

Guidelines
for
Purchasing and Developing
Permanent Housing
through the
Regional Center
Community Placement Plan

for

**Fiscal Year 2016-17 Requests and
Modifications**

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 Department of Developmental Services

Community Placement Plan Housing Guidelines Fiscal Year 2016-17

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Department of Developmental Services

Guidelines for Purchasing and Developing Permanent Housing through the Regional Center Community Placement Plan (Housing Guidelines)

Note: The Effective Date of the Housing Guidelines is July 1, 2016. These Housing Guidelines apply to all Housing Proposals submitted by the Regional Center (RC) to the Department of Developmental Services (Department or DDS) after the Effective Date; and where a non-profit organization (NPO) will be the fee owner of a property purchased using Community Placement Plan (CPP) Start-Up funds (CPP funds).

I. Introduction

The Department created these Housing Guidelines to achieve the development of safe, affordable, and sustainable housing for individuals with intellectual or developmental disabilities eligible to receive services from the RC (consumers). To protect the State of California's (State) interest, the Department uses CPP funds to facilitate the development of permanent housing in the community that will be used exclusively, in perpetuity,¹ by consumers. In collaboration with the RC, an NPO may purchase real property through the "Buy-It-Once" model or may develop multiple restricted units in a multi-family project.

II. Authority

Development of permanent housing must adhere to resource development provisions pursuant to Welfare and Institutions Code (WIC) Section 4418.25, in which the development of community resources is allowed within the RC's approved CPP.

Effective June 2014, new statutory provisions were added to the Department's existing authority to develop community resources. These provisions, along with related program requirements, are described in Senate Bill 856 (Chapter 30, Statutes of 2014) and are added to WIC Sections 4684.80, 4684.81, and 4698. Pursuant to these provisions, the Department now is required to support development of Enhanced Behavioral Supports Homes and Community Crisis Homes as new models of care for consumers requiring intensive services and supports due to challenging behaviors. The Enhanced Behavioral Supports Homes are statutorily required to be established as a pilot program and implemented, until January 1, 2020, to test the effectiveness of these homes.

¹For purposes of these Housing Guidelines, "in perpetuity" is interchangeable with "for 99 years."

III. CPP Housing Process Overview

Pursuant to these Housing Guidelines, a RC must submit a Housing Proposal describing how the Department-approved CPP funds will be used for the acquisition (purchase) of housing and/or the modification of the housing to meet the unique needs of consumers. (See also Appendix I.) Approval and funding priority will be aligned with the priorities and goals stated in the Fiscal Year (FY) 2016-17 CPP Guidelines issued by the Department on March 3, 2016 (CPP Guidelines). The Department supports collaborative proposals between two or more RCs to develop specialized housing resources to meet the statewide needs of consumers.

Once the Housing Proposal is approved, the Department will issue a Letter of Conditional Approval authorizing the RC to identify one or more prospective properties that will be owned by the NPO, or to begin renovation or construction activities on a property that is already owned by the NPO.

When the NPO has signed a purchase agreement to purchase a property approved by the RC, the RC shall submit a Housing Acquisition Request (HAR) to the Department in accordance with Section X.B of these Housing Guidelines. The RC shall not authorize the use of CPP funds to purchase real property prior to the submission and the Department's approval of a HAR.

Single-Family Housing Proposal

The Housing Proposal must:

- Be consistent with the RC's authority to conduct resource development as described in WIC Section 4418.25 and be submitted and approved through the process specified in the FY 2016-17 CPP Guidelines and these Housing Guidelines.
- Demonstrate a contractual agreement between the RC and NPO that will own the property through an Agreement or Contract that requires the RC and NPO to obtain the Department's conditional approval for its Housing Proposal prior to proceeding with the acquisition of real property. (See also Section V.A.ii.b of these Housing Guidelines regarding the submission of a Housing Proposal prior to the selection of an NPO.)
- Demonstrate a separation of property ownership from the delivery of services and supports within the home, i.e., the NPO cannot be both the property owner and the service provider.
- Contain sufficient detail for the Department to determine the intended use of the requested funds.
- Require the NPO to comply with the terms of these Housing Guidelines, including but not limited to its execution of the Department's restrictive covenant (Exhibit A) for each property it acquires or renovates.

