

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Richmond Community Redevelopment Agency  
440 Civic Center Plaza  
Richmond, CA 94804  
Attn: Director of Housing

No fee for recording pursuant to  
Government Code Section 27383

39123992



CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
**DOC- 2010-0141432-00**

Acct 2-Chicago Title

Thursday, JUL 15, 2010 08:00:00

FRE \$0.0011

Ttl Pd \$0.00

Nbr-0000527397

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(SPACE ABOVE FOR RECORDER'S USE)

### AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "Regulatory Agreement") is made and entered into as of July 14, 2010, by and among the RICHMOND COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, duly organized and existing under the laws of the State of California (the "Agency") and PRIME RICHMOND HOUSING PARTNERS, L.P. (the "Owner").

#### WITNESSETH

WHEREAS, the Agency is authorized pursuant to Chapter 7.6 of Part 2 of Division 24 of the Health and Safety Code of the State of California (the "Act") to issue bonds to provide funds to finance the acquisition by nonprofit organizations of multifamily rental housing developments located in its jurisdiction, all as provided in the Act; and

WHEREAS, the Agency previously issued its Multifamily Housing Revenue Bonds (BRIDGE Affordable Housing Program/The Summit at Hilltop Apartments), 1993 Issue A (the "Original Bonds") and loaned the proceeds thereof to Bridge Housing Acquisitions, Inc. (the "Former Owner") to enable the Former Owner to acquire a 240-unit multifamily housing development located within the City of Richmond as further described herein (the "Project"), all for the public purpose of assisting persons of lower income within the City of Richmond to obtain decent, safe and sanitary housing; and the Former Owner entered into that certain Regulatory Agreement and Declaration of Restrictive Covenants as of September 1, 1993 (the "1993 Agreement"). The Original Bonds were refunded in their entirety by the Variable Rate Demand Multifamily Housing Revenue Refinancing Bonds (the Summit at Hilltop Apartments) 2003 Series A issued by Agency (the "Bonds"). In connection with such refunding, the 1993 Agreement was amended in that certain First Amendment to Regulatory Agreement as of August 1, 2003 (the "First Amendment") (collectively, the 1993 Agreement and the First Amendment are referred to as the "Former Regulatory Agreement"); and

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(B)

WHEREAS, the Owner has acquired the Project from the Former Owner's successor in interest, Hilltop Summit LLC, as of July 14, 2010; and

WHEREAS, as of the effective date of this Regulatory Agreement, no Bonds remain outstanding; and

WHEREAS, the Agency and the Owner wish to amend, restate and replace in its entirety the Former Regulatory Agreement to acknowledge the payment in full and retirement of the Bonds and to clarify and set forth their respective rights and obligations toward each other and the Project.

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

**Section 1. Definitions and Interpretation.** Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

"Act" means Chapter 7.5 (commencing with Section 33740) of Part 1 of Division 24 of the Health and Safety Code of the State of California as now in effect.

"Adjusted Income" means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed pursuant to Section 8 of the United States Housing Act of 1937, or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under the Code and the Act.

"Administrator" means the Agency for so long as Agency elects to administer the Regulatory Agreement, or at such time as Agency no longer acts as Administrator, any entity appointed by the Agency to act as agent of the Agency in the administration of this Regulatory Agreement. As of the date hereof, the Agency is the acting Administrator of this Regulatory Agreement, but Agency reserves the right at any time to appoint an agent to act for the Agency as Administrator hereunder. Agency shall promptly notify Owner of any such appointment.

"Affiliated Party" means a person whose relationship with the Owner would result in a disallowance of losses under Section 267 or 707(b) of the Code or who together with the Owner are members of the same controlled group of corporations (as defined in Section 1663(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

"Affordable Rent" or "Rents" means monthly rent (excluding any supplemental rental assistance from the State, the federal government, or any other public agency to tenants or on behalf of the applicable Lower-Income Units) not in excess of thirty percent (30%) of one-twelfth of fifty percent (50%) of the Median Income for the Area, based upon the following assumed household sizes for the following sizes of residential units in the Project:

<u>Size of Units</u>	<u>Assumed Number of Persons In Household for Affordable Units</u>
Studio	1
One bedroom	2
Two bedroom	3
Three bedrooms	4
Four bedrooms	5
Five or more bedrooms	As determined by HUD

“Agency” means the Richmond Community Redevelopment Agency, public body corporate and politic, duly organized and existing under the laws of the State of California.

“Area” means the Primary Metropolitan Statistical Area or Metropolitan Statistical Area in which the Project is located as contemplated by the Code.

“Certificate of Continuing Program Compliance” means the certificate to be filed semi-annually by the Owner with the Agency which shall be substantially in the form attached to this Regulatory Agreement as Exhibit C.

