unit to another prospective Resident. The recruitment provision applies to all Housing Units included in the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside, including both Low-Income Housing Units and Market Rate Housing Units, if applicable. The minimum thirty (30) day recruitment period begins on the first full day that (1) a Housing Unit is vacant and ready for occupancy, and (2) the Owner actively commences to market the Housing Unit.



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If the Owner rents a Housing Unit included in the Special-Needs Housing Set-Aside(s) to a household who is not eligible for the appropriate Special-Needs Housing Set-Aside(s) after the thirty (30) day period, when a comparably sized or larger Housing Unit becomes vacant the Owner must again undertake the good faith efforts to actively market such Housing Unit(s) as described above in this paragraph 4.30 and shall not rent such Housing Unit(s) for a minimum of thirty (30) days to anyone who is not eligible for the appropriate Special-Needs Housing Set-Aside(s). If the Owner rents a Housing Unit included in the Farmworker Housing Set-Aside to an ineligible household after the thirty (30) day period, any and all Housing Units that subsequently become vacant, including the Housing Unit rented to the ineligible household, must be rented to a Resident who is eligible for the Farmworker Housing Set-Aside (subject to the thirty day marketing requirement set forth in the preceding paragraph).

The marketing requirements for the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside set forth in this paragraph 4.30 apply to all vacant Housing Units which are necessary to comply with the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside throughout the Project Compliance Period.

Notwithstanding anything herein to the contrary, for the Special-Needs Housing Set-Aside for persons who are Elderly, no Housing Unit may be rented to any person if the result is that the Project would no longer be an Elderly Housing Project. Also, notwithstanding anything herein to the contrary, for the Special-Needs Housing Set-Aside for Transitional Housing, any vacancies in the set-aside must be filled by a Resident who meets the eligibility criteria for that set-aside.

4.31 The Owner has agreed and does hereby agree to an Additional Low-Income Housing Use Period of **twenty two (22)** years for the Project. The Owner acknowledges that this Agreement shall remain in full force and effect during this period and the Owner shall comply with the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement for the duration of the Additional Low-Income Housing Use Period. The Owner and its successor(s) in interest, if any, waive(s) any right to terminate this Agreement with respect to any Building in the Project for the duration of the Additional Low-Income Housing Use Period as may otherwise be available pursuant to Section 42(h)(6)(E)(i)(II).

4.32 If the Owner submitted the Application on or after November 20, 1997, or, if the Owner submitted the Application before November 20, 1997, and made an agreement in the Application for the Allocation Criteria relating to Resident charges and fees, the Owner hereby agrees to:



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- (i) limit up-front charges and fees for Residents of all Low-Income Housing Units and all Housing Units subject to a Special-Needs Housing Set-Aside(s) to:
- (a) the first month's Gross Rent;
  - (b) a reasonable damage or security deposit (excluding any pet damage deposit, if applicable) no greater than 50% of the maximum applicable monthly Gross Rent; plus
  - (c) a reasonable credit check fee; AND
- (ii) not charge any other up-front charges or fees, for example, the last month's rent, application fees, and cleaning deposits or fees.

In addition to the above charges and fees, the Owner may collect the last month's Gross Rent in advance ONLY IF the charges are made on at least a six (6) month prorated basis beginning on the second month or later (e.g. one-sixth of the last month's Gross Rent due each month from the second month through the seventh month).

This paragraph 4.32 does apply to the Project.

4.33 If the Owner requested in the Application and received Allocation Criteria Points for the preservation of federally assisted low-income housing, the Owner hereby agrees to:

- (i) maintain the Low-Income Housing Units included in the Project for a minimum of thirty (30) years;
- (ii) not evict the existing Residents in any Federally Assisted Building(s) (except for good cause) and hereby represents that none of the Low-Income Residents occupying a Federally Assisted Building at the time of its acquisition by the Owner have been evicted (except for good cause);
- (iii) except as specifically provided below, not increase the Gross Rent of the existing Residents in any Federally Assisted Building(s) in the Project for a three-year period following the later of –
  - (a) the acquisition date of the Federally Assisted Building(s) in the Project; or
  - (b) the date of the action that would otherwise have resulted in the conversion of the Low-Income Housing Units to Market Rate Housing Units, unless the increases are required by the federal agency regulating the low-income use; and
- (iv) if the Project has project-based Section 8 rental assistance or other comparable project-based federal rental assistance, renew the existing project-based Section 8 rental assistance contract or other comparable project-based federal rental assistance contract for the earlier of (i) the



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duration of the Project Compliance Period or (ii) as long as the rental assistance is available.

With regard to item (iv) above, the Owner may request that the Commission waive or modify this requirement if the Owner demonstrates that the rental assistance is insufficient to support the economic viability of the Project. The waiver or modification will be at the reasonable discretion of the Commission. With regard to item (iii) above, if the Project is denied rental assistance during the three-year period, the Owner, after giving a minimum of twelve (12) months notice to the existing Residents, may increase the Gross Rent of the existing Residents in an amount necessary to support the Project's operating expenses and debt service costs, as acceptable to the Commission, so long as:

- (i) for households at or below 45% of the Area Median Gross Income, the monthly Gross Rent does not exceed 30% of 45% of the monthly Area Median Gross Income adjusted for the Imputed Household Size; or
- (ii) for households above 45% of the Area Median Gross Income, the monthly Gross Rent does not exceed an amount to be approved by the Commission based on the economic viability of the Project at that time.

This paragraph 4.33 **does not** apply to the Project.

4.34 The Owner shall at all times comply with all applicable federal, state and local laws, rules and regulations now provided or which may be hereafter provided, including but not limited to: (i) federal housing policy governing nondiscrimination and accessibility, as determined under the Americans with Disabilities Act, the Fair Housing Act, as amended; Architectural Barriers Act of 1968; Housing and Community Development Act of 1974; Civil Rights Act of 1964; Civil Rights Act of 1968; Age Discrimination Act of 1975; (ii) to the extent applicable, the Housing and Urban Development Act of 1968; the Uniform Relocation and Real Property Acquisition Act of 1970; and the Stewart B. McKinney Homeless Assistance Act; and (iii) the State Environmental Policy Act; State Workers Compensation Industrial Insurance Act; Washington Fair Housing Laws; and the Washington State Landlord/Tenant Act. Further, if the Project includes "Federally Assisted Housing" as defined in RCW 59.28.020 (as it may be subsequently amended or renumbered), the Owner shall comply with the written notice requirements specified in RCW 59.28.020 at least twelve (12) months prior to the expiration of the federal rental assistance contract or prepayment of the federal mortgage or loan.

The Owner shall obtain all necessary state and local approvals and permits required for the Project and develop and operate such Project in conformance with the laws of the state of Washington including state and local laws prohibiting discriminatory housing and



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employment practices. The Project shall at all times meet state and local health, safety and building codes and standards and be suitable for occupancy and habitability.

4.35 The Owner shall not discriminate in making available Housing Units in the Project for occupancy on the basis of race, creed, color, sex, national origin, religion, familial status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E.

The Owner shall not discriminate against any Resident or prospective Resident on the basis of that Resident's or prospective Resident's sources of income, including but not limited to public assistance, provided such sources of income are not in contravention of any federal, state or local law. The Owner further agrees not to discriminate against any Resident or prospective Resident on the basis of that Resident's or prospective Resident's receipt of Section 8 or any comparable rental assistance.

4.36 When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside, the Owner shall not apply selection criteria to a prospective Resident that are more burdensome than the selection criteria applied to any other Resident or prospective Resident; and the Owner shall take into consideration the rental history of such prospective Resident as evidence of the ability to pay the applicable rent, if: (i) the rental history is of a term of at least one year; and (ii) the history shows that the Resident has paid at least the same percentage of his income for rent during that period as he will be required to pay for the rent of the Housing Unit for which the Resident is applying.

4.37 The Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) shall not be geographically segregated from other Housing Units in the Project. In addition, the Low-Income Housing Units and Housing Units in a Special-Needs Housing Set-Aside(s) shall be substantially the same size as other Housing Units with the same number of bedrooms.

4.38 The configuration of Housing Units (e.g. studios, one-bedrooms, two-bedrooms, etc.) used for the Low-Income Housing Units and the Special-Needs Housing Set-Asides for Elderly persons, persons with Disabilities and Transitional Housing shall be proportional to the configuration of the Total Housing Units in the Project. The Owner may use a configuration of Housing Units for the Low-Income Housing Units and/or a Special-Needs Housing Set-Aside(s) that is different than the proportional configuration of



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the Total Housing Units in the Project only with the prior written approval of the Commission.

4.39 All Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) shall be of the same quality construction as all other Housing Units, and shall be equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the needs of Resident(s) with Disabilities. Notwithstanding the foregoing, if Housing Units rented to non-low-income Residents are above the quality standard of the Low-Income Housing Units or contain additional amenities not contained in the Low-Income Housing Units, then:

- (i) The Owner must represent and warrant to the Commission that the Eligible Basis in the Building was reduced by an amount equal to the portion of the Adjusted Basis of the Building which is attributable to Housing Units in the Building which are not Low-Income Housing Units and which are above the average quality standard of the Low-Income Housing Units in the Building; or
- (ii) The Owner shall submit evidence that, in the judgment of the Commission, reasonably demonstrates that the excess of the cost of such above quality Housing Unit(s) over the amount such Housing Unit(s) would cost if the average cost per square foot of Low-Income Housing Units in the Building were substituted for the cost per square foot of such above quality Housing Unit(s) were used, is less than fifteen percent (15%) of the cost per square foot of the Low-Income Housing Unit and the Owner elected to exclude such excess costs from Eligible Basis.

4.40 The Owner shall at least annually notify the relevant public housing authority and at least two (2) community agencies in the area of the Project of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside. Where no public housing authority exists, notice shall be given to an agency authorized to act in lieu of a public housing authority, if any.

4.41 The Owner shall at least annually notify the general public, via advertisement(s) in a newspaper(s) of general circulation in the area of the Project, of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside. Such advertisement(s) shall conform to the Fair Housing Act, as amended, and state and local law.



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4.42 The Owner shall include a rider (the "Lease Rider") to each Resident lease or rental agreement and provide a copy to such Resident in substantially the form set forth in Exhibit "C", attached hereto and incorporated herein by reference, which describes in general the legal rights and remedies of the Resident and the Owner's duties and responsibilities under the Tax Credit Program. The Owner shall provide the Commission a copy of the master lease or rental agreement with the attached Lease Rider and must provide each Resident with a copy of the Lease Rider prior to their execution of a lease or rental agreement. The Lease Rider must be signed and dated by a Resident signifying receipt of such Lease Rider and maintained on file for inspection by the Commission. The Owner must provide each Resident a copy of the executed lease or rental agreement and a copy of the signed Lease Rider for such Resident's records.

4.43 The Owner represents and warrants that the Project shall not contain a Commercial Facility; or to the extent that it is intended that such Project contain a Commercial Facility that the Owner shall not include any costs associated with such Commercial Facility in determining the Eligible Basis of the Project and/or any Building. The Owner further agrees to provide evidence upon request in a form acceptable to the Commission of the Owner's continuing compliance with this paragraph 4.43.

4.44 Throughout the Three-Year Period applicable to a Building, the Owner shall comply with the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement and the Credit Reservation Contract which shall remain in effect with respect to such Building until termination of the Three-Year Period. The Owner acknowledges that the Commission's requirements for the Three-Year Period are more stringent than those under Section 42 of the Code.

4.45 Except as specifically set forth in Section 16 below and the *Policies*, all Project Transfers or Assignments shall require the prior written consent of the Commission. The Owner shall not make, participate in, or allow a Project Transfer or Assignment, except as set forth in Section 16 below and the *Policies*, without the prior written consent of the Commission.