- Demonstrate compliance with State fiscal oversight, accountability, and audit requirements consistent with WIC Section 4648.1 and California Code of Regulations, Title 17, Section 54326.
- Demonstrate that ongoing costs are supported and will be met within the provisions of the median rate requirement in WIC Sections 4681.6, 4689.8, and 4691.9, and other types of CPP residential facility rate structures implemented by the Department.
- Specify that the services and supports from CPP housing development must be eligible for Federal Financial Participation (FFP) consistent with WIC Section 4418.25(b)(5).

The approval of a Housing Proposal is contingent on the RC's current and continuing compliance with the Housing Guidelines and the RC's ability to promptly and directly provide the Department, as needed or as requested, current, complete and accurate information as specified in these Housing Guidelines. Consistent with WIC Section 4648.1, the RC agrees to all monitoring by the Department, including examination and review of books, records, documents and files, in whatever form they exist, of the named NPO and its affiliate organizations, and interviews with its principals, agents, and employees.

Multi-Family Housing Proposal

The RC must submit a Multi-Family Housing Proposal when at least one unit is developed as part of a multi-family project. A multi-family project is defined as a structure or set of structures with common financing, ownership, and management and which collectively contains five (5) or more units. For the purpose of these Housing Guidelines, a unit includes, but is not limited to, a studio, apartment, townhouse, duplex, etc., but does not include a bedroom within a unit. The Multi-Family Housing Proposal describes how the RC plans to use Department-approved CPP funds to increase affordable and accessible "set-aside" units that are restricted in use for eligible consumers. The RC must contract with the ownership entity to create these deeply subsidized units.

If the RC is approved for a multi-family project consistent with the process specified in the CPP Guidelines, the RC must contact the Department not less than six (6) months prior to submission of a Multi-Family Housing Proposal due to the additional planning and workload associated with the review of the multi-family housing proposal. The RC must submit a Multi-Family Housing Proposal within 45 days from the date the RC selects the NPO for the project or awards the project to the NPO.

Appendix N of these Housing Guidelines provides additional guidance on specific requirements and procedures for a Multi-Family Housing Proposal.

IV. CPP Housing Contractual Provisions

At least the following contracts/agreements must be executed for each CPP property developed as part of a Housing Proposal submitted under these Housing Guidelines:

- A contract/agreement between the RC and the NPO (the RC-NPO contract). The RC may execute separate agreements with the NPO regarding the acquisition or renovation of a project, or incorporate the terms of such agreements into the RC-NPO contract.
- A contract, agreement, and/or vendorization between the RC and service provider.
- A lease agreement between the NPO and the service provider (the NPO-service provider lease).

The RC may complete such applicable contracts/agreements at different times during the housing development process, but must submit them to the Department according to Appendix H.

The purpose of the CPP contractual provisions is to ensure that the RC, NPO, and the service provider enter into appropriate written contracts related to the use of CPP funds and the timely development of any CPP-funded project (acquisition and renovation, or new construction). The applicable contracts/agreements must include, at a minimum, the following:

- A. **PROJECT DEVELOPMENT:** The RC-NPO contract must at minimum describe the following: the tasks to be accomplished; who is responsible for those tasks; accountability by each entity for the timely development of the project, etc. The agreement/contract should demonstrate to the satisfaction of the Department how the NPO will comply with all state and local building requirements, including the RC's verification that all projects have, or shall receive, all required permits prior to the start of any demolition, construction, or renovation.
- B. **HOUSING AGREEMENTS:** The provisions in the RC-NPO contract must be consistent with the provisions in these Housing Guidelines, inclusive of the CPP Property Documents (see Appendices described below). In the event of any inconsistencies between these Housing Guidelines and the RC-NPO contracts, these Housing Guidelines shall control.

Following approval, the RC must use the Department-approved escrow instructions to close escrow on the CPP property. Escrow contractual provisions must specify that the escrow company cannot close on the property until all of the requirements set forth in the escrow instructions have been satisfied.

- C. **LEASE RATE ADJUSTMENT:** The RC-NPO contract and service provider lease must contain a provision for the adjustment of the lease rate and the service

provider reimbursement/service rate upon reduction or elimination of the debt service or other operating costs.

Once the Department-approved senior lender loan on the project property is paid in full, the RC must review the existing service provider rate agreement, along with the lease rate, to reassess the need for any adjustments as a result of a redirection of the debt service.