“Certification of Designation of Lower-Income Units” means the certificate designating dwelling units in the Project for occupancy by Lower-Income Tenants required to be delivered to the Administrator and the Agency, by the Owner pursuant to this Agreement.

“Certification of Tenant Eligibility” means a certificate in the form of Exhibit B attached hereto.

“City” means the City of Richmond, California, a municipal corporation and charter city.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, or any successor to the Internal Revenue Code of 1986, as amended.

“Former Owner” means BRIDGE Housing Acquisitions, Inc., a California nonprofit public benefit corporation, and its successors and assigns, and any surviving, resulting or transferee entity.

“HUD” means the United States Department of Housing and Urban Development.

“Lower-Income Tenants” means individuals or families, on the basis of the “Certification of Tenant Eligibility” attached hereto as Exhibit B as certified by such individual or family, who have an Adjusted Income which does not exceed fifty percent (50%) of the Median Income for the Area, adjusted for household size.

"Lower-Income Units" means the dwelling units in the Project designated for occupancy by Lower-Income Tenants pursuant to Section 3.

"Low Income Tenants" means individuals or families who have an Adjusted Income which does not exceed eighty percent (80%) of the Median Income for the Area, adjusted for household size.

"Median Income for the Area" means the median income for the Area as determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 are terminated, median income for the Area determined under Section 50105 and 50079.5 of the California Health and Safety Code, as required by Section 33742(a)(1) of the Act.

"Owner" means Prime Richmond Housing Partners, L.P., a California limited partnership.

"Owner Representative" means the person or persons (who may be employees of the Owner) designed from time to time to act hereunder on behalf of the Owner in a written certificate furnished to the Agency and the Administrator (if not the same as the Agency), containing a specimen signature of such person or persons and signed on behalf of the Owner by a duly authorized representative of the Owner.

"Project" means the Project Facilities and the Project Site.

"Project Facilities" means the multifamily rental housing development located on the Project Site, consisting of 240 units located in the City of Richmond, including structures, buildings, fixtures or equipment, as it may at any time exist, and any structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of such facilities.

"Project Lender" means an entity making a loan to the Owner or its successors or assigns for the purposes of financing the acquisition of the Project.

"Project Site" means the parcel of real property described in Exhibit A which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Recertification Date" means the date on which the Owner shall recertify the income of the occupants of each Lower-Income Unit as set forth in Section 3 hereof.

"Regulatory Agreement" means this Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July \_\_\_, 2010, by and between the Agency and the Owner.

"State" means the State of California.

"Term" means the period beginning on the date hereof and ending on the later of (a) September 22, 2023, or (b) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

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

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

**Section 2. Residential Rental Property.** The Owner hereby represents, warrants and covenants, at all times during the Term, as follows:

A. The Project Facilities will be acquired and operated for the purpose of providing multifamily residential rental property and the Owner shall own, manage and operate (or cause the management and operation of) the Project Facilities as a project to provide multifamily residential rental housing comprised of a building or structure or several interrelated buildings or structures, each consisting of more than one dwelling unit and facilities functionally related and subordinate thereto, and no other facilities. As used herein facilities functionally related and subordinate to the Project Facilities shall include facilities for use by the tenants, including, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the Project Facilities, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

B. All of the dwelling units in the Project are similarly constructed, and each dwelling unit in the Project contains facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which are complete, separate and distinct from other dwelling units in the Project and includes a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

C. None of the dwelling units in the Project will at any time be used on a transient basis and the Owner will not rent any of the units for a period of less than thirty (30) consecutive days, and none of the dwelling units in the Project will at any time be leased or rented for use as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer court or park.

D. No part of the Project will at any time be owned or used by a cooperative housing corporation.

E. All of the dwelling units in the Project will be available for rental on a continuous basis to members of the general public and the Owner will not give preference to any

particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Lower-Income Tenants and Low Income Tenants.

F. The Project Site consists of a parcel or, parcels that are contiguous (parcels are contiguous if their boundaries meet at one or more points) except for the interposition of a road, street or stream, and all of the Project Facilities and the Project comprise a single geographically and functionally integrated project for multifamily rental housing, as evidenced by the common ownership, management, accounting and operation of the Project.

G. The Owner will not sell dwelling units within the Project.

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

I. The Owner shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, age, national origin or marital status in the rental, lease, use or occupancy of the Project, or in connection with the employment or application for employment of persons for the operation and management of the Project.

**Section 3. Lower-Income Tenants.** The Owner hereby represents, warrants and covenants, at all times during the Term, as follows:

A. Throughout the Term, (i) not less than twenty percent (20%) of the units in the Project shall be continuously occupied or held vacant and available for occupancy by Lower-Income Tenants, and (ii) the rents for one-half of the Lower-Income Units shall be Affordable Rents. The Owner shall not restrict over twenty-five percent (25%) of the units in the Project to persons whose incomes would permit them to be qualified as Lower-Income Tenants, without the prior written consent of the Agency (the Administrator shall have no obligation to monitor compliance by the Owner with the limitation imposed by this sentence).

