

RECORDING REQUESTED BY and:
WHEN RECORDED RETURN TO:

CA Tax Credit Allocation Committee
915 Capitol Mall, Room 485
P.O. Box 942809
Sacramento, CA 94209-0001

SPACE ABOVE LINE FOR
RECORDER'S USE

**CAPITAL NEEDS COVENANT
(EXISTING TAX CREDITS—TRANSFER)
(CA- -)**

THIS CAPITAL NEEDS COVENANT ("Covenant") is made as of the ____ day of ____, 20____, by and among ____ a ____ [corporate structure] ("Transferor"), ____, a ____ [corporate structure] ("Transferee"), and the CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a State of California public body ("TCAC").

RECITALS

A. Transferor is the owner of that certain real property located in the County of ____, State of California, as more particularly described in Exhibit A, attached hereto ("the Property"), on which is a multifamily rental housing development known as [] ("the Project").

B. Transferor is transferring the Property and Project or selling or assigning a partnership interest in the Property and Project to Transferee.

C. The Property and Project are subject to a certain Regulatory Agreement dated as of ____, ("the TCAC Regulatory Agreement") which was entered into for the purpose of receipt of State or federal low income tax credits from TCAC, as the state housing tax credit agency for the State of California, and that TCAC Regulatory Agreement sets forth certain use restrictions affecting the Project. That TCAC Regulatory Agreement was recorded in the ____ County Recorder's Office ("Official Records") on ____ [date] as Document Number ____.

D. The TCAC Regulatory Agreement requires Transferor and any successors in interest thereto, unless otherwise excused or exempted by TCAC, to comply with the regulations of TCAC promulgated at Title 4, California Code of Regulations, commencing with section 10300, ("the TCAC Regulations") then in effect or as amended thereafter.

E. Section 10320(b) of the TCAC Regulations provides that Transfer Events are subject to the prior written approval of the Executive Director, which approval may be conditioned on specified conditions including but not limited to executing and complying with a capital needs covenant which will be binding on both the Transferor and the Transferee and any assignee thereof.

F. Transferor has completed a Qualified Capital Needs Assessment as defined by Section 10302 of the TCAC Regulations which identifies Short Term Work and Long Term Work as defined by that regulation and the costs thereof which shall be set-aside as provided in this Covenant. TCAC has approved the Qualified Capital Needs Assessment and specified set-asides to accomplish that work as set forth in this Covenant.

G. The TCAC Executive Director may waive or modify the amounts to be set-aside and spent pursuant to the Qualified Capital Needs Assessment if the net project equity is less than the amount necessary to finance the work specified by the Qualified Capital Needs Assessment, as specified in Section 10320(b)(2) of the TCAC Regulations.

H. Transferor agrees to the determinations of the Qualified Capital Needs Assessment, and Transferee agrees to set-aside the funds as set forth pursuant to this Covenant and to perform the work consistent with the funding set-aside pursuant to this Covenant. The TCAC Executive Director approves the Transfer Event conditioned on the approval of the Transferor and Transferee of these conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Covenant as agreements among the parties.

2. Deposits and Work:

(a) At the time of closing of the transfer, Transferee shall set aside the sum of _____ dollars (\$_____) in a Short Term Work Reserve Account to perform the Short Term Work as identified in the approved Qualified Capital Needs Assessment, and shall perform that work within three years of the date of transfer.

(b) For fifteen (15) years after the closing of the transfer, Transferee annually shall set aside by [specified date] of each year the following annual amounts in the Project's replacement reserve account which includes contributions required by TCAC regulations which shall be used, along with other reserve deposits if necessary, to complete the Long Term Work.

Year 1-15: \$_____ (equal annual installments)

(c) Notwithstanding the requirements for deposits and completion of related work set forth in subparagraphs (a) and (b), Transferee shall not have an obligation to provide the specified deposits if it demonstrates to TCAC that the debt service coverage ratio for any year meets the requirements of Section 10320(b)(2)(B)(iii) of the TCAC Regulations for a modification or waiver by the TCAC Executive Director.

3. Term. The term of this Covenant shall commence on the date hereof and shall continue for:

(a) Fifteen (15) years after the closing date of the transfer.

4. Annual Certification. Transferee shall certify annually its compliance with the deposit and work terms of this Covenant on a form to be provided by TCAC.

5. Effect. The terms and conditions of this Covenant supersede the terms of the TCAC Regulatory Agreement and, should there be any conflict or inconsistency between this Covenant and the TCAC Regulatory Agreement, the terms and conditions of this Covenant shall prevail.

6. Binding. This Covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

7. Modifications. This Covenant may not be modified except by an instrument in writing executed by each of the parties hereto or their respective successors and/or assigns.

8. Notices.

(a) Process of Serving Notice. All notices under this Covenant shall be:

(1) in writing and shall be:

(A) delivered, in person;

(B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;

(C) sent by overnight courier; or

(D) sent by electronic mail with originals to follow by overnight courier;

(2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee(s); or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier Service.