4.46 The Owner represents and warrants that the Owner and/or the Project, as applicable, complies and will continue to comply with each of the Program Limits in the *Policies*.

4.47 The Owner represents and warrants that the Project information included in Exhibit "B", attached hereto and incorporated herein by reference, is complete and accurate.



## 5. Commission's Representations

The Commission represents that it had and has the authority to grant, or bind a successor organization with the authority to grant, a Credit Reservation and a Carryover Allocation and/or final Allocation of Credit, if any, made with respect to the Project which would be apportioned to each qualifying Building located in the state of Washington for purposes of the Code. Any Credit Reservation, Carryover Allocation and/or final Allocation was and will be based solely upon the representations and agreements of and the information submitted by the Owner and/or the Owner's designees, representatives or agents without confirmation by the Commission.

## 6. Reporting Requirements

6.1 The Owner, shall timely provide in writing all information and documentation requested by the Commission, its representatives or designees throughout the Project Compliance Period. Such information requested shall include without limitation, all Certifications or other documentation as to the compliance of each Building in the Project with the terms of this Agreement, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, and other requirements of the Commission, IRS, state, federal or local authorities. Further, the Owner shall grant the Commission and its representatives access to the Project and to each Building and structure located on the Land for on-site review and inspection, which shall include the right to interview Residents of the Project, to inspect Housing Units, to review Resident applications and financial information in the possession of the Owner (or its agents), and to review information, including without limitation, the Owner's books and records relating to the Project, upon a minimum of three (3) days advance notice. The Owner shall comply with the compliance monitoring, record keeping, certification and reporting requirements described in this Section 6, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, Section 42 of the Code, and federal and state law. The Owner acknowledges that the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual* and federal and state laws as they pertain to the Tax Credit Program are frequently amended and it is the Owner's sole responsibility to ensure that the Project is in compliance throughout the Project Compliance Period.

6.2 The Owner and its property management representative shall attend a tax credit compliance training workshop given by the Commission or its authorized designee by the *earlier* of: (i) at least one hundred twenty (120) days before the first completed Building is Placed-In-Service; or (ii) prior to commencement of initial rent-up activities for the Project.



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6.3 The Owner shall provide to the Commission, true, complete, and fully executed copies of: (i) IRS Form 8609 and attached Schedule A (together with any other attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; (ii) IRS Form 8586 (together with all attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; and (iii) each and every other form or document that is required, pursuant to Section 42 of the Code and the regulations thereunder, to be filed by the Owner with the IRS in connection with the Project or any Building in the Project throughout the Project Compliance Period. The copies described above must be filed with the Commission no later than the earlier of the date they are actually filed with the IRS or the date they are legally due to be filed, including extensions, with the IRS. Throughout the Project Compliance Period, the Owner also shall provide to the Commission true and complete copies of any and all notices, correspondence or other documents received by the Owner or its agent from the IRS with regard to the Project, including but not limited to notices, correspondence or other documents responding to or relating to IRS Form 8609, IRS Form 8586 and IRS Form 8823. The copies described in the immediately preceding sentence must be filed with the Commission no later than fifteen (15) days after being received by the Owner.

6.4 The Owner shall keep records for the Project (and, as noted, for each Building) that show for each Year throughout the term of this Agreement the following information:

- (i) The total number of Housing Units in each Building (including the number of bedrooms and the size in square feet of each Housing Unit).
- (ii) The percentage and number of Housing Units in each Building that are Low-Income Housing Units.
- (iii) The percentage and number of Housing Units in the Project that are subject to the Additional Low-Income Housing Set-Aside requirements.
- (iv) The percentage and number of Housing Units in the Project that are subject to each of the Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside requirements.
- (v) The Gross Rent charged for each Low-Income Housing Unit in the Project (including any Utility Allowances).
- (vi) The number of Residents in each Low-Income Housing Unit.
- (vii) The number of Residents in each Housing Unit subject to a Special-Needs Housing Set-Aside related to household size.
- (viii) The Low-Income Housing Unit vacancies in each Building and information that shows when, and to whom, the next available Housing Units were rented.



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- (ix) The vacancies of any Additional Low-Income Housing Set-Aside in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (x) The vacancies of any Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (xi) The annual Income Certification of each low-income Resident;
- (xii) Documentation to support each low-income Resident's Income Certification.
- (xiii) Documentation to support that each Resident who resides in a Housing Unit that is subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside meets the Commission's eligibility criteria for such Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside.
- (xiv) The Eligible Basis and Qualified Basis of each Building at the end of the first year of the Credit Period.
- (xv) The character and use of the nonresidential portion of each Building included in the Building's Eligible Basis under Section 42(d) of the Code.
- (xvi) The date that a Resident initially occupies a Housing Unit and the date that a Resident moves-out of a Housing Unit.
- (xvii) Documentation that demonstrates compliance with the marketing requirements for the Special-Needs Housing Set-Aside(s) and the Farmworker Housing Set-Aside as set forth in paragraphs 4.29 and 4.30 above.
- (xviii) If the Owner made an agreement in the Application relating to Resident charges and fees, documentation that demonstrates compliance with the requirements set forth in paragraph 4.32 above.
- (xix) Documentation that demonstrates compliance with the annual notification requirements set forth in paragraph 4.40 above.
- (xx) Documentation that demonstrates compliance with the annual advertising requirements set forth in paragraph 4.41 above.
- (xxi) Documentation that demonstrates compliance with the Lease Rider requirements as set forth in paragraph 4.42 above.
- (xxii) Compliance with each and every other covenant and obligation of the Owner under this Agreement, the Credit Reservation Contract and/or the Tax Credit Program.

6.5 The Owner shall, throughout the term of this Agreement, retain the records described in paragraph 6.4 above: (i) for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; and, (ii) with respect to





any year for which an income tax return is not filed or does not reflect the Credit for such project, for at least six (6) years after the end of that year. The records for the first year of the Credit Period as defined under Section 42(f)(1) of the Code, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Project Compliance Period as defined under Section 42(i)(1) of the Code with respect to a Building in the Project.

6.6 The Owner shall submit a Certification at least annually to the Commission in a form acceptable to the Commission under penalties of perjury that, at all times during the preceding twelve (12) month Certification Period the following was true:

6.6.1 The Project met the requirements of:

- (i) the 20-50 test under Section 42(g)(1)(A) of the Code, or the 40-60 test under Section 42(g)(1)(B) of the Code, whichever Minimum Low-Income Housing Set-Aside test is applicable to the Project;
- (ii) if applicable to the Project, the 15-40 test under Section 42(g)(4) and Section 142(d)(4)(B) of the Code for "deep rent skewed" projects;
- (iii) any Additional Low-Income Housing Set-Aside; and
- (iv) any Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside.

6.6.2 There was no change in the Applicable Fraction of any Building in the Project, or that there was a change, and a description of the change.

6.6.3 The Owner has received an annual Income Certification from each low-income Resident, and documentation to support that Certification.

6.6.4 Each Low-Income Housing Unit in the Project was Rent-Restricted.

6.6.5 All Housing Units in the Project were for use by the general public and used on a non-transient basis (defined under Section 42(i)(3)(B) of the Code).

6.6.6 Each Building in the Project was suitable for occupancy and habitability, taking into account local health, safety, and building codes.

6.6.7 There was no change in the Eligible Basis (as defined in Section 42(d) of the Code) of any Building in the Project, or if there was a change, the nature of the change.



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6.6.8 All functionally related and subordinate facilities included in the Eligible Basis under Section 42(d) of the Code of any Building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all Residents in the Building.

6.6.9 If a Low-Income Housing Unit in the Project became vacant, that reasonable attempts were or are being made to rent that Housing Unit or the next available Housing Unit of comparable or smaller size to Residents having a qualifying Income before any Housing Units in the Project were or shall be rented to Residents not having a qualifying Income.

6.6.10 If a Housing Unit subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside in the Project became vacant, that the Owner complied with the requirements specified in paragraph 4.30 above (describing good faith efforts to actively market vacant Housing Units and holding the Housing Units open).

6.6.11 If the Owner made an agreement in the Application for the Allocation Criteria relating to Resident charges and fees, that the Owner complied with the requirements described in paragraph 4.32 above.

6.6.12 If the Income of a Resident of a Low-Income Housing Unit in the Project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available Housing Unit of comparable or smaller size in the Project was or shall be rented to Residents having a qualifying Income.

6.6.13 This Agreement was in effect as an extended low-income housing commitment as described in Section 42(h)(6) of the Code.

6.6.14 The Project was a Residential Rental Property in compliance with all applicable federal, state and local housing laws, regulations and policies governing nondiscrimination and accessibility, including but not limited to: the Americans with Disabilities Act; Fair Housing Act, as amended; Architectural Barriers Act of 1968; Housing and Community Development Act of 1974; Civil Rights Act of 1964; Civil Rights Act of 1968; and Age Discrimination Act of 1975 and no Resident or prospective Resident was discriminated against on the basis of race, creed, color, sex, national origin, familial status, religion, marital status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. Furthermore, no



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Resident or prospective Resident was discriminated against on the basis of that Resident's or prospective Resident's: (i) sources of income, including but not limited to public assistance, provided such sources of income were not in contravention of any federal, state or local law; or (ii) receipt of Section 8 or any comparable rental assistance.

6.6.15 There were no changes in the Project that would alter or amend the representations or agreements made in the Application, the Credit Reservation Contract and/or the Carryover Allocation Contract, except as the documents and agreements have been previously amended by the Owner or its predecessor in interest with the written approval of the Commission.

6.6.16 The Owner has no actual or constructive knowledge of the occurrence of any event that would require the Owner to notify the Commission pursuant to paragraph 4.12 above.

6.6.17 When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside, the Owner did not apply selection criteria to a prospective Resident that was more burdensome than selection criteria applied to any other Resident or prospective Resident.

6.6.18 The Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) were not at any time geographically segregated from other Housing Units in the Project.

6.6.19 Except for the Special-Needs Housing Set-Aside for Large Households, the configuration of any Housing Units used for the Low-Income Housing Units and any Special-Needs Housing Set-Aside(s) were proportional to the configuration of the Total Housing Units in the Project (unless a different configuration was approved by the Commission in writing) and the Housing Units used for the Low-Income Housing Units and any Special-Needs Housing Set-Aside(s) were substantially the same size as other Housing Units with the same number of bedrooms.

6.6.20 All Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) were of the same quality and construction as all other Housing Units and were equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the



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needs of Resident(s) with Disabilities and subject to the exception set forth in paragraph 4.39 above.

6.6.21 The Owner notified the relevant public housing authority and at least two (2) community agencies in the area of the Project of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside or, if no public housing authority existed, notice was given to an agency authorized to act in lieu of a public housing authority.

6.6.22 The Owner notified the general public, via advertisements in newspapers of general circulation in the area of the Project, of the availability of Low-Income Housing Units and any Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside, and such advertisement(s) conformed with the Fair Housing Act, as amended, and state and local law.

6.6.23 The Owner provided a copy of the Lease Rider (in substantially the form set forth in Exhibit "C") to each Resident prior to the execution of each lease or rental agreement for the Project and a Lease Rider has been signed and dated by each Resident and is on file with the Owner for inspection by the Commission.

6.6.24 The Project has not and does not contain a commercial facility except to the extent previously approved in writing by the Commission.

6.6.25 As may be requested by the Commission in the future, any other factual matters that reflect compliance by the Owner and/or the Project with each and every other covenant and obligation under this Agreement, the Credit Reservation Contract and/or the Tax Credit Program.