The Owner will designate such Lower-Income Units and will make any revisions to such designations (which revisions the Owner may make from time to time at its sole option, provided that the requirements hereof are met on a continuous basis) by delivery of a certificate to the Agency and the Administrator (if not the same as the Agency) substantially in the form of Exhibit D hereto, and the Owner shall advise the Agency and the Administrator (if not the same as the Agency), by delivery of a certificate in writing substantially in the form of Exhibit D hereto of the status of the occupancy of the Project on a quarterly basis for the term of this Regulatory Agreement. An annual summary of such quarterly certificates shall be prepared by the Owner and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code, with a copy to be filed by the Owner with the Administrator.

A unit occupied by a Lower-Income Tenant who at the commencement of the occupancy is a Lower-Income Tenant shall be treated as occupied by a Lower-Income Tenant

until a recertification of such tenant's income in accordance with the following paragraph demonstrates that such tenant no longer qualifies as a Lower-Income Tenant and thereafter any residential unit of comparable or smaller size in the Project is occupied by a new resident other than a Lower-Income Tenant. Moreover, a unit previously occupied by a Lower-Income Tenant and then vacated shall be considered occupied by a Lower-Income Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

On or about September 22 of each year (the "Recertification Date"), the Owner shall recertify the income of the occupants of each Lower-Income Unit by obtaining a completed Certification of Tenant Eligibility in the form attached hereto as Exhibit B based upon the current income of each occupant of the unit. In the event the recertification demonstrates that such household's income exceeds 70% of the Median Income for the Area, (i) such household will no longer qualify as Lower-Income Tenants if the Owner rents any available unit of comparable or smaller size to anyone who is not a Lower-Income Tenant, and (ii) the Owner covenants to rent the next available unit of comparable or smaller size to tenants who are Lower-Income Tenants so that, notwithstanding the provisions of the first sentence of the preceding paragraph, at least twenty percent (20%) of the units in the Project remain occupied by Lower-Income Tenants. No tenant in the Project shall be denied continued occupancy in the Project because, after occupancy, such tenant's household income increases such that the income for such household will no longer qualify such household as Lower-Income Tenants. An "available" unit is one that is unoccupied by a tenant.

The Lower-Income Units will be rented on a first-come, first served, basis. The Owner will use all reasonable diligence in renting units in the Project which become vacant after the date hereof to intermingle the Lower-Income Units with all other dwelling units and on all floors in the Project; and so that the Lower-Income Units will be of a quality, and offer a range of sizes, and number of bedrooms, comparable to those units which are available to other tenants. Tenants in the Lower-Income Units shall have equal access and enjoyment to all common facilities of the Project.

B. During the Term, the Owner will rent or lease the Lower-Income Units to Lower-Income Tenants and, if at any time the Owner is unable to rent or lease the Lower-Income Units to Lower-Income Tenants, the Owner will hold the unrented Lower-Income Units vacant pending rental or lease to Lower-Income Tenants.

C. The Owner will obtain and maintain on file Certifications of Tenant Eligibility from each Lower-Income Tenant substantially in the form attached hereto as Exhibit B, and will provide such additional information as may be required in the future by the State, the Agency and by the Code or the Act, as the same may be amended from time to time. A copy of each such income certification obtained prior to initial occupancy shall be filed with the Administrator, prior to occupancy by the tenant whenever possible but in no event more than thirty (30) days after initial occupancy by the tenant, and a copy of any other certification of income obtained pursuant to Paragraph 3A shall be attached to each annual Certificate of Continuing Program Compliance filed with the Agency and the Administrator (if not the same as the Agency) pursuant to Paragraph 3E. The Certifications of Tenant Eligibility shall be subject to independent investigation and verification by the Administrator or its designee, in the

discretion of the Administrator; however, nothing herein shall require any such investigation or verification by the Administrator.

The Owner shall make a good faith effort to verify that the income provided by an applicant in an income certification is accurate by taking any of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) obtain an income verification form from the applicant's current employer, (4) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies, or (5) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

D. The Owner will maintain complete and accurate records pertaining to the Lower-Income Units and will permit any duly authorized representative of the Agency or the Administrator (if not the same as the Agency) to inspect the books and records of the Owner pertaining to the incomes of and rents charged to Lower-Income Tenants residing in the Project.