- D. **REPLACEMENT RESERVE ACCOUNT:** The NPO-service provider lease includes a description of a replacement reserve account. Funds in the account are intended for the major repair and replacement of capital improvements related to the property, including but not limited to, foundation and floor slab, roofing, plumbing, electrical, structural components of the exterior and interior and load bearing walls, fencing, fire sprinkler systems and related electrical panels, major appliances such as stove, refrigerator, and oven/range, etc. (See also Section M.iv of these Housing Guidelines for more details on the replacement reserve account.)
- E. **MAINTENANCE:** The NPO-service provider lease contains a provision about the terms for funding short- and long-term maintenance separate from the replacement reserves described above. The purpose of this provision is to clearly outline the responsibilities of the service provider and the NPO for short- and long-term maintenance.
- F. **WELFARE PROPERTY TAX EXEMPTION:** When the service provider is a 501(c)(3) non-profit organization, the RC-NPO contract obligates the NPO to file a property tax exemption application as early as possible after the NPO purchases the property and has signed a lease with the service provider. In any event, this process should occur not later than the first day the first consumer occupies the property. Note: The NPO and the service provider each must have an Organizational Clearance Certificate from the State Board of Equalization as a condition to obtaining an exemption from real property taxes from the local county tax assessor.
- i. In the instances when the property tax is paid directly by the NPO, and the property tax cost is incorporated into the lease payment, the lease agreement must include provisions requiring the reduction of the rent based on the actual county property tax once the exemption is granted.
 - ii. In the instances when the property tax is paid directly by the service provider (additive to the base rent rate), the lease must spell out such an agreement.
 - iii. In the instances when rent is reduced under either (a) or (b) above, the RC shall reduce the service provider reimbursement/service rate by the same amount, but ensure this rate is sufficient to cover the operational expenses of the project.

- iv. In the instances where a property is no longer eligible for a tax exemption, the RC must describe the process that will be used for managing the increased expense.

- G. CPP FUND RECOUPMENT: The RC-NPO contract describes fair and equitable recoupment of the CPP funds in the event that, for any reason whatsoever, the property will not be completed, the project does not conform to the purposes of these Housing Guidelines, or the real property ceases to be used as housing for consumers. On a case-by-case basis, the Department will review RC requests concerning extraordinary circumstances that impact the project's sustainability. Note: A temporary cessation of use of the housing by consumers due to casualty or temporary condemnation not caused by the NPO shall not require the NPO to repay CPP funds.

- H. UNUSED CPP FUNDS: The RC-NPO contract must address the proposed use of any CPP funds that were not used toward the completion of the proposed project. Examples of unused CPP funds include (acquisition or renovation) that were not used for the project, permanent financing, closing costs, reimbursements to the developer, NPO, or RC for acquisition, pre-development, or renovation/construction costs, or reimbursement due to tax exempt status. The RC must obtain the Department's approval prior to the use of any unused CPP funds of five thousand dollars (\$5,000), or greater. Upon reconciliation of all funds, any unused balance of CPP funds must be returned to the Department within 120 days of the reconciliation of funds. In addition, the provisions in the contract must ensure that permanent financing and CPP funds are not utilized for the same cost/expense.

- I. DISCONTINUED PROJECT: The RC-NPO contract requires the NPO to return CPP funding, to the RC and the Department for a project that will not be completed. The RC should notify the Department immediately if a project is to be discontinued, so that the Department can work with the RC to determine the best alternative use for those CPP funds.

- J. PROJECT COSTS: The RC-NPO contract specifies the projected cost to acquire and/or renovate the property, or projected new construction costs.

- K. DEVELOPER FEE: The RC-NPO contract describes the methodology for establishing the proposed developer fee(s) from all sources. The developer fee methodology must clearly describe the basis for calculating the fee(s).

- L. PERFORMANCE ASSURANCES: A description of how the RC and NPO provide for the obligation of the NPO to have its general contractor obtain a payment and performance bond to cover all of expected costs to renovate the proposed housing project(s).

If the NPO cannot secure a payment and performance bond, the RC may request approval from the Department to use all of the following alternative performance assurances:

- i. Contract provisions based on achievement of project milestones.
- ii. Review and verification of project performance and progress by a professional construction manager prior to the release of contractor payments.
- iii. A provision in the RC-NPO contract that the NPO must require its contractor to accept payments based upon performance, as well as, commit to submitting mechanics lien releases to the RC, if applicable, when and if a contract is signed with a contractor.
- iv. The RC shall retain ten percent (10%) of the renovation funds until the work or improvements are completed. These funds would be released to the NPO or its contractor only when a Certificate of Occupancy (or its equivalent) is provided by the local agency (e.g., a building inspector), construction manager/consultant, and upon delivery of appropriate mechanic's lien releases and final walk-through approval by the RC and the RC's approval of the work or improvement.