6.7 The Commission will: (i) review the annual Certifications submitted by the Owner of a Project under paragraph 6.6 above for compliance with the requirements of Section 42 of the Code and with the requirements of the Commission's Tax Credit Program; and (ii) randomly select at least twenty percent (20%) of the Low-Income Housing Units and Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside for each Project each year and obtain from the Owner and review the documentation of the Residents who have occupied these Housing Units within the Certification Period, including a copy of the annual Income Certification and the documentation (in a form prescribed by or acceptable to the Commission) the Owner has received to support that Income Certification.



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6.8 The Owner represents that it has reviewed the *Low-Income Housing Tax Credit Compliance Manual*, and agrees to prepare the documentation required in this Section 6 in accordance therewith.

6.9 The Owner hereby acknowledges and agrees that the reporting requirements and obligations set forth in this Section 6 may be amended from time to time by the Commission, in its sole discretion, to the extent necessary to meet the requirements of the Code and the Tax Credit Program and, for the purposes of this Agreement, the Owner shall be subject to and bound by such amendments on a prospective basis. To the extent permitted by law, such amendments may be made either through an amendment of this Agreement, the *Policies* or the *Low-Income Housing Tax Credit Compliance Manual*.

## 7. Recordation

This Agreement shall be recorded by the Owner in the office of the county auditor or recorder of each county in which each Building in the Project is located. The Owner shall deliver evidence of each such recording to the Commission within fourteen (14) days following the execution of this Agreement. All amendments to this Agreement shall be executed, recorded and delivered in like manner.

## 8. Enforcement of Terms

8.1 The benefits of this Agreement shall inure to and may be enforced by the Commission, its successors and assigns, throughout the term of this Agreement. The Owner agrees that it shall execute and deliver any and all documents and instruments necessary to effectuate the provisions of this paragraph 8.1. The rights and remedies of the Commission under this Agreement upon Noncompliance, default or breach by the Owner are in addition to and not in lieu of the rights and remedies the Commission has the authority to exercise by statute, rule or regulation.

8.2 Nothing in this Agreement shall impose any duty or obligation on the Commission to take any action, including without limitation any duty or obligation to find a purchaser for any Building, the Project or any portion thereof or to bring any action enforcing this Agreement. The Commission may exercise its rights under this Agreement solely in its own discretion.

8.3 In determining whether any default or Noncompliance by the Owner exists under this Agreement, the Commission shall not be required to conduct any investigation or



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review of operations by the Owner and may rely solely upon any notice delivered to the Commission with respect to the occurrence or absence of a default.

8.4 Any Credit Reservation, Carryover Allocation and/or final Allocation and this Agreement and the terms and provisions herein are solely for the benefit of the parties hereto and are not for the benefit of and may not be relied on by any third parties.

8.5 This Agreement is not intended, and shall not be construed, to create a duty or obligation of the Commission to enforce any term or provision of this Agreement, the *Policies*, the Credit Reservation Contract, or any other Tax Credit Program documents or agreements on behalf of, at the request of, or for the benefit of, any former, present or prospective Resident. The Commission assumes no direct or indirect obligation to any former, present or prospective Resident for violations by the Owner or any other party. Violations of the provisions of this Agreement, the *Policies*, the Credit Reservation Contract, or any other Tax Credit Program documents or agreements shall be enforceable exclusively against the Owner and, to the extent provided for herein, against the Bound Parties, a General Partner, a party to a Joint Venture, a Managing Member, and a Company Member. The Commission, its successors, designees and assigns, assume no direct or indirect obligation to any former, present or prospective Resident for such violations.

## 9. Defaults; Remedies

If the Owner fails to observe or perform any of the terms, conditions, obligations, restrictions, covenants, representations or warranties set forth in this Agreement on its part to be observed or performed and if such Noncompliance is not corrected as provided for in Section 3 above, then such Noncompliance shall be considered an event of default and the following shall occur:

9.1 The Commission, its successors, designees, and assigns, shall be entitled, individually and collectively, by law or in equity to compel specific performance by the Owner of its obligations under this Agreement and to exercise any other rights or remedies it may have under this Agreement, the Tax Credit Program, the Credit Reservation Contract or law.

9.2 In the event of a violation or attempted violation of any of the provisions hereof, the Commission, its successors, designees and assigns, and, subject to the provisions of paragraph 8.5 above, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Set-Aside, or who meets the requirements for occupying a Housing Unit subject to a Special-Needs Housing



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Set-Aside(s) (such individual may be a former, present or prospective Resident of the Project), may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation.

9.3 Upon demand by the Commission, the Owner shall pay to the Commission an amount equal to all monies received by the Owner with respect to Low-Income Housing Units and, to the extent applicable, Housing Units subject to a Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside, from the time that the Owner or its agents knowingly or negligently permitted such Housing Units to be occupied by persons who are determined not to meet the income limitations applicable to such Low-Income Housing Units or who, subject to the terms of paragraph 4.30 above, are determined not to meet the requirements for occupying a Housing Unit which is subject to the Special-Needs Housing Set-Aside(s) or the Farmworker Housing Set-Aside until the Project is brought back into compliance with the provisions of this Agreement. Notwithstanding the foregoing, the provisions of this paragraph 9.3 are not intended, and shall not be construed, to grant to the Commission a current lien on or a security interest in, the rents, issues and profits from the Project. Accordingly, the Commission shall have no right in the rents, issues or profits from the Project that is prior to the interest of a properly executed and recorded mortgage lien or assignment of rents [except to the extent that the Commission may obtain a judgment against the Owner (or its successor) that is prior to a recorded mortgage lien or assignment of rents].

9.4 Subject to the provisions of paragraph 8.5 above, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Set-Aside (such individual may be a former or present Resident of the Project), shall be entitled to cause the Owner to pay such individual an amount equal to the difference between the monies received by the Owner from such individual with respect to a Low-Income Housing Unit and the amount which should have been received by the Owner if the rent collected by the Owner for such Unit was in compliance with the provisions of this Agreement.

9.5 The provisions hereof are imposed upon and made applicable to the Project and shall run with the Land and shall be enforceable against the Owner and each Bound Party. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation or any other breach or violation thereof at any later time or times.



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## 10. Indemnification

10.1 The Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, shall jointly and severally at all times indemnify and hold harmless the Commission, including any member, officer, employee, agent or representative thereof (the "Indemnified Parties") from and against any and all claims, suits, losses, damages, costs, expenses and liabilities of whatsoever nature or kind (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgment(s), and any disallowance of tax benefits) directly or indirectly resulting from, arising out of, or related to: (i) acceptance, consideration and approval or disapproval of the Application; (ii) use of the information in the Application; (iii) the participation of any person in the Tax Credit Program in connection with the Project; (iv) any Credit Reservation or Allocation of Credit with respect to the Project; (v) the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of such Project; (vi) the Commission's acting as a party to any agreement entered into in connection with a Project; (vii) any enforcement by the Commission of any agreement entered into by an Owner and the Commission relating to the Project; (viii) any claim or suit arising because of an Owner's or any other party's failure to comply with any federal, state, or local environmental, labor, income tax, excise tax, transfer tax, employment tax, housing or employment discrimination, permitting, zoning, or land use law, regulation or requirement; and/or (ix) any claim or suit by an investor in the Project or by a lender to the Project or purchaser or assignee. An Indemnified Party may, in its sole discretion, monitor and/or participate in the defense of any such claim or suit and may select any law firm to do so. This may include any level of participation, including complete control, desired by the Indemnified Party.

The Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, shall promptly reimburse the Indemnified Party for all attorneys' fees, litigation and court costs, amounts paid in settlement and other such sums as described above which are incurred by the Indemnified Party. The Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, waive any right to bring legal action, on their own behalf or on behalf of any other party, against the Commission as to any matter for which the Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing



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Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, agree to indemnify and hold harmless the Commission.

10.2 The Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, jointly and severally agree to pay, indemnify and hold the Commission, including any member, officer, employee, agent or representative thereof (the "Enforcing Parties") harmless from any and all costs, expenses and fees, including all attorneys' fees which may be incurred by any Enforcing Party in enforcing or reasonably attempting to enforce this Agreement following any event of default on the part of the Owner hereunder, whether the same shall be enforced by suit or otherwise; together with all costs, fees and expenses which may be incurred in connection with any amendment to this Agreement or otherwise by the Commission at the request of the Owner (including the fees and expenses of legal counsel to the Commission in connection with any opinion to be rendered hereunder).

10.3 The agreements to indemnify set forth in this Section 10 are joint and several obligations which are separate agreements which shall survive any foreclosure action, attempted transfer or assignment or termination of an Owner's, General Partner's, party to a Joint Venture's, and/or, in the case of a Limited Liability Company, each Managing Member's or, if there is no Managing Member, each Company Member's and any Company Manager's interest in the Project and such agreements are a personal obligation of such party and action may be brought thereon independently of any other remedy provided for in this Agreement. The agreements to indemnify set forth in this Section 10 with respect to the Owner, General Partner(s), party to a Joint Venture, and/or, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager are intended to cover actions or events which occur and give rise to the indemnification provisions of this Section 10 during the period of such party's interest in the Project, irrespective of when such claim or suit is brought. The signatures below of each General Partner, each party to a Joint Venture and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable, not only binds the Owner to the terms of this Section 10 but shall also constitute such party's agreement to be separately bound in its own name by the terms of this Section 10 notwithstanding the fact it is otherwise signing in a representative capacity.

10.4 Limited Personal Liability for Subsequent Owner. Except for accrued Annual Compliance Monitoring Fees, no successor in interest to the Owner shall be liable for monetary damages or restitution under Section 9 above or this Section 10 arising from: (i) acts (or failures to act) by persons or entities other than such successor (or a Related Party



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to such successor) which occurred before the earlier of the date the successor obtained control or became the owner of the Project; or (ii) events or conditions on or related to the Project occurring or existing prior to the earlier of the date such successor obtained control or became the owner of the Project. Notwithstanding the foregoing, if defaults exist under this Agreement that arose before and are continuing after such successor either obtains control or becomes the owner of the Project (each a "Continuing Default"), then the successor shall be in Noncompliance under this Agreement to the extent that the Continuing Default relates to the period commencing on the successor's ownership of the Project (subject to the opportunity to cure provided in Section 3 above). If and so long as the cure of a Continuing Default is prohibited by law (including restrictions on tenant evictions), the successor shall not be in Noncompliance and shall not be required to cure the Continuing Defaults; provided, notwithstanding the above, the Commission will give the successor written notice of a Continuing Default and/or report the same to the IRS as required by the Tax Credit Program, Section 42 of the Code, the regulations thereunder and applicable law (as amended from time to time).

If a successor in interest to the Owner (the "First Successor") becomes the owner of the Project and the First Successor subsequently transfers the Project to an unrelated third party, the First Successor shall not be liable under this Agreement for acts or omissions occurring or conditions existing after the date of such transfer, provided that the following conditions are met:

- (i) The First Successor completes the transfer of ownership of the Project in accordance with the terms and conditions of Section 16 below, including but not limited to the payment of the Commission's then applicable nonrefundable transfer fee;
- (ii) The First Successor cures any existing defaults for which it is responsible hereunder in a timely manner; and
- (iii) The First Successor pays all accrued Annual Compliance Monitoring Fees.

In no event shall a successor in interest to the Owner be released from the continuing obligations it has hereunder, including but not limited to paragraphs 10.1, 10.2 and 10.3 above, for acts or omissions occurring or conditions existing during the period of the successor's ownership of the Project.