E. The Owner will prepare and submit to the Agency and the Administrator (if not the same as the Agency) within thirty (30) days after the Recertification Date in each year, a "Certificate of Continuing Program Compliance" substantially in the form attached hereto as Exhibit C executed by the Owner stating (i) the percentage of the dwelling units in the Project which were occupied by Lower-Income Tenants (or held vacant and available for occupancy by Lower-Income Tenants as provided in Section 3(A) above) during such period, (ii) that to the knowledge of the Owner, no default has occurred under this Regulatory Agreement (or if such an event of default has occurred, specifying the nature thereof and the actions being taken to remedy the same), and (iii) that all fees due to the Administrator under this Agreement have been paid.

F. Except for the Affordable Rent, as applicable, to be paid by one-half of the Lower-Income Tenants, the Owner shall not collect any additional fees or payments from such Lower-Income Tenants except security deposits or other deposits or fees required of all similarly situated tenants.

G. At the request of any Authorized Representative of Agency, the Owner shall annually meet and confer with representatives of the Agency as to the operations and financial condition of the Project, the affordability goals of the Owner with respect to the Project, and the status of the Lower-Income Units and market rate units in the Project. Nothing in this paragraph shall imply that the Agency is in any way responsible for the operation of the Project.

#### **Section 4. Low Income Tenants**

At all times during the Term, not less than twenty percent (20%) of the units in the Project shall be continuously occupied or held vacant and available for occupancy by Low Income Tenants. The requirements of this Section 4 are in addition to the units required for Lower-Income Tenants under Section 3 above; provided, however, that at no time shall the total number of units restricted under Section 3 above and this Section 4 exceed a total of forty percent (40%) of the units in the Project. Neither the Agency nor the Administrator shall have

any obligation to monitor compliance by the Borrower with the limitation imposed by this Section 4.

**Section 5. Agreement to Record.** The Owner hereby represents, warrants and covenants that it will cause this Regulatory Agreement to be recorded in the real property records of the County of Contra Costa, California, and in such other places as the Administrator or the Agency may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

**Section 6. Consideration.** In consideration of the Agency's approval of the transfer of the Project, the Agency and the Owner have entered into this Amended and Restated Regulatory Agreement and have agreed to restrict the uses to which this Project can be put for the term hereof.

**Section 7. Reliance.** The Agency and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the Agency and the Owner. In performing their duties and obligations hereunder, the Agency and the Administrator may rely upon statements and certificates of the Owner and Lower-Income Tenants, and upon audits of the books and records of the Owner pertaining to occupancy and rental of the Project. In performing its duties hereunder, the Owner may rely on the Certificates of Tenant Eligibility and any verifications in support thereof unless the Owner has actual knowledge that such Certificates or verifications are inaccurate. In determining whether any default or lack of compliance by the Owner exists under this Regulatory Agreement, the Agency (or the Administrator) shall not be required to conduct any investigation into or review of the operations or records of the Owner and may rely solely on any notice or certificate delivered to the Administrator or the Agency by the Owner, the Agency or the Administrator with respect to the occurrence or absence of a default.

**Section 8. Sale or Transfer of the Project.** The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof (other than for individual tenant use as contemplated hereunder), except as subject to the terms and conditions of this Regulatory Agreement. Without limiting the foregoing, Owner shall not sell the Project other than to an Owner Affiliate without the prior written consent of the Agency, which consent shall not unreasonably be withheld or delayed. "Owner Affiliate" means any entity which controls, is controlled by, or is under common control with Owner, or any limited partnership or limited liability company in which Owner or an Owner Affiliate is a general partner or managing member. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this section shall be void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement.

The Owner hereby covenants to reference this Regulatory Agreement in any documents transferring any interest (other than a leasehold interest in individual units) in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement.

**Section 9. Term.** This Regulatory Agreement shall become effective upon its execution and delivery and shall remain in effect throughout the Term. The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement, and all and several of the terms hereof, shall terminate and be of no further force and effect in the event of (i) involuntary noncompliance with the provisions of this Regulatory Agreement caused by a foreclosure by a Project Lender of a lien of a deed of trust on the Project given to such Project Lender, or delivery of a deed in lieu of foreclosure, pursuant to which the Project Lender or a purchaser or transferee pursuant to such foreclosure shall take possession of the Project or (ii) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, or requisition, or change in a federal law or an action of a federal agency after the date hereof which prevents the Agency from enforcing the provisions hereof, or condemnation or similar event; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure of the lien of a deed of trust or the delivery of a deed in lieu of foreclosure or a similar event, the Owner or any "related person" (within the meaning of Section 103(b) of the Code) obtains an ownership interest in the Project for federal income tax purposes. Upon the termination of all and several of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**Section 10. Burden and Benefit.** The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Project Site in that the Owner's legal interest in the Project is rendered less valuable thereby.