The RC must receive Department approval to use the alternative performance assurances prior to the start of construction.

M. REGIONAL CENTER MONITORING REQUIREMENTS:

- i. Property Safety Standard: After the renovation work is complete and during occupancy of the property by consumers, the RC must annually certify in Appendix M that, to the RC's best knowledge, the interior, exterior, and any detached structures of the proposed property are in good working condition and properly maintained, and that there is no threat to the health, welfare, and safety of consumers living at the property, staff, visitors, etc.
- ii. Project Progress: The RC shall regularly monitor CPP projects to ensure the satisfactory progress, of all the Department-approved Housing Proposal acquisition and renovation, as outlined in Section X. of these Housing Guidelines, and shall report the progress of the projects on a quarterly basis.
- iii. Insurance: The RC shall ensure that the NPO procures and maintains:
 - a) Property hazard insurance equal to the replacement value of the property. The Department must be named as loss payee.
 - b) Liability insurance of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate of general liability requirements related to the CPP property consistent with the DDS Deed of Trust. The Department must be named as additional insured. The RC also shall ensure the service provider maintains applicable liability insurance.

The recommended deductible for all policies is ten thousand dollars (\$10,000) per policy. The proof of insurance should indicate the specific name of the project and the property address.

- iv. Replacement Reserve Account: The RC shall ensure that the NPO maintains a replacement reserve account for all CPP properties and provides an accounting of the replacement reserve funds for each CPP property as part of annual reporting. A separate bank account shall be designated for replacement reserve funds. Unless otherwise required by the RC, the NPO may deposit replacement reserve funds for multiple properties in one bank account. The RC and NPO must not use replacement reserve funds designated for one CPP property to cover costs of another CPP property.

Prior to using funds in the replacement reserve account, the NPO must obtain the RC's approval. The RC must ensure the NPO has exhausted all other sources of funding, e.g., insurance, product warranties, etc., before using replacement reserve funds. If a replacement reserve account needs to be established for a CPP property or a Department-approved replacement reserve amount needs to be increased, the RC may submit a written request to the Department for review.

The RC shall ensure the NPO conducts a replacement reserve analysis at the time a HAR is submitted. An updated replacement reserve analysis shall be completed and submitted to the Department not less than every five (5) years thereafter. The RC shall have the option to require that the replacement reserve analysis is completed by an independent third party. The Department will review a proposed change in the replacement reserve amount based upon the replacement reserve analysis.

- v. Appraisal: The RC shall ensure the purchase price of real property is supported by the appraisal report for the appraised value of the property. An appraisal report completed for the senior lender(s) is acceptable to meet this requirement.

V. CPP Housing Proposal Contents

A. Housing Proposal Overview

The Housing Proposal shall:

- i. Describe the type of housing to be developed, whether the Housing Proposal is for acquisition and renovation, or new construction. The type of housing may include, but is not limited to, Adult Residential Facility, Residential Care Facility for the Elderly, Specialized Residential Facility, Adult Residential

Facility for Persons with Special Health Care Needs (ARFPSHN), Family Teaching Home, or units within a multi-family housing development.²

- ii. Identify the applicable NPO that will acquire ownership of the property.
 - a) In instances where the developer is different than the NPO, specify a time certain that the NPO owner-entity will acquire the property. The Department may request additional information including, but not limited to, information that demonstrates the developer's experience, financial strength, ability to develop a project, etc.
 - b) If the RC has not selected an NPO at the time the Housing Proposal is submitted to the Department, the RC may describe the process that will be used to select an NPO or the pending Request for Proposal process. Once the RC has selected the NPO, all documents required in Appendix II must be submitted to the Department for review and approval, prior to the NPO entering into any purchase contract for real property.
- iii. Describe how the proposed property meets the needs (e.g., accessibility/universal design, behavioral, medical, etc.) of consumers who are moving from a developmental center, an Institution for Mental Disease (IMD) facility ineligible for FFP, an out-of-state placement, and/or consumers who are at risk of admission to FDC or SDC due to an acute crisis, an IMD facility ineligible for FFP, and/or out-of-state services. The Department encourages the RCs to design homes that allow individuals with developmental disabilities to remain in their homes as their physical conditions change due to age or illness (i.e., "aging in place" or "universal design"). The California Department of Housing and Community Development created a resource guide on aging in place/universal design, which can be accessed electronically at:
<http://www.hcd.ca.gov/hpd/aginginplace.pdf>
- iv. Describe the type of neighborhood for the proposed property (e.g., single family, multi-family, commercial, etc.), location selection criteria (transportation, access to services, etc.) and the availability of supportive services and vocational programs that are available for consumers residing in the proposed development.
- v. Follow guidance issued by the federal Centers for Medicare & Medicaid Services regarding settings that have the effect of isolating individuals receiving services and supports in the community. (See also Enclosure A of the CPP Guidelines.)