## 11. Notices; Counting Days

All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties at

the addresses set forth below, or to such other place as a party may from time to time designate in writing:

Owner: **Salem Village Limited Partnership, A Washington Limited Partnership**

Contact for Legal Notices: **Mark Kantor  
Attorney at Law  
Kantor Taylor McCarthy & Britzmann, P.C.  
1501 Fourth Avenue, Suite 1610  
Seattle WA 98101-1662**

Commission: **Washington State Housing Finance Commission  
1000 Second Avenue  
Suite 2700  
Seattle, Washington 98104-1046  
Attn: Executive Director**

Except as otherwise set forth herein, "days" as used in this Agreement and all Exhibits hereto shall mean calendar days, including Saturdays, Sundays and Washington State holidays; provided if the last day of a deadline or other period described herein would otherwise fall on a Saturday, Sunday or Washington State holiday, the last day of such deadline or other period shall extend to the next calendar day that is not a Saturday, Sunday or Washington State holiday; provided, if the last day of a deadline or other period is December 31 (or any other date that cannot be extended under the law), the deadline or other period shall be the last day prior to the original deadline or other period that is not a Saturday, Sunday or Washington State holiday.

## **12. Amendment**

The Commission and the Owner may amend this Agreement only by written agreement signed by both parties and duly recorded.

## **13. Waiver**

No action or failure to take action pursuant to this Agreement on the part of the Commission, including without limitation, any investigation by or on behalf of the

T:\Masters\Contract\1999 Regulatory Agreement Packet  
August 2, 1999 version

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REGULATORY AGREEMENT (Extended Use Agreement)  
Salem Village Apartments (TC or OID # 97-44H)  
October 26, 1999



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Commission, shall constitute a waiver by the Commission of the Owner's compliance with the terms, conditions, obligations restrictions, covenants, representations and warranties set forth in this Agreement nor establish a precedent for any other project, person or entity. No waiver, modification or change shall be binding unless in writing and signed by the Commission. A waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

#### **14. Partial Invalidity**

Each and every term of this Agreement shall be valid and enforceable to the fullest extent possible. If any term(s) or provision(s) of this Agreement or the application thereof to any person, entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) to persons, entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected hereby.

#### **15. Further Assurances**

The Owner agrees to execute, acknowledge, and deliver any and all documents, instruments, and writings, and to perform other acts as are reasonably necessary to carry out the purposes of this Agreement.

#### **16. Project Transfer or Assignment**

16.1 Subject only to the specific exceptions set forth in paragraph 16.2 below and the *Policies*, each and every Project Transfer or Assignment shall require the prior written consent of the Commission. A Project Transfer or Assignment is defined as any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in,

- (i) an interest in the Land, the Project, or any Building;
- (ii) an ownership interest in the entity that is the Owner; or
- (iii) the right, title or interest of the Owner in the Application, the Credit Reservation Contract, the Carryover Allocation Contract, this Agreement, or any other agreement in which the Commission and the Owner are parties.

Project Transfers or Assignments that require the written consent of the Commission generally fall into one of the three categories listed below; however, these three categories



are not intended to describe all Project Transfers or Assignments that require the prior written consent of the Commission:

16.1.1 A sale, contribution, assignment, lease, exchange, or transfer of, or change in, an interest in the Land, Project or a Building or in the Owner's rights in the Application.

16.1.2 A sale, contribution, assignment, exchange, or transfer of, or change in, certain ownership interests in the entity that is the Owner. The types of entities that may be the Owner are Limited Partnerships, Limited Liability Companies, General Partnerships, Joint Ventures and corporations.

The typical types of transfers of, or changes in, ownership interests in these entities that require the prior written consent of the Commission are:

- (i) If a Limited Partnership is the Owner, a sale or transfer of, or change in, the interest of a General Partner (including the addition, removal or withdrawal of a General Partner);
- (ii) If a Limited Liability Company is the Owner and has a Managing Member, a sale or transfer of, or change in, the interest of a Managing Member (including the addition, removal or withdrawal of a Managing Member);
- (iii) If a Limited Liability Company is the Owner and does not have a Managing Member, a sale or transfer of, or change in, the interest of a Company Member (including the addition, removal or withdrawal of a Company Member);
- (iv) If a Joint Venture or a General Partnership is the Owner, a sale or transfer of, or change in, the interest of a party or Partner, as the case may be (including the addition, removal or withdrawal of a party or Partner); and
- (v) If a Closely-Held Corporation is the Owner, the issuance, redemption or transfer of its stock or shares.

For purposes of this Section 16, a General Partner's interest in a Limited Partnership, a Managing Member's interest in a Limited Liability Company (or, if there is no Managing Member, a Company Member's interest in a Limited Liability Company), a party's interest in a Joint Venture, a Partner's interest in a General Partnership, and stock or shares in a Closely-Held Corporation, are referred to as "Restricted Ownership Interests."



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16.1.3 Project Transfers or Assignments requiring the prior written consent of the Commission also typically include certain indirect changes in the ownership structure of the Project. For example, the Owner must obtain the Commission's prior written consent for a sale or transfer of, or change in, an ownership interest in a Limited Partnership, Limited Liability Company, General Partnership or Joint Venture, or for the issuance, redemption, or transfer of stock or shares in a corporation if (i) the ownership interest that is the subject of the Project Transfer or Assignment is a Restricted Ownership Interest; and (ii) the entity in which the interest is held is related to the Owner through a series of Restricted Ownership Interests.

16.2 Notwithstanding the foregoing, the written consent of the Commission is not required: (i) to lease or rent Housing Units to Residents for their use as contemplated in the Tax Credit Program; (ii) for any other incidental use, to the extent permissible under all applicable federal, state and local laws and regulations; (iii) to grant a security interest or lien junior to the interest of the Commission; (iv) for a sale or transfer of, or change in, the interest of a Limited Partner (including the addition, removal or withdrawal of a Limited Partner); (v) in the case of a Limited Liability Company that has a Managing Member, for a sale or transfer of, or change in, the interest of a Company Manager who is not a Company Member or a Company Member who is not a Managing Member (including the addition, removal or withdrawal of such Company Manager or Company Member); or (vi) for the issuance, redemption or transfer of stock or shares of a corporation that is not a Closely-Held Corporation.

16.3 If in the Application the Owner (i) made a Commitment to participate under the Credit Set-Aside category for Qualified Nonprofit Organizations or Nonprofit Organizations or (ii) requested and received Allocation Criteria Points for having a Qualified Nonprofit Organization or a Nonprofit Organization sponsor for the Project, in addition to the other requirements and conditions set forth in the *Policies*, and as established by the Commission, any Project Transfer or Assignment shall be such that the Project continues to qualify for the respective Credit Set-Aside category or the Allocation Criteria Commitment, regardless of whether the Project received a Credit Reservation and/or Allocation under the Credit Set-Aside category for Qualified Nonprofit Organizations or Nonprofit Organizations or instead received a Credit Reservation and/or Allocation from the balance of the Annual Authority remaining after the Credit Set-Asides.

16.4 In order to request the Commission's written consent to a proposed Project Transfer or Assignment, the Owner shall advise the Commission in writing of the proposed Project Transfer or Assignment. The written request from the Owner, at a minimum, shall describe: (1) the name of the Project; (2) the name of the Owner, the proposed Transferor



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and Transferee, and all other relevant parties; (3) a complete description of the proposed Project Transfer or Assignment, including the proposed effective date; and (4) any special circumstances related to the proposed Project Transfer or Assignment. After receiving the written request, the Commission shall notify the Owner of the terms and conditions that must be satisfied, and the documentation that must be provided to the Commission, in order for the Commission to consider the request for its consent to the Project Transfer or Assignment.

16.5 For the Commission to consider a request for consent to a Project Transfer or Assignment, the Owner must satisfy each of the following requirements at least forty five (45) days before the proposed effective date of the Project Transfer or Assignment:

- (i) Pay to the Commission the applicable nonrefundable Transfer Fee for *each* Project Transfer or Assignment; and
- (ii) Fully and accurately complete and return all of the forms, documents and other information required by the Commission.

The Commission shall review the sufficiency of all of the documentation and information submitted in support of a request for the Commission's consent. The Commission shall have the right to determine (i) whether additional information is necessary in order to consider the request and (ii) whether the Commission's consent should be conditioned upon certain events, facts or requirements.

16.6 Any Project Transfer or Assignment made without the Commission's prior written consent (unless otherwise expressly permitted under paragraph 16.2 above or the *Policies*) or otherwise in violation of the requirements or provisions of this Section 16 or the *Policies*, the Credit Reservation Contract, or the Tax Credit Program shall be:

- (i) ineffective to relieve or release the Transferor, the Land, the Project and/or any Building from the obligations and provisions of the *Policies*, the Credit Reservation Contract, this Agreement and/or the Tax Credit Program;
- (ii) considered an event of default under the Application, the Credit Reservation Contract, this Agreement and the Tax Credit Program, allowing the Commission to immediately exercise any or all available remedies; and
- (iii) considered an event of Noncompliance that may result in the cancellation or invalidation of the Reservation and/or Allocation of Credit for the Project and/or any Building.

16.7 The Commission will not provide an IRS Form 8609 to any person or entity other than the person or entity who owns the Project receiving such Allocation at the time each



Building is Placed-In-Service unless all Project Transfers or Assignments are completed in accordance with the terms and conditions set forth in this Section 16 and the *Policies*.

16.8 Notwithstanding any contrary provision in this Agreement, the Credit Reservation Contract, or the *Policies*, the Commission may, in its sole discretion, withhold consent to any proposed Project Transfer or Assignment so long as (i) there remains an uncured default or breach by the Owner (or any predecessor of, or successor to, the Owner) of this Agreement, the Credit Reservation Contract, or the *Policies*, or (ii) any amount is owing by the Owner (or any predecessor of, or successor to, the Owner) to the Commission pursuant to any provision in such documents, including but not limited to paragraph 9.3 above.

## **17. Duration; Survival**

All of the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement shall be effective with respect to the Project and the Land upon execution of this Agreement and continue in full force and effect throughout the Project Compliance Period, unless sooner terminated with respect to a Building under Sections 22 or 24 below. Notwithstanding the termination of this Agreement with respect to a Building under Sections 22 or 24 below, Section 10 above shall survive and continue and is a personal obligation of the Owner, each General Partner, each party to a Joint Venture, and, in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, as applicable.

## **18. Time of the Essence**

Time is of the essence of this Agreement.

## **19. Captions**

Captions used in this Agreement are used for convenience of the Parties only and shall not be deemed to limit, modify or alter any of the substantive provisions of this Agreement.

## **20. Gender**



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Whenever in this Agreement the context requires, references to person shall mean any individual or entity including but not limited to any General Partnership, Limited Partnership, Limited Liability Company, corporation, Joint Venture, trust, business trust, cooperative or association and references to the masculine shall be deemed to include the feminine and neuter, and references to the singular shall be deemed to include the plural.

## **21. Governing Law; Effective Date**

This Agreement shall be governed by the laws of the state of Washington. Notwithstanding the date of the Agreement set forth on page one, this Agreement is entered into and shall be effective on the last signature date of the parties hereto.

## **22. Involuntary Loss**

22.1 In the event title to a Building is transferred during the term of this Agreement by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then this Agreement, excluding Section 10 above, shall automatically terminate with respect to such Building and any portion of Land upon which such Building is located (the Building together with any portion of the Land upon which such Building is located (whether owned or leased) are referred to in this Section 22 as the "transferred property") at the end of the Three-Year Period applicable to such Building. This Agreement shall thereafter be effective as to the Project but excluding the transferred property. In the event a successor in title by reason of the foreclosure, forfeiture or deed in lieu of foreclosure desires to qualify for Credit for such Building, if any, such successor in interest shall execute a revised regulatory agreement (extended use agreement) that shall be a recorded restrictive covenant on the transferred property and shall perform such acts and execute such other and further contracts or agreements required by the Commission; provided, if for any reason a revised regulatory agreement (extended use agreement) is not executed, such successor shall remain subject to, and liable under, the terms of this Agreement.