The Agency and the Owner hereby declare their understanding and intent that the covenants, reservations and restrictions set forth herein directly benefit the land by enhancing and increasing the enjoyment and use of the Project by certain Lower-Income Tenants and Low Income Tenants.

**Section 11. Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

**Section 12. Enforcement.** If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement and such default remains uncured for a period of thirty (30) days after notice thereof is given by the Agency or the Administrator to the Owner, then the Agency may take any one or more of the following steps:

A. By mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Regulatory Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the Agency or the Administrator hereunder.

B. Have access to, and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project.

C. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner under this Regulatory Agreement.

**Section 13. Estoppel Certificate.** The Agency agrees, upon the request of the Owner or its successor in interest, to promptly execute and deliver to the Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrancer of the Project, a written certificate stating, if the same be true, that the Agency has no knowledge of any violation or default of the Owner of any of its covenants hereunder, or if there are such violations or defaults, the nature of the same.

**Section 14. Indemnification.** The Owner hereby covenants and agrees that it shall hold harmless, defend and indemnify the Agency, the City, and the Administrator (if not the same as the Agency) and their respective officers, members, commissioners, directors, officials and employees (individually and collectively, "Agency Indemnatee") from and against all claims, liabilities, obligations, damages, penalties, litigation, costs, charges and expenses (including without limitation reasonable attorneys, accounting, consulting, engineering, and other fees and expenses), imposed on, incurred by or asserted against the Agency Indemnatee by third parties and arising from, resulting from, or in any way connected with or related to (i) any act or omission of the Owner or any of its agents, servants, employees or licensees in connection with the Project; (ii) the operation, use, occupancy, maintenance, or ownership of the Project (including compliance with laws, ordinances and rules and regulations of public authorities relating thereto), or (iii) the exercise or performance by Agency Indemnatee of any powers or duties under this Regulatory Agreement; provided, however, that this provision shall not require the Owner to indemnify the Agency Indemnatee from any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the Agency Indemnatee. The indemnity provided in this Section shall include within its scope, without limitation: any and all active or passive negligence on the part of Agency Indemnatee (other than willful misconduct) or any claims of combined negligence on the part of Agency Indemnatee and Owner, to the extent Agency Indemnatee is not prohibited by law from contracting for indemnification against such active, passive or combined negligent conduct; any claims for wrongful death; any vicarious liability imposed upon the Agency Indemnatee; and any liability imposed by law on the Agency Indemnatee on a strict liability theory or pursuant to any local, state or federal environmental statute, regulation or law. It is the express intention of the parties that Owner shall indemnify Agency Indemnatee against any and all such liability hereunder.

The Owner also shall pay and discharge and shall indemnify and hold harmless the Agency Indemnatee from any taxes (including, without limitation, any ad valorem taxes and sales taxes), assessments, impositions, fees and other charges in respect of the Project.

In the event that any action or proceeding is brought against the Agency Indemnatee with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel selected by the indemnified party, and the payment of all expenses related thereto.

The Agency Indemnitee shall have the right to retain separate defense counsel at the sole cost and expense of Owner, upon Agency Indemnitee's reasonable determination that such separate counsel is necessary to provide Agency Indemnitee with an adequate defense to any such action or proceeding.

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

**Section 15. Subordination.** The terms, conditions and provisions of this Regulatory Agreement shall be subject and subordinate in all respects to the terms, conditions and provisions of the Fannie Mae Rider to Regulatory Agreement, attached hereto as Exhibit E. Agency acknowledges that in connection with the financing or refinancing of the Project, Owner may grant a deed of trust in the Project. The Agency further acknowledges and agrees that, as provided in Section 9 hereof, if any foreclosure or transfer of the Project by deed in lieu of foreclosure shall occur, this Regulatory Agreement and the terms hereof will terminate and be of no force or effect.

**Section 16. Amendments.** This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in interest, and duly recorded in the real property records of County of Contra Costa, California.

**Section 17. Notice.** Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

The Agency: Richmond Community Redevelopment Agency  
440 Civic Center Plaza  
Richmond, CA 94804  
Attention: Director

With a copy to: City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804  
Attention: City Attorney

The Owner: Prime Richmond Housing Partners, L.P.  
c/o The Prime Group  
50 California Street, Suite 3240  
San Francisco, CA 94111  
Attention: John Adair

**Section 18. Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 19. Multiple Counterparts.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 20. Limited Liability.** The Agency shall have no responsibility to monitor the Owner's compliance with the terms of this Regulatory Agreement. The Agency shall have no liability to tenants of the Project or any other person or entity by reason of a failure of the Owner to comply with any provision of this Regulatory Agreement.

**Section 21. Attorney's Fees.** In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Regulatory Agreement, the Owner agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the Agency and/or the Administrator in connection with such action.