(b) Any party to the Covenant may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in the Covenant.

(c) Any party to this Covenant shall not refuse or reject delivery of any notice given in accordance with this Covenant. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

9. Validity. Notwithstanding anything herein contained, if any one or more of the provisions of this Covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity, or unenforceability shall not affect any other provision of this Covenant, but this Covenant shall be construed as if such an illegal, invalid, or unenforceable provision had never been contained herein.

10. Applicable Law. This Covenant shall be governed by and construed in accordance with all applicable federal laws and the laws of the State of California.

11. Recording. It is the intent of the parties that this Covenant shall be recorded in the Official Records.

12. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other(s), execute, acknowledge and deliver, or caused to be executed, acknowledged, or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Covenant, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Covenant.

13. Responsibility for Acts or Omissions. Nothing in this Covenant shall impose on TCAC the obligations of Transferee under this Covenant or require TCAC to assume or assure the proper completion of the Short Term Work or Long Term Work imposed by this Covenant.

14. Default and Remedies. In the event of any breach or violation of any agreement, obligation, or warranty under this Covenant, TCAC shall give written notice to Transferee, specifying (i) the nature of the breach or violation, (ii) the action required to cure the breach of violation, if an action to cure is possible, and (iii) a date, which shall not be less than sixty (60) calendar days from the mailing of the notice by which such action to cure must be taken. If Transferee fails to cure the breach or violation within the timeframe specified in the notice, or if a cure is not possible, TCAC may proceed with seeking any and all remedies allowed by law or in equity, or in the TCAC Regulatory Agreement, any of which may be exercised concurrently, independently, or successively.

15. Indemnification and Attorney's Fees.

(a) In the event any legal action is commenced by any party hereto concerning this Covenant or the rights and duties of any party hereto, whether such action be an action for damages, or for equitable or declaratory relief, the prevailing party to such litigation shall be entitled to, in addition to all other relief as may be granted by the court, any and all reasonable sums for costs and expenses related to the enforcement of this

Covenant and the legal action and for attorneys' fees in an amount to be set by the court.

(b) Transferor and Transferee, as applicable, its successors and assigns, shall defend, indemnify and hold TCAC, its members, officials, directors, employees, and agents, harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorney's fees) which TCAC may incur as a result of (i) Transferor's or Transferee's as applicable, failure to reasonable perform any material obligations as required by this Covenant; (ii) a failure of any of Transferor's or Transferee's as applicable, representations or warranties under this Covenant to be true and complete in any material respect; and (iii) any material breach, act or omission by Transferor or Transferee, as applicable, or their agents or employees with respect to noncompliance with this Covenant. Transferor or Transferee, as applicable, shall pay immediately upon TCAC's demand any amounts owing under this indemnity. The duty of Transferor or Transferee, as applicable, to indemnify includes the duty to defend TCAC in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. This duty to indemnify TCAC shall survive the term of this Covenant.

16. No Waiver of Rights. No failure or delay of TCAC in any one instance to exercise any remedy or power given it by this Covenant or to insist upon strict compliance by Transferee of any obligation imposed on it herein in any other instance and no custom or practice of any party hereto at variance with any term hereof shall constitute a waiver or a modification of the terms hereof by TCAC or any right it has herein to demand strict compliance with term thereof by the Transferee, in any other instance.

17. Valid Authorization. Each person executing this Covenant on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Covenant and to bind such party with respect to all of its obligations hereunder.

18. Time of Essence. Time is of the essence in the performance of every obligation contained in this Covenant.

19. Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one Covenant.

IN WITNESS WHEREOF, each of the TCAC, the Transferor, and the Transferee has caused this Covenant to be signed by its duly authorized representative, to be effective as of the day and year first written above, notwithstanding the actual date of execution.

TRANSFEROR

_____ [Name]

By: _____

Name: _____

Title: _____

Address: _____

ACKNOWLEDGEMENT

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

State of _____

County of _____

On _____, 20__, before me, _____, [insert name and title of officer] personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[NOTARY SEAL]

Capital Needs Covenant (Existing Tax Credits--Transfer)

TRANSFeree

_____ [Name]

By: _____

Name: _____

Title: _____

Address: _____

ACKNOWLEDGEMENT

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

State of _____

County of _____

On _____, 20__, before me, _____, [insert name and title of officer] personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[NOTARY SEAL]

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

By: _____
Name: _____
Title: _____

Address: 915 Capitol Mall, Room 485
Sacramento, CA 95814

ACKNOWLEDGEMENT

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

State of California
County of Sacramento

On _____, 20__, before me, _____, [insert name and title of officer] personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[NOTARY SEAL]

Capital Needs Covenant (Existing Tax Credits--Transfer)

EXHIBIT A. PROPERTY LEGAL DESCRIPTION