22.2 Notwithstanding the foregoing, paragraph 22.1 above shall not apply and all provisions of this Agreement shall remain in full force and effect with respect to a transferred property if after an acquisition described in such paragraph, the Owner or a related party (as defined in Sections 42(d)(2)(D)(iii), 267, 707(b) or 1563(a) of the Code) acquires an ownership interest (for federal income tax purposes) in such transferred property if the Secretary or the Commission determines that such acquisition is part of an



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arrangement with the Owner, a purpose of which is to terminate this Agreement in whole or in part.

22.3 In the event of involuntary transfer with respect to a Building arising as a consequence of seizure, requisition or condemnation by a governmental authority, this Agreement, excluding Section 10 above, shall automatically terminate with respect to such Building and any portion of Land seized, requisitioned or condemned by such governmental authority; and this Agreement shall thereafter be applied by excluding such Building and portion of Land from the Project.

22.4 This Agreement shall continue to apply in full to each Building and the Land as to which no foreclosure, forfeiture, deed in lieu of foreclosure or involuntary transfer arising from seizure, requisition or condemnation by a governmental authority has occurred until otherwise terminated with respect to such Building and Land.

### **23. Uniformity; Common Plan**

The provisions hereof shall apply uniformly to the entire Project to establish and carry out a common plan for the use, development and operation of the Project.

### **24. Termination of this Agreement**

The terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement may be voluntarily terminated by the Owner and the Commission with respect to a Building in the Project under the following conditions:

24.1 At any time after the close of the latest to end of: (i) the fourteenth (14th) year of the Compliance Period with respect to a Building; or (ii) one Year prior to the end of the Additional Low-Income Housing Use Period with respect to such Building, if any, the Owner may submit to the Commission a written request ("Purchase Request") that the Commission find a person to purchase the Owner's interest in such Building.

24.2 The Commission shall have one year from its receipt of a Purchase Request to present a proposed Qualified Contract by a person who agrees to purchase such Building and continue to operate the low-income housing portion of such Building as a qualified low-income building (within the meaning of Section 42 of the Code).



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24.3 If the Commission presents a timely proposed Qualified Contract under paragraph 24.2 above, the Purchase Request shall become irrevocable and the purchase and sale of the Building shall be carried out pursuant to the terms of the Qualified Contract. If, during the one year period and before the Commission presents a Qualified Contract, the Owner withdraws the Purchase Request: (i) the Owner shall fully reimburse the Commission for its costs incurred in attempting to locate a purchaser, including but not limited to the Commission's advertising costs, broker fees and attorneys' fees; and (ii) the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement shall not terminate with respect to such Building. However, the Owner shall not be precluded from having paragraph 24.1 above apply to a subsequent request made thereunder with respect to such Building.

24.4 If the Commission does not present a proposed Qualified Contract for a Building under paragraph 24.2 above by the close of the one year period, then the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement in effect for such Building, excluding Section 10 above, shall terminate at the end of Three-Year Period in effect with respect to such Building and the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement, excluding Section 10 above, shall thereafter be applied by excluding such Building from the Project.

24.5 This Agreement shall continue in full force and effect and shall continue to apply to each Building, the Land, and Project not subject to the Owner's Purchase Request and the related absence of a Qualified Contract under paragraphs 24.1 and 24.4 above.

24.6 If the Project consists of more than one Building, then the terms and requirements for the sale of one or more but not every Building in the Project shall be governed by subsequent Treasury Regulations and other applicable law. Nothing in this Agreement shall be deemed to permit sale of any Building or any interest in a Building, the Land, the Project or any portion thereof in violation of any applicable law, including without limitation state and local subdivision and zoning laws, ordinances and regulations.

## **25. Valid Existence; Authorization; No Conflict With Other Documents**

The Owner warrants that it is validly organized and currently authorized to do business in the state of Washington. The Owner, and each party or person executing this Agreement on behalf of the Owner, represents and warrants as follows: (i) that the execution, delivery and performance of this Agreement have been duly authorized and approved by the appropriate governing body of the Owner; (ii) that this Agreement, upon execution by each



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signatory of the Owner as set forth below, constitutes a valid and binding agreement of the Owner; (iii) if the Owner is a Partnership, that the Partners executing this Agreement on behalf of the Owner constitute all of the General Partners of the Partnership as of the date of the execution of this Agreement; (iv) if the Owner is a Joint Venture, that the parties executing this Agreement on behalf of the Owner constitute all of the parties of the Joint Venture; and (v) if the Owner is a Limited Liability Company, that the parties executing this Agreement on behalf of the Owner constitute, (a) if the Limited Liability Company has one or more Managing Members, all Company Managers (including all Managing Members) or (b) if the Limited Liability Company has no Managing Members, all Company Members and all Company Managers, if any, as of the date of the execution of this Agreement. The Owner further warrants that the Owner has not executed and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event this Agreement is controlling as to the rights and obligations in this Agreement and supersedes any other conflicting requirements.



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[Be sure to keep all signatures inside the box to be able to record the document.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective, duly authorized representatives on the date(s) set forth opposite their signatures below.

Note: If the Owner is a Partnership, each General Partner must sign. If the Owner is a Limited Liability Company that has one or more Managing Members, each Company Manager (including each Managing Member) must sign. If the Owner is a Limited Liability Company that has no Managing Members, each Company Member and any Company Manager must sign. If the Owner is a Joint Venture, each party to the Joint Venture must sign. If the Owner is one or more individuals, each individual must sign.

OWNER: **Salem Village Limited Partnership, A Washington Limited Partnership**

By (print): Salem Village WA Non-Profit Corp. its/a Managing Partner  
By (sign): [Signature]  
Name (print): KENT HABERLY Date: 11/29/99  
Title (print): PRESIDENT OF SALEM VILLAGE, Non-Profit Corporation

By (print): \_\_\_\_\_ its/a \_\_\_\_\_  
By (sign): \_\_\_\_\_  
Name (print): \_\_\_\_\_ Date: \_\_\_\_\_  
Title (print): \_\_\_\_\_

By (print): \_\_\_\_\_ its/a \_\_\_\_\_  
By (sign): \_\_\_\_\_  
Name (print): \_\_\_\_\_ Date: \_\_\_\_\_  
Title (print): \_\_\_\_\_

Owner's Federal Taxpayer Identification Number: **91-1789040**

WASHINGTON STATE HOUSING FINANCE COMMISSION

By [Signature] Date: 12/02/99  
Kim Herman, Executive Director



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[Notary page for person signing on behalf of an entity. Please make additional copies of the applicable notary page as needed for each signatory. Be sure to keep all marks and the notarial stamp/seal inside the box to be able to record the document.]

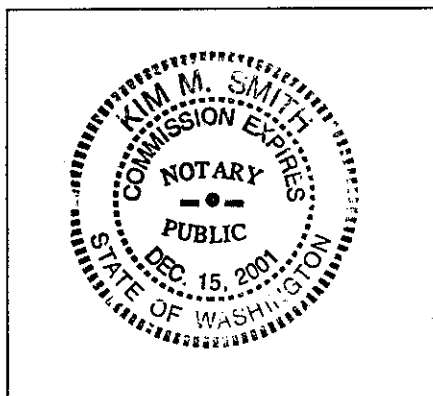
STATE OF WASHINGTON )

) ss.

COUNTY OF Skagit )

I certify that I know or have satisfactory evidence that Kent Huberly is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument as the/a President of Salem Village Corp., which is the/a managing partner of Salem Village Ltd. Ptnshp., and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11-29-99.



(Use this space for notarial stamp/seal.)

Kim M. Smith  
Notary Public

Name (print): Kim M. Smith

Residing at: Mt. Vernon

Commission expires: 12/15/2001



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**EXHIBIT "A"**

**TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the County of Skagit, State of Washington, and is described as follows:

Lot 2 of Short Plat No. MV-8-94, as approved July 1, 1997 and recorded July 1, 1997, in Book 13 of Short Plats, pages 17 and 18, records of Skagit County Washington, being in a portion of Government Lot 7, Section 8, Township 34 North, Range 4 East, W.M., TOGETHER WITH that portion of Lot 3 of said Short Plat, described as follows:

Beginning at the Northwest corner of said Lot 2; thence South 0 degrees 11' 21" West, along the West line of said Lot 2, also being the East line of said Lot 3, a distance of 229.71 feet to the Southwest corner of said Lot 2; thence North 87 degrees 57' 29" West, along the North line of a 60.00-foot wide utility and access easement as shown on said Short Plat, 53.64 feet; thence North 0 degrees 11' 21" East, 64.17 feet to the beginning of a curve to the right, having a radius of 88.00 feet; thence Northeasterly along the arc of said curve to the right, through a central angle of 21 degrees 40' 05", an arc distance of 33.28 feet; thence North 21 degrees 51' 26" East, 117.03 feet to the beginning of a curve to the left, having a radius of 50.00 feet; thence Northerly along the arc of said curve to the left, through a central angle of 21 degrees 40' 05", an arc distance of 18.91 feet; thence North 0 degrees 11' 21" East, 4.11 feet to a point which lies North 87 degrees 57' 29" West from said Northwest corner of Lot 2; thence South 87 degrees 57' 29" East, 0.64 feet to the POINT OF BEGINNING.

Situated in the County of Skagit, State of Washington.



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**EXHIBIT "B"**

**TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)**

**PROJECT DESCRIPTION**

NAME OF PROJECT: Salem Village Apartments

TC OR OID NUMBER: 97-44H

OWNER: Salem Village Limited Partnership, A  
Washington Limited Partnership

OWNER'S ADDRESS: PO Box 2116  
Mount. Vernon WA 98273

OWNER'S FEDERAL TAXPAYER  
IDENTIFICATION NUMBER: 91-1789040

CONTACT FOR LEGAL NOTICES: Mark Kantor  
Attorney at Law  
Kantor Taylor McCarthy & Britzmann, P.C.  
1501 Fourth Avenue, Suite 1610  
Seattle WA 98101-1662

CREDIT SET-ASIDE CATEGORY: Qualified Nonprofit Organization

The agreement to limit Resident up-front charges and fees as set forth in paragraph 4.32 of this Agreement does apply to this Project.

The agreement to comply with the conditions of the Preservation of Federally Assisted Low-Income Housing Allocation Criterion as set forth in paragraph 4.33 of this Agreement does not apply to this Project.