**Section 22. Administrator's Fees.** Commencing on the first anniversary of the date of this Agreement, the Owner agrees to pay, without notice or demand, to the Administrator the annual fee of the Administrator in the amount of \$2,000. In the event that any Administrator resigns or is terminated by the Agency, then, upon request by the Agency, the Owner agrees to use all reasonable efforts to (i) identify a replacement Administrator acceptable to the Agency, (ii) enter into an administration agreement with the Agency and such replacement Administrator, and (iii) pay the fee set forth above to any such replacement Administrator.

IN WITNESS WHEREOF, the Agency and the Owner have executed this Regulatory Agreement by duly authorized representatives, all on the date first above written.

**"AGENCY"**

RICHMOND COMMUNITY REDEVELOPMENT  
AGENCY

By:   
Executive Director

**"OWNER"**

PRIME RICHMOND HOUSING PARTNERS,  
L.P., a California limited partnership

By: Prime Richmond Acquisition, LLC,  
a Delaware limited liability company  
Its: Co-General Partner

By: Construction Management Resources  
Group, LLC, a Delaware limited  
liability company  
Its: Managing Member

By: **SEE COUNTERPART SIGNATURE**  
John Atwater, its Manager

IN WITNESS WHEREOF, the Agency and the Owner have executed this Regulatory Agreement by duly authorized representatives, all on the date first above written.

**"AGENCY"**

RICHMOND COMMUNITY REDEVELOPMENT  
AGENCY

**SEE COUNTERPART SIGNATURE**

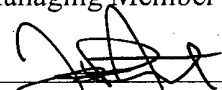
By: \_\_\_\_\_  
Executive Director

**"OWNER"**

PRIME RICHMOND HOUSING PARTNERS,  
L.P., a California limited partnership

By: Prime Richmond Acquisition, LLC,  
a Delaware limited liability company  
Its: Co-General Partner

By: Construction Management Resources  
Group, LLC, a Delaware limited  
liability company  
Its: Managing Member

By:   
John Atwater, Its Manager

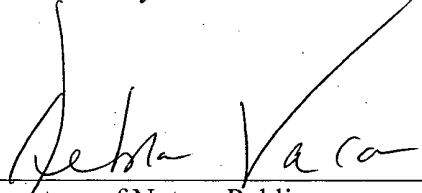
**ALL-PURPOSE ACKNOWLEDGMENT**

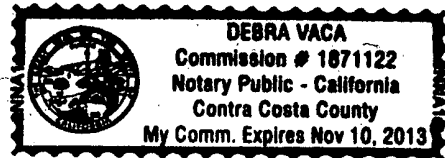
State of California ) ss.  
County of Contra Costa )

On July 12, 2010, before me, **Debra Vaca, Notary Public**, personally appeared Steve Duran, who proved to me on the basis of satisfactory evidence to be the **person(s)** whose **name(s)** is/are subscribed to the within instrument and acknowledged to me that **he**/she/they executed the same in **his**/her/their authorized **capacity(ies)**, and that by **his**/her/their **signature(s)** on the instrument the **person(s)**, or the entity upon behalf of which the **person(s)** acted, executed the instrument.

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

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public



NAME OF DOCUMENT NOTARIZED: Amended/Restated Regulatory Agreement

STATE OF CALIFORNIA           )  
  )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_

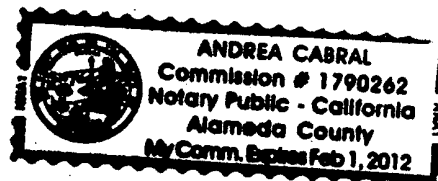
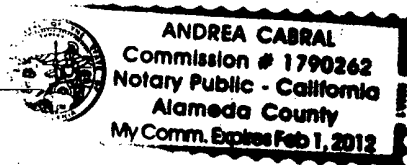
STATE OF CALIFORNIA           )  
  )  
COUNTY OF San Francisco)

On July 9, 2010 before me, Andrea Cabral, Notary Public,  
personally appeared John Atwater, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Andrea Cabral



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROJECT SITE**

All that certain real property situated in the City of Richmond, County of Contra Costa, State of California, more particularly described as follows:

Parcel A, as shown on the map of subdivision No. 7149, filed for record on October 30, 1989, in Book 339 of Maps, Pages 13 et seq., Contra Costa County Records.

**EXHIBIT B**  
**CERTIFICATION OF TENANT ELIGIBILITY**

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24-CFR 813). You should make certain that this form is at all times up to date with the HUD Regulations.

Re: [Address of Apartment Building]

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1 Name of Members of the <u>Household</u>	2 Relationship To Head of <u>Household</u>	3 <u>Age</u>	4 Social Security <u>Number</u>	5 Place of <u>Employment</u>
_____	HEAD SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Income Computation

6. The total anticipated income, calculated in accordance with the provisions of this paragraph 6, of all persons over the age of 18 years listed above for the 12-month period beginning the date that I/we plan to move into a unit is \$\_\_\_\_\_.

Included in the total anticipated income listed above are:

- (a) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;
- (b) the net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);
- (c) interest and dividends (including income from assets excluded below);

(d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;

(e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(f) the maximum amount of public assistance available to the above persons other than the amount of any assistance specifically designated for shelter and utilities;

(g) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(h) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(i) any earned income tax credit to the extent that it exceeds income tax liability.

Excluded from such anticipated income are:

(a) casual, sporadic or irregular gifts;

(b) amounts which are specifically for or in reimbursement of medical expenses;

(c) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

(d) amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or payments to veterans not used for the above purposes are to be included in income;

(e) special pay to a household member who is away from home and exposed to hostile fire;

(f) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(g) foster child care payments;

(h) the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1977;

1973; (i) payments to volunteers under the Domestic Volunteer Service Act of

(k) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(1) payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(m) payments received from the Job Training Partnership Act;

(n) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(o) the first \$2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims.

7. Do the persons whose income or contributions are included in item 6 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land) Yes \_\_\_\_ No \_\_\_\_;

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value? Yes \_\_\_\_ No \_\_\_\_.

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? Yes \_\_\_\_ No \_\_\_\_

(d) If the answer to (c) above is yes, state:

(1) the amount of income expected to be derived from such assets in the 12- month period beginning on the date of initial occupancy in the unit that you propose to rent: \$ , and

(2) the amount of such income, if any, that was included in item 6 above:

8.(a) Are all of the individuals who propose to reside in the unit full-time students\*? Yes \_\_\_\_ No \_\_\_\_.

\* A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an

accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least 1 of the proposed occupants of the unit a husband or wife entitled to file a joint federal income tax return? Yes \_\_\_\_\_ No \_\_\_\_\_.

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner; or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/we declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_ in the City of \_\_\_\_\_ California.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Applicant

[Signature of all persons over the age of 18 years listed in number 2 above required]

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. calculation of eligible income:

a. Enter amount entered for entire household in 6 above: \$ \_\_\_\_\_

b. (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ \_\_\_\_\_);

(2) Multiply the amount entered in 7(d)(1) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(d)(1) would be if invested in passbook savings (\$ \_\_\_\_\_), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ \_\_\_\_\_);

(3) Enter at right the greater of the amount calculated under (1) or (2) above: . \$ \_\_\_\_\_.

c. TOTAL ELIGIBLE INCOME

Line 1.a plus line 1.b(3): \$ \_\_\_\_\_

2. The amount entered in 1.c:

Qualifies the applicant(s) as a Lower-income Tenant(s).

Does not qualify the applicant(s) as a Lower-Income Tenant(s)

3. Number of apartment unit assigned:

Bedroom Size: Rent: \$ \_\_\_\_\_

4. This apartment unit (was/was not] last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Lower- Income Tenants.

5. Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other ( \_\_\_\_\_ )

\_\_\_\_\_  
Manager

## INCOME VERIFICATION (for employed persons)

The undersigned employee has applied for a rental unit located in a development for persons of low income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages \_\_\_\_\_ Overtime \_\_\_\_\_ Bonuses \_\_\_\_\_

## Commissions

Total current income \_\_\_\_\_

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature	Date	Title
-----------	------	-------

I hereby grant you permission to disclose my income to \_\_\_\_\_ in order that they may determine my income eligibility for rental of an apartment located in their project.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Please send to

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**INCOME VERIFICATION**  
**(for self-employed persons)**

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

---

Signature

---

Date

**EXHIBIT C**  
**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

(To be filed prior to the 30th day after September 22nd of each year).

Witnesseth that on this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, the undersigned, does hereby certify that such multifamily housing project is in continuing compliance with the Regulatory Agreement and Declaration of Restrictive Covenants executed by the undersigned and recorded in the records of the County of Contra Costa, California, and that to the knowledge of the undersigned no default exists under said Regulatory Agreement, and all fees owing to the Agency and the Administrator have been paid. Specifically, it hereby is confirmed that each Lower-Income Tenant currently residing in a unit in such housing project has completed a Certificate of Tenant Eligibility and Income Verification in the form approved by the Richmond Redevelopment Agency and that since commencement of the Term at least 20% of the occupied units in the Project have been rented to (or are vacant and last occupied by) Lower-Income Tenants, and at least one-half of such units have been rented at Affordable Rents (each of the foregoing capitalized terms having the meaning assigned in said Regulatory Agreement).