ADDITIONAL LOW-INCOME HOUSING  
USE PERIOD: 22 years

PROJECT COMPLIANCE PERIOD: 40 years

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REGULATORY AGREEMENT (Extended Use Agreement)  
Salem Village Apartments (TC or OID # 97-44H)  
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TOTAL UNITS: 47  
 TOTAL COMMON AREA UNITS: 1  
 †TOTAL HOUSING UNITS: 46  
 † PROJECT APPLICABLE FRACTION: 100%  
 MINIMUM LOW-INCOME HOUSING SET-ASIDE: "40 / 60"  
 PERCENT OF AMGI FOR QUALIFIED LOW-INCOME HOUSING UNITS: 60%  
 †TOTAL HOUSING UNITS IN LOW-INCOME HOUSING SET-ASIDE: 46  
 PERCENT OF AMGI FOR HOUSING UNITS SUBJECT TO ADDITIONAL LOW-INCOME HOUSING SET-ASIDE: 40%


	<u>#* OF HOUSING UNITS</u>	<u>%* OF ALL HOUSING UNITS</u>
†ADDITIONAL LOW-INCOME HOUSING SET-ASIDE:	36	76%

†SPECIAL-NEEDS HOUSING SET-ASIDES AND FARMWORKER HOUSING SET-ASIDE

FOR LARGE HOUSEHOLDS:	0	0%
FOR PERSONS WITH DISABILITIES:	10	20%
FOR PERSONS WHO ARE ELDERLY:	46	100%
The Owner has elected the following criteria for operating the Project as an Elderly Housing Project:		
	<b>Election 1: A Project in which all Housing Units are intended for and solely occupied by Residents who are 62 or older.</b>	
FOR TRANSITIONAL HOUSING:	0	0%
FOR FARMWORKERS:	0	0%

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<u>BIN for each Building</u>	<u>Street Address for each Building (or, if none is available, the legal description included in Exhibit "A")</u>	<u>City</u>	<u>Approximate Credit % for each Building</u>	<u>Building Type (New, Rehabilitation, Acquisition/Rehabilitation)</u>	<u># of Housing Units in each Building†</u>	<u># of Qualified Low-Income Housing Units in each Building†</u>	<u>%* of Housing Units in each Building which are Qualified Low-Income Housing Units†</u>
WA-97-00141	2619 North LaVenture Road	Mt. Vernon	"9%"	New	47	46	100.00%

\* Based on the lesser of the Unit Fraction or Floor Space Fraction.

† Excludes any Common Area Units

#### COMMON AREA UNITS:

<u>BIN for each Building</u>	<u>Street Address for each Building (or, if none is available, the legal description included in Exhibit "A")</u>	<u># of Units</u>
WA-97-00141	2619 North LaVenture Road	1

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**EXHIBIT "C"**

**TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)**

**LEASE RIDER TO BE ATTACHED TO RESIDENT LEASES  
AND RENTAL AGREEMENTS**

**APPLICATION for RESIDENCY  
RECERTIFICATION of EXISTING RESIDENT**

Dear prospective resident/existing resident:

The **Salem Village Apartments** project rents residential rental units under the federal low-income tax credit program administered by the Washington State Housing Finance Commission through its Low-Income Housing Tax Credit Program. Under this program, the owner may qualify for federal tax credits in exchange for renting at least a portion of the project to low-income people and restricting the rents for those units. In addition, the owner may have agreed to set aside a portion of the project for occupancy by persons who meet the special-needs criteria of the program.

At least **forty six (46)** units in this project are set aside for low-income residents. No new resident in these units can have income exceeding **sixty percent (60%)** of the area median gross income for the county(ies) in which the project is located, as published by the U.S. Department of Housing and Urban Development at the time of initial tenancy. In addition, the owner has agreed to set aside at least **thirty six (36)** (the Additional Low-Income Housing Set-Aside) units in this project for residents with income not exceeding **forty percent (40%)** of the area median gross income for the county(ies) in which the project is located, as published by the U.S. Department of Housing and Urban Development at the time of initial tenancy. Substantial assets are converted by formula and included in the income total. The federal government and the Commission describe how to measure, report and verify income under this program to ensure that the project is reaching those individuals for whom it was designed. Special rules are used for full-time students.

Maximum rents are determined based on the income elections made above and by the number of bedrooms in the units. A table of maximum rents is provided to the owner by

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the Commission and is adjusted annually based on the area median gross income for the county(ies) in which the project is located.

To be eligible for a rent-restricted unit, all the income and assets of the residents of that unit must be documented and verified. The manager of the project will provide the forms each prospective resident or existing resident will be required to prepare and submit. These forms must be filled out accurately. The forms which will need to be filled out include the following:

1. Rental Eligibility Application. Income from all sources and assets must be listed. The forms must be signed and dated under penalties of perjury.
2. Request for Verification of Employment. Employer must complete employer section. One form is needed for each source of income in the household.

The Low-Income Housing Tax Credit Program also requires annual recertification for all participating residents. This means that a new set of these same forms must be completed annually by existing residents. Again, all information must be accompanied by documentation. Because of the growing pressure on the government and the Commission to combat fraud, these forms must be prepared carefully so that every question is answered and that all answers are clearly readable. "N/A" (not applicable) should be written in all sections which do not apply.

Once you are certified as a low-income resident, you continue to be eligible as a low-income resident, even if your income later rises above the income limitation. Special rules take effect if your income rises above 140% of the income limitation you met at your initial occupancy; if the owner wants to continue to count your unit as a low-income unit, your rent must remain restricted. However, if your apartment project also contains market rate units, and the owner elects to rent one of the market rate units to a qualified low-income resident to replace the unit you occupy as a low-income unit, your unit would no longer be required to be rent restricted. In any event, the Tax Credit Program does not require that you be evicted or that your tenancy be terminated, even if your income rises above the initial income limitation.

In addition to the units which are set aside for residency by persons who meet certain income limitations as described above, some units in the project may be set aside for persons with special needs or for farmworkers. At least **zero (0)** units in this project are set



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Kathy Hill, Skagit County Auditor

aside for low-income large households and contain three (3) or more bedrooms for occupancy by four (4) or more persons who are not necessarily related.

At least **ten (10)** units in this project are set aside for residency by persons with a physical or mental impairment which substantially limits one or more of the major life activities of such individuals such as preventing the caring of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

At least **forty six (46)** units in this project are set aside for residency by: (i) at least one person fifty five (55) or older per unit; or (ii) only persons sixty two (62) or older.

At least **zero (0)** units in this project are used to facilitate the transition of homeless individuals to independent living within twenty four (24) months.

At least **zero (0)** units (which are all of the units) in this Project are set aside for farmworkers.

Persons meeting any of the foregoing special-needs criteria will be required to verify their eligibility to reside in a unit included in a special-needs housing set-aside(s). In addition, such prospective resident or existing resident will need to follow the income verification requirements discussed previously to reside in a unit set aside for low-income residents.

All housing in the project will be operated in a manner consistent with federal housing policy governing nondiscrimination and accessibility, as determined under the Americans with Disabilities Act, the Fair Housing Act, as amended, the rules and regulations of the U.S. Department of Housing and Urban Development and federal, state and local law now provided or which may hereafter be provided. To that end, the owner shall not discriminate in making rental units available for occupancy on the basis of race, creed, color, sex, national origin, religion, marital status, age or disability; provided that the owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. Furthermore, the owner shall not discriminate against any prospective resident or existing resident on the basis of that prospective resident's or existing resident's sources of income provided such sources of income are not in contravention of any federal, state or local law.

All units set aside for occupancy by persons who meet the low-income or persons with special-needs criteria of the program will be of the same quality construction as all other units, and will be equipped and maintained in the same manner as all other units.

When selecting residents for occupancy, the owner shall not apply selection criteria to a prospective resident that is more burdensome than selection criteria applied to any other prospective resident or existing resident; and the owner shall take into consideration the rental history of such prospective resident as evidence of the ability to pay the applicable rent, so long as: (i) the rental history is of a term of at least one year; and (ii) the history shows that the resident has paid at least the same percentage of his/her income for rent during that period as he/she will be required to pay for the rent of the unit for which they are applying.

Under the Low-Income Housing Tax Credit Program each prospective resident and existing resident who meets the low-income requirements and/or the special-needs criteria of the program is given certain rights to ensure the owner's compliance with the applicable unit restrictions. Residents who meet the low-income requirements, who reside in a rent-restricted unit, and who pay rent to the owner in excess of the amount allowed under the Low-Income Housing Tax Credit Program are entitled to seek recovery of the excess amount of rent paid, if any.

If you have any questions, please contact the project's manager at telephone: \_\_\_\_\_


Acknowledged by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signed by Prospective Resident or Existing Resident)

The Commission's address and telephone number is:

Washington State Housing Finance Commission  
Attn: Tax Credit Compliance Monitoring  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104-1046  
(206) 464-7139  
1-800-767-HOME

T:\Masters\Contract\1999 Regulatory Agreement Packet  
August 2, 1999 version

REGULATORY AGREEMENT (Extended Use Agreement)  
Salem Village Apartments (TC or OID # 97-44H)  
October 26, 1999  
EXHIBIT "C"

  
199912060130  
Kathy Hill, Skagit County Auditor  
12/6/1999 Page 63 of 78 3:53:41PM

## EXHIBIT "D"

### TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

#### DEFINITIONS

1.1 "Additional Low-Income Housing Set-Aside" means the specified percentage of Housing Units that are both Rent Restricted and occupied by Residents whose Income is at or below **forty percent (40%)** of the Area Median Gross Income.

1.2 "Additional Low-Income Housing Use Period" means with respect to a Building, the period of **twenty two (22) Years** beginning immediately following the end of the Compliance Period. This Agreement shall remain in full force and effect during this period and the Owner shall comply with the terms, conditions, obligations, restrictions, covenants, representations and warranties set forth in this Agreement for the duration of the Additional Low-Income Housing Use Period. The Owner and its successor(s) in interest, if any, waive(s) any right to terminate this Agreement with respect to any Building in the Project for the duration of the Additional Low-Income Housing Use Period as may otherwise be available pursuant to Section 42(h)(6)(E)(i)(II).

1.3 "Agreement" means this Regulatory Agreement (Extended Use Agreement).

1.4 "Allocation" means, for purposes of this Agreement, the maximum amount of Credit available to the Project as a result of an allocation of Credit by the Commission, which will be apportioned to each Qualified Building at the time such Building is Placed-In-Service. Allocation includes (a) Credit allocated (as that term is used in Section 42 of the Code) by the Commission and subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process), and (b) Credit attributable to that portion of Eligible Basis financed with tax-exempt bonds (i.e., Credit which, by virtue of Section 42(h)(4) of the Code, is not allocated pursuant to the competitive allocation process).

1.5 "Annual Compliance Monitoring Fee" means the annual fee imposed by the Commission on the Owner of a Project for monitoring of its compliance with the Code, the Tax Credit Program, the Credit Reservation Contract and this Agreement.

1.6 "Applicable Fraction" means the lesser of the Unit Fraction or Floor Space Fraction for a Building or the Project, as the context so requires.

1.7 "Application" means the Tax Credit Program Application and amendments thereto, if any, submitted by the Owner with respect to the Project.





1.8 "Bankruptcy" has the meaning set forth in paragraph 4.12 of this Agreement.

1.9 "BIN" means the Building Identification Number (i.e., the identifying number assigned to a Building in the Project by the Commission).

1.10 "Bound Party" has the meaning set forth in the Recitals of this Agreement.

1.11 "Building" means Residential Rental Property containing residential Housing Units located on the Land and included in the Application. For purposes of the Tax Credit Program, each Building is identified by its BIN and its street address assigned by the United States Postal Service. In case of any inconsistency, the BIN shall control. In the event more than one Building is located on the Land, each Building must be identified in the manner required by Section 42(g) of the Code to be treated as part of the Project. Failure to meet the foregoing requirements will result in each Building on the Land being treated as its own independent Project. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Contract or otherwise in Exhibit "B", attached to this Agreement.

1.12 "Carryover Allocation" means, to the extent applicable, an Allocation pursuant to a Carryover Allocation Contract which is made with respect to a Building or Project pursuant to Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, as the case may be, and in conformance with Treasury Regulation Section 1.42-6. A Carryover Allocation is generally not granted if the Project is a Qualified Tax-Exempt Bond-Financed Project.

1.13 "Carryover Allocation Contract" means, to the extent applicable, an agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein subject to the satisfaction by the Owner of the terms, conditions, obligations and restrictions set forth therein and satisfaction of the requirements under Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, IRS Treasury Regulation Section 1.42-6 and any other applicable law, the Commission makes a Carryover Allocation to the Project. A Carryover Allocation Contract is generally not entered into if the Project is a Qualified Tax-Exempt Bond-Financed Project.