As of the data of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Low Income Tenants or Lower-Income Tenants (as such terms are defined in the Regulatory Agreement) or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Lower-Income Tenant vacated such unit; as indicated:

Occupied by Low Income Tenants:

\_\_\_\_\_% Unit Nos. \_\_\_\_\_

Occupied by Lower-Income Tenants:

\_\_\_\_\_% Unit Nos. \_\_\_\_\_

Held vacant for occupancy continuously since last occupied by Lower-Income Tenant:

\_\_\_\_\_ % Unit Nos. \_\_\_\_\_

Vacant Units:

\_\_\_\_\_ % Unit Nos. \_\_\_\_\_

OWNER:

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

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

**EXHIBIT D  
DESIGNATION OF LOWER-INCOME UNITS**

The following dwelling units as hereby designated as Lower-Income Units:

**Unit Numbers**


**Number**

Total Units in the Project \_\_\_\_\_

Total Units currently occupied \_\_\_\_\_

Total Units occupied by Lower-Income Tenants \_\_\_\_\_

Total Units available for rent to Lower-Income Tenants \_\_\_\_\_

Certifications of Tenant Eligibility are attached hereto for all new Lower-Income Tenants who have moved into such multifamily project since the filing of the last Designation of Lower-Income Units. The same is true and correct to the best of the undersigned's knowledge and belief.

Dated: \_\_\_\_\_

OWNER:

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

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

**EXHIBIT E**  
**FANNIE MAE RIDER TO REGULATORY AGREEMENT**

**THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT ("Rider") is attached to and forms a part of the AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Regulatory Agreement"), dated as of July \_\_, 2010, by and among PRIME RICHMOND HOUSING PARTNERS, L.P. ("Owner"), its successors and assigns, the RICHMOND COMMUNITY DEVELOPMENT AGENCY ("Agency").**

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Owner.

3. **Obligations not Secured by the Project.** The obligations of the Owner and any subsequent owner of the Project under the Regulatory Agreement shall not be secured by or constitute a lien on, or security interest in, the Project. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California) (as amended from time to time, "**Security Instrument**").

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Loan Documents (as defined in the Security Instrument). Upon a conveyance or other transfer of title to the Project by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan secured by the Security Instrument, the person who acquires title to the Project pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement.

5. **Obligations Personal.** The Agency agrees that no owner of the Project (including Fannie Mae) subsequent to the Owner will be liable for, assume or take title to the Project subject to:

(a) any failure of any prior owner of the Project to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Project under the Regulatory Agreement.

The Owner and each subsequent owner of the Project shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Project. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Project.

6. **Sale or Transfer.** All restrictions on sale or transfer of the Project or of any interest in the Owner, consents of the Agency, transfer agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Loan Documents which requires the Owner to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Owner, excluding transfers permitted by the Security Instrument. No covenant obligating the Owner to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall apply to a transfer to Fannie Mae upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan by Fannie Mae, or to any subsequent transfer by Fannie Mae following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Loan. Any written consent to a sale or transfer obtained from the Agency shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Project.** In the event that the Project is damaged or destroyed or title to the Project, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Owner shall comply with all applicable requirements of the Security Instrument and the other Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

(c) Upon any default by the Owner under the Regulatory Agreement, the Agency shall only have the right to seek specific performance of the obligations of the Owner or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise unlawful; provided, however, that the Agency may enforce any right it may have under the Regulatory Agreement

for monetary damages only against Excess Revenues (as defined below), if any, of the Owner, unless Fannie Mae otherwise specifically consents in writing to the use of other funds.

(d) The Agency shall provide written notice to Fannie Mae and the Loan Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Regulatory Agreement.

(e) As used in this Section, the term “**Excess Revenues**” means, for any period, the net cash flow of the Owner available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Loan, the payment of all operating, overhead, ownership and other expenditures of the Owner directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Owner is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

9. **Amendments.** The Agency shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Agency, or to cause the Agency to enforce, the terms of the Regulatory Agreement. In addition, the Owner and the Agency intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

11. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Loan Servicer at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

**CBRE Multifamily Capital, Inc.**  
**2800 Post Oak Blvd.**  
**Suite 2100**  
**Houston, TX 77057**

12. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2899  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065  
**RE: [SPECIFY TRANSACTION NAME, PROJECT NAME  
AND LOAN SERVICER]**

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2899  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369  
**RE: [SPECIFY TRANSACTION NAME, PROJECT NAME  
AND LOAN SERVICER]**

[For courier use 4000 Wisconsin Avenue, N.W. and delete  
Drawer AM]

**AMENDED AND RESTATED REGULATORY AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

**By and between the**

**RICHMOND COMMUNITY REDEVELOPMENT AGENCY,**

**and**

**PRIME RICHMOND HOUSING PARTNERS, L.P.  
a California limited liability company**

**Dated as of July \_\_, 2010**

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