1.14 "Certifications" means the representations made under penalties of perjury by (i) the Owner, (ii) each Developer, (iii) each General Partner, (iv) each party to a Joint Venture, (v) in the case of a Limited Liability Company, each Managing Member or, if there is no Managing Member, each Company Member and any Company Manager, and/or (vi) each Resident, as applicable, including but not limited to those representations set forth in the Application and the *Certification Regarding Financial Solvency and Litigation Status; Certification on Behalf of Nonprofit Organization; Certification on*



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*Behalf of Profit-Motivated Individual, Business, Corporation or Partnership; and Certification of Ability to Contribute Equity to the Project* to the extent such Certifications apply to the Owner and/or the Project. Certifications also mean any and all representations made under penalties of perjury with respect to the Project at any time from the date of submission of the Application and throughout the Project Compliance Period.

1.15 "Closely-Held Corporation" means a corporation whose shareholders do not have a ready public market in which to sell their stock or shares, as determined by the Commission.

1.16 "Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed, and final Treasury Regulations, and Revenue Rulings and pronouncements issued or amended regarding it by the U.S. Department of the Treasury or IRS or as interpreted by any court of competent jurisdiction, to the extent applicable to the Project.

1.17 "Commission" means the Washington State Housing Finance Commission and any successor or assignee.

1.18 "Commitment" means a representation or agreement of the Owner contained in the Application which is binding upon the Owner and its successor(s) in interest throughout the Project Compliance Period unless otherwise noted in this Agreement, the *Policies*, the Application or agreements entered into with the Commission in connection with the Tax Credit Program.

1.19 "Common Area Unit" means a Unit in the Project, as identified in this Agreement, that is occupied by resident managers or maintenance personnel, or used for the Project's business offices or security personnel, to the extent such use is reasonably required for the Project. A Common Area Unit is not a Housing Unit and is not included in the Total Housing Units for the Project. A Common Area Unit shall not be includible in either the numerator or the denominator of the Unit Fraction, Floor Space Fraction, or Applicable Fraction. At any time during the Project Compliance Period that a Common Area Unit becomes available as a residential rental Unit, such Unit shall fall within the definition of "Housing Unit" hereunder, and such Unit shall be treated as a Qualified Low-Income Housing Unit to the extent such treatment is necessary to maintain the Applicable Fraction for the Building in which said Unit is located at the percentage required to maintain the Applicable Fraction for the Building. In addition, such Unit shall be treated as a Unit subject to the Additional Low-Income Housing Set-Aside and any Special-Needs Housing Set-Aside(s) to the extent such treatment is necessary to maintain the designated percentage of Housing Units subject to such set-asides as set forth herein.



1.20 "Company Manager" means a person or entity legally designated as a manager of a Limited Liability Company. A Company Manager may be a Managing Member or a person or entity that is not a member of the Limited Liability Company.

1.21 "Company Member" means a person or entity legally admitted to a Limited Liability Company as a member. A Company Member may be, but is not necessarily, a Managing Member.

1.22 "Compliance Period" for a Building means a period of fifteen (15) Years beginning with the first Year in which such Building is Placed-In-Service or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year. In the case of an Existing Building receiving acquisition Credit, the Compliance Period for such Building shall not begin before the Compliance Period for the rehabilitation expenditures for such Building (which are treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.23 "Continuing Default" has the meaning set forth in paragraph 10.4 of this Agreement.

1.24 "Contributing Party" has the meaning set forth in paragraph 4.9 of this Agreement.

1.25 "Covered Party" has the meaning set forth in paragraph 4.12 of this Agreement.

1.26 "Credit" means the low-income housing tax credit available for federal income tax purposes under Section 42 of the Code for a Qualified Building.

1.27 "Credit Period" for a Building means the period of ten (10) Years beginning with the Year in which the Building is Placed-In-Service for Credit purposes or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year; but only if the Building is a "qualified low-income building" (within the meaning of Section 42(c)(2) of the Code) as of the close of the first Year of such period. In the case of an Existing Building receiving acquisition Credit, the Credit Period shall not begin before the Credit Period for the rehabilitation expenditures for such Building (which are treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.28 "Credit Reservation" means, to the extent applicable, the reservation of a maximum amount of Credit out of the Credit Ceiling to the Project which will be available for Allocation to such Project and apportioned to each Qualified Building upon meeting the requirements of the Tax Credit Program and Section 42 of the Code. A Credit Reservation is generally not granted if the Project is a Qualified Tax-Exempt Bond-Financed Project.

1.29 "Credit Reservation Contract" means, to the extent applicable, the agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein subject to the terms, conditions, obligations and restrictions set forth therein, the Commission granted a Credit Reservation to the Project. A Credit Reservation Contract is generally not entered into if the Project is a Qualified Tax-Exempt Bond-Financed Project.

1.30 "Disabilities" means a physical or mental impairment which substantially limits one or more of the major life activities of an individual such as preventing the caring of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

1.31 "Elderly" means persons who are Residents of an Elderly Housing Project.

1.32 "Elderly Housing Project" means a Project that conforms with the Fair Housing Act, as amended, and is operated in compliance with one of the following criteria (as elected by the Owner) throughout the Project Compliance Period:

- (i) A Project in which all Housing Units are intended for and solely occupied by Residents who are sixty two (62) or older;
- (ii) A Project in which all Housing Units are intended and operated for occupancy by at least one Resident who is fifty-five (55) or older, and where at least eighty percent (80%) of the Housing Units are in fact occupied by at least one Resident who is fifty five (55) or older; OR
- (iii) A Project which is financed, constructed and operated under the RD Section 515 program for the elderly (i.e. where each such Resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the RD program).

1.33 "Enforcing Party" has the meaning set forth in paragraph 10.2 of this Agreement.

1.34 "Extended Low-Income Housing Use Period" for a Building means the period beginning with the first day in the Compliance Period in which such Building is part of a "qualified low-income housing project" (within the meaning of Section 42 of the Code), and ending on the date thirty (30) years thereafter, unless terminated earlier under the provisions of this Agreement.

1.35 "Farmworker" means a household whose Income is derived from farmwork in an amount not less than \$3,000 per year and which, at the time of initial occupancy of the Housing Unit at the Project, has an Income at or below fifty percent (50%) of the Area Median Gross Income.

1.36 "Farmworker Housing Set-Aside" means one hundred percent (100%) of the Housing Units in the Project are set aside for occupancy by Residents who are Farmworkers.

1.37 "First Successor" has the meaning set forth in paragraph 10.4 of this Agreement.

1.38 "Floor Space Fraction" means the fraction of a Project devoted to low-income housing, the numerator of which is the total square footage of floor space in all Low-Income Housing Units in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied. Where the context requires, the Floor Space Fraction is determined Building by Building.

For Projects which provide Housing Units for a Special-Needs Housing Set-Aside(s), Floor Space Fraction with respect to a Special-Needs Housing Set-Aside is the fraction of a Project devoted to the Special-Needs Housing Set-Aside, the numerator of which is the total square footage of floor space in all Housing Units in the Special-Needs Housing Set-Aside in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied.

1.39 "Gross Rent" means the rent received for a Low-Income Housing Unit. The Utility Allowance for a Housing Unit must be included in Gross Rent, but Gross Rent excludes:

- (i) any payments under Section 8 or any comparable rental assistance program;
- (ii) any fees for supportive services (within the meaning of Section 42(g)(2)(B)(iii) of the Code) paid to the Owner (on the basis of the low-income status of the Resident of the Housing Unit) by a governmental assistance program or an organization exempt from federal income tax under Section 501(c)(3) of the Code, if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and
- (iii) rental assistance payments to the Owner under RD Section 515 of the Housing Act of 1949.

Gross Rent includes de minimis amounts paid toward purchase of a Housing Unit as described in Section 42(g)(6) of the Code. Gross Rent also includes the amounts imposed on Residents for Required Services even if federal or state law requires that the Services must be offered to Residents by an Owner. The amount of maximum Gross Rent allowed for a Low-Income Housing Unit is determined annually based upon the Area Median Gross Income determined by HUD. The maximum Gross Rent for any year must be decreased if the Area Median Gross Income for the locality in which the Project is located



decreases but such amount will not be reduced below the amount of Gross Rent established pursuant to Revenue Procedure 94-57.

1.40 "HOME Funds" means financing received or provided under the HOME Investment Partnership Act.

1.41 "Housing Unit" means a Low-Income Housing Unit and/or Market Rate Housing Unit located in a Building which is available for rent or rented by Residents. A Common Area Unit is not a Housing Unit. "Housing Units" refers to all the Housing Units in the Project, unless the context clearly means all the Housing Units in a Building.

1.42 "Imputed Household Size" means the number of people deemed living in a Housing Unit, determined by the number of bedrooms in the Housing Unit, as follows:

<u>Type of Housing Unit</u>	<u>Imputed Household Size</u>	
Efficiency/Studio (No Separate Bedroom)	1	Person
One Bedroom	1.5	Persons
Two Bedrooms	3	Persons
Three Bedrooms	4.5	Persons
Four Bedrooms	6	Persons
Five Bedrooms	7.5	Persons
Each Additional Bedroom	Add 1.5	Persons

1.43 "Indemnified Party" has the meaning set forth in paragraph 10.1 of this Agreement.

1.44 "IRS Form 8609" means the Internal Revenue Service form entitled "*Low-Income Housing Credit Certification*" issued by the Commission with respect to a Qualified Building no later than the end of the calendar year that such Building is Placed-In-Service. The IRS Form 8609 establishes the maximum Credit for the Building available for use by the Owner of the Project.

1.45 "Land" means the Land legally described in Exhibit "A".

1.46 "Large Household" means a group of four (4) or more Income qualified Residents who are not necessarily related and who live together in a Low-Income Housing Unit containing three (3) or more bedrooms.

1.47 "Large Household Unit" means a Low-Income Housing Unit containing three (3) or more bedrooms which is occupied by four (4) or more Income qualified Residents who are not necessarily related.



1.48 "Lease Rider" means the disclosure statement required by the Commission which is to be attached by the Owner to each Resident lease and rental agreement for all Low-Income Housing Units and all Market Rate Housing Units in the Project. The Lease Rider describes in general the rights of the Residents of the Project.

1.49 "Limited Liability Company" means a limited liability company validly formed under any state.

1.50 "Low-Income Housing Set-Aside" means the specified percentage of Housing Units that are both Rent Restricted and occupied by Residents whose Income is at or below the Minimum Low-Income Housing Set-Aside [subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code].

1.51 "Low-Income Housing Unit" means a Housing Unit which meets the definition of a Qualified Low-Income Housing Unit. In addition, all Housing Units in the Additional Low-Income Housing Set-Aside are Low-Income Housing Units. Common Area Units are not included.

1.52 "Managing Member" means a Company Manager who is also a Company Member.

1.53 "Minimum Low-Income Housing Set-Aside" means the minimum percent required under Section 42(g) of the Code of Housing Units in the Project to be both Rent-Restricted and occupied by Residents whose Income is at or below a certain percentage of Area Median Gross Income [subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code]. For purposes of Section 42(g) of the Code, the Owner must select a Minimum Low-Income Housing Set-Aside of either:

- (i) twenty percent (20%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or
- (ii) forty percent (40%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income.

All Low-Income Housing Units in the Project must meet the income requirements of the Minimum Low-Income Housing Set-Aside. The Owner may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations.



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1.54 "Noncompliance" means a failure to observe or perform any covenant, condition, or term of this Agreement or the Credit Reservation Contract, or a failure to meet the requirements of Section 42 of the Code, related regulations, the *Policies*, or the Tax Credit Program.

1.55 "Owner" means **Salem Village Limited Partnership, A Washington Limited Partnership** and its successor(s) in interest of the Project and also includes any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and any other person or entity having any right, title, or interest in the Project. Owner does not include an individual who is merely a Resident of the Project. "Owner" also includes any predecessor in interest in the Project which submitted the Application to the Commission or entered into the Credit Reservation Contract and/or Carryover Allocation Contract in regards to the Project.

1.56 "Placed-In-Service" means:

- (i) for a New Building or Existing Building used as Residential Rental Property, the date on which such Building is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or,
- (ii) for rehabilitation expenditures that are treated as a separate New Building, the twenty four (24) month period over which such rehabilitation expenditures are aggregated.

1.57 "Policies" means the written interpretive and policy statements issued by the Commission pursuant to RCW 34.05.230(1) and relating to the *Qualified Allocation Plan*, WAC 262-01-130, and the Tax Credit Program in effect as of the date the Owner entered into a Credit Reservation Contract for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation Contract, the *Policies* in effect as of the date the Owner submitted the Project's Tax Credit Program Application to the Commission. The *Policies* must be adhered to by any participant in the Program. The *Policies* include requirements that are more stringent than those under Section 42 of the Code.

1.58 "Prior Lien" has the meaning set forth in paragraph 4.6 of this Agreement.

1.59 "Program" means the Commission's Tax Credit Program.

1.60 "Program Documents" has the meaning set forth in Section 1 of this Agreement.



1.61 "Program Guidelines" means, for the purposes of Projects with Applications submitted prior to November 20, 1997, the various written criteria, requirements and policies as adopted by the Commission to administer the Tax Credit Program and implement the *Qualified Allocation Plan* in effect as of the date the Owner entered into a Credit Reservation Contract for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation Contract, the *Program Guidelines* in effect as of the date the Owner submitted the Project's Tax Credit Program Application to the Commission. The *Program Guidelines* include requirements that are more stringent than those under Section 42 of the Code. For Projects with Applications submitted on or after November 20, 1997, refer to the definition of *Policies* above.

1.62 "Project" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Project, each Building must be financed under a common plan and identified in the manner required under Section 42(g) of the Code.

1.63 "Project Compliance Period" means the period beginning with the year that the first Building of the Project is Placed-In-Service and continuing thereafter until the last to end of the following periods for each Building in the Project: (i) the Compliance Period; (ii) the Extended Low-Income Housing Use Period; (iii) the Additional Low-Income Housing Use Period; or iv) the Three-Year Period.

1.64 "Project Transfer or Assignment" means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in,

- (i) an interest in the Land, the Project, or any Building;
- (ii) an ownership interest in the entity that is the Owner; or
- (iii) the right, title or interest of the Owner in the Application, the Credit Reservation Contract, the Carryover Allocation Contract, this Agreement, or any other agreement in which the Commission and the Owner are parties.

By way of example, a Project Transfer or Assignment includes (but is not limited to):

- (i) If a Limited Partnership is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a Partner (including the addition, removal, or withdrawal of a Partner);
- (ii) If a Limited Liability Company is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a Company Manager, Managing Member, or Company Member (including the addition, removal or



withdrawal of a Company Manager, Managing Member or Company Member);

- (iii) If a Joint Venture or General Partnership is an Owner, any direct or indirect sale or transfer of, or change in, the interest of a party to the Joint Venture or Partner of the General Partnership (including the addition, removal or withdrawal of a party or Partner); and
- (iv) If a corporation is an Owner, any direct or indirect change in the ownership of the corporation, including the issuance, redemption or transfer of stock or shares.

Except as specifically set forth in Section 16 of this Agreement and the *Policies*, all Project Transfers or Assignments require the prior written consent of the Commission and the payment of a Transfer Fee. The requirements and procedure for obtaining the Commission's prior written consent are set forth in Section 16 of this Agreement and the *Policies*.

1.65 "Purchase Request" has the meaning set forth in paragraph 24.1 of this Agreement.

1.66 "Qualified Building" means a Building which meets the terms, conditions, obligations and restrictions of the Tax Credit Program, the Credit Reservation Contract and/or Carryover Allocation Contract this Agreement and Section 42 of the Code for an Allocation and the issuance by the Commission of IRS Form 8609.

1.67 "Qualified Contract" means a bona fide contract, determined pursuant to Section 42(h)(6)(F) of the Code, to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building of the sum of:

- (i) the portion of outstanding indebtedness secured by, or with respect to, the Building which is allocable to such Building;
- (ii) the Adjusted Investor Equity in the Building; and
- (iii) other capital contributions invested in the Building but not reflected in the amounts described immediately above; *reduced by*
- (iv) cash distributed from the Project or available for distribution from the Project, provided that in all cases the purchase price for the Building shall be determined consistent with the requirements of Section 42(h)(6)(F) of the Code.

For purposes of this definition, "Adjusted Investor Equity," as defined in Section 42(h)(6)(G) of the Code, means, for any calendar year,



- (i) the total amount of cash taxpayers have invested in a Project ("Invested Cash") *increased by*
- (ii) the amount equal to the Invested Cash multiplied by the cost of living adjustment for that calendar year,

as determined under Section 1(f)(3) of the Code by substituting the calendar year with or within which the first Year of the Credit Period ends for "calendar year 1987". An amount shall be taken into account as Invested Cash only as far as there was an obligation to invest that amount at the beginning of the Credit Period and as far as that amount is shown in the adjusted basis of the Project.

1.68 "Qualified Low-Income Housing Project" means a Project of Residential Rental Property in which **forty percent (40%)** or more of the Total Housing Units, based on the lesser of the Unit Fraction or Floor Space Fraction, are both Rent Restricted and occupied by Residents whose Income is at or below **sixty percent (60%)** of the Area Median Gross Income [subject to the exception for initially qualifying Residents whose income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and (4) of the Code].

1.69 "Qualified Low-Income Housing Unit" means a Housing Unit that is both Rent-Restricted and occupied by Residents whose Income is at or below **sixty percent (60%)** of the Area Median Gross Income [subject to the exception for initially qualifying Residents whose Incomes increase, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code]; provided that:

1.69.1 A Housing Unit shall constitute a Qualified Low-Income Housing Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Section 42(i)(3) of the Code;

1.69.2 A Housing Unit in any Building which has four (4) or fewer Units shall not constitute a Qualified Low-Income Housing Unit if any Unit in the Building is occupied by an Owner or a related person (within the meaning of Section 42(i)(3)(C) of the Code) unless such Building is described in Section 42(i)(3)(E) of the Code; and

1.69.3 A Housing Unit shall not be considered to be a Qualified Low-Income Housing Unit if all Residents in the Housing Unit are students (as defined in Section 151(c)(4) of the Code), none of whom file a joint income tax return unless such students are recipients of aid for dependent children benefits, enrolled in a job training program under the Job Training Partnership Act or similar federal, state or local program, or unless such students are single parents and their children and



such parents and children are not dependents (as defined in Section 152 of the Code) of another individual.

1.70 "Qualified Tax-Exempt Bond-Financed Project" means a Project in which a portion of the Eligible Basis of a Building is financed with certain tax-exempt bonds, as described in Section 42(h)(4)(A) and (B) of the Code.

1.71 "Regulatory Agreement (Extended Use Agreement)" means this Agreement and amendments thereto, if any, which are required to be executed by the Owner and recorded in first lien position, which imposes terms, conditions, obligations, restrictions, covenants, representations and warranties which run with the Land and which are binding and a burden upon the Land and Project and all portions thereof, and upon:

- (i) any successor in interest, purchaser, grantee, transferee, developer, owner or lessee (other than a Resident) of any portion of the Project;
- (ii) any other person or entity having any right, title or interest in any portion of the Project; and
- (iii) the heirs, executors, administrators, legal representatives, devisees, successors and assigns of any of the foregoing persons or entities,

and which is intended to meet the definition of a "long-term commitment to low-income housing" as required by Section 42(h)(6) of the Code and the requirements of the Tax Credit Program.

1.72 "Rent-Restricted" means that the Gross Rent with respect to a Low-Income Housing Unit does not exceed thirty percent (30%) of the applicable income limitation adjusted by the Imputed Household Size. This income limitation is determined either by (i) the Minimum Low-Income Housing Set-Aside; or (ii) the Additional Low-Income Housing Set-Aside, as the case may be, for such Low-Income Housing Unit, subject to the exception set forth in Section 42(g)(2)(E) of the Code (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

1.73 "Restricted Ownership Interest" means a General Partner's interest in a Limited Partnership, a Managing Member's interest in a Limited Liability Company (or, if there is no Managing Member, a Company Member's interest in a Limited Liability Company), a party's interest in a Joint Venture, a Partner's interest in a General Partnership, and stock or shares in a Closely-Held Corporation.

1.74 "Resident" means an individual or group of individuals (other than an Owner) residing in a Low-Income Housing Unit or Market Rate Housing Unit.



1.75 "Rules" means the rules adopted by the Commission governing the Tax Credit Program as codified at Washington Administrative Code 262-01-130.

1.76 "Special-Needs Housing Set-Aside" means the specified percentage of Housing Units that meets the definition of a Large Household Unit or which are set aside for occupancy by Residents who meet the criteria under the Tax Credit Program for persons with special-needs, as follows: the Elderly, persons with Disabilities and Transitional Housing.

1.77 "Tax Credit Program" means the Commission's program for allocating Credit and taking other action related to Projects for which any Owner claims or plans to claim Credit. The Tax Credit Program includes, without limitation, adopting the *Qualified Allocation Plan, Policies* and Allocation Criteria, making Credit Reservations and Allocations, assigning BINs, determining the amount of Credit necessary for the financial feasibility of a Project and its viability as a Qualified Low-Income Housing Project throughout the Credit Period (including such determinations made on behalf of another governmental unit), entering into Regulatory Agreements (Extended Use Agreements) for Projects, monitoring Projects, and notifying the IRS of an Owner's, a Building's, or a Project's Noncompliance.

1.78 "Three-Year Period" for a Building means:

- (i) the three years following the date of acquisition of that Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or
- (ii) in those circumstances where the Owner has properly and timely submitted to the Commission a Purchase Request, the three-year period commencing upon expiration of the one-year period following the Commission's receipt of the Purchase Request.

Generally, the Commission has one year after receipt of a Purchase Request to present to the Owner a Qualified Contract for the purchase of the Owner's interest in a Building. If the Commission fails to do so, the Regulatory Agreement and all of its restrictions and limitations on the use of the Building will terminate at the end of the three-year period following the one-year period.

1.79 "Total Housing Units" means all Housing Units in the Project, including both Market Rate Housing Units and Low-Income Housing Units. Common Area Units are not included. All percentages of Total Housing Units in the Project are based on the lesser of the Project's Floor Space Fraction (square footage of the Total Housing Units) or Unit Fraction (number of Total Housing Units) unless otherwise specifically noted.



1.80 "Transferee" means the person, organization or entity that is the transferee in connection with a Project Transfer or Assignment.

1.81 "Transferor" means the person, organization or entity that is the transferor in connection with a Project Transfer or Assignment.

1.81 "Unit" means a residential rental Housing Unit located in a Building and also includes a Common Area Unit.

1.83 "Unit Fraction" means the fraction of a Project devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied. Where the context requires, the Unit Fraction is determined Building by Building.

For Projects which provide Housing Units for a Special-Needs Housing Set-Aside(s), Unit Fraction with respect to each Special-Needs Housing Set-Aside is the fraction of the Project devoted to the Special-Needs Housing Set-Aside, the numerator of which is the number of Special-Needs Housing Set-Aside Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied.

1.84 "Year" means the taxable year of the Owner which is the **calendar** year.