² If the RC has been approved to develop a multi-family project, the RC should contact the Department not less than six (6) months prior to submitting a Multi-Family Housing Proposal. (See also Appendix N.)

- vi. Require the project(s) to provide for automatic fire sprinkler systems.

B. Financial

The Housing Proposal shall include the following financial information:

- i. A description of how the RC and the NPO will maintain accounting, financial, and other records related to the use of CPP funding.
- ii. Unless waived by the Department, a minimum down payment amount of twenty percent (20%) of the property's purchase price using Department-approved CPP funds for acquisition. For multi-family projects, the amount of CPP funds depends on either the number of units to be occupied by consumers, or on the scope of the entire project.
- iii. A detailed Sources and Uses of funds. If the Sources and Uses of funds is not submitted, the proposal must include a budget that details the amount of funds targeted for acquisition, renovation, administrative costs of the NPO, (to include developer fees), pre-development costs, renovation, and transition estimates.
 - a) The Sources and Uses of funds will need to be updated at the following times:
 - Upon the acquisition of the property.
 - Upon approval of the renovation bid/budget.
 - Upon any material project changes, e.g., capacity, additional renovation expenses, schedule of development, etc.
 - At reconciliation of CPP funds upon completion of each project.
 - At any time requested by the Department.
 - b) Priority will be given to proposals demonstrating leveraging of funds from grants, gifts and other like sources, rather than, or in addition to, funds from long-term financing.
 - c) Entities providing project funds may include, but are not limited to, federal, state and local housing programs, private parties, banks, and foundations.
- iv. The terms of the mortgage loan(s).
 - a) If long-term funding is obtained in part through a loan, include the proposed loan terms.

- b) The mortgage loan shall not exceed a 15-year term without the Department's approval. The Department will consider other proposed financing terms on a case-by-case basis.
 - c) Adjustable rate mortgage loans and balloon payments are not permitted, without prior approval by the Department.
- v. An estimated itemized operating budget in a format approved by the Department.
- vi. A projected 15-year pro forma budget that demonstrates the project's financial feasibility. The budget:
 - a) Anticipates income from all sources to be used to fund and operate the project over fifteen (15) years.
 - b) Accounts for required replacement reserve deposits.
 - c) Estimates the total amount of loan or mortgage payment(s), property (hazard) and liability insurance, home warranty contract, operating expenses, property management expenses, and property taxes (if applicable).

C. NPO Documents

The RC shall submit with the Housing Proposal, the required NPO documents consistent with Appendix I. (If the RC has not yet selected an NPO, the RC will submit these documents at a later date.) The RC must submit a Certificate of Status of Good Standing issued by the California Secretary of State, valid within 240 days of Housing Proposal submission. As applicable, the RC may elect to submit these required NPO documents one time annually with the first Housing Proposal of the funding year, excluding the Certificate of Status of Good Standing. If any of this information changes, the RC must provide the Department with the updated document(s), as applicable.

D. Proposed Schedule of Development/Implementation Plan

The RC shall provide a detailed schedule of the proposed development process outlining estimated timeframes and conditions for project completion that includes the following:

- i. Realistic, structured timeframes projected at the time of submittal for the type of projects proposed by the RC.
- ii. Sequenced schedule of development activities from property identification to occupancy. If the project contains more than one property, each property must have a separate implementation plan.

- iii. A description of all strategies (e.g., real estate agent, specific online property search tools, direct marketing, government-owned properties, etc.) that will be used to identify properties.
- iv. As required above, activities to comply with all state and local building and occupancy requirements, including without limitation the RC's receipt of verification that any project has received all required permits prior to the start of any demolition, construction, or renovation.
- v. An outline of the process to request, from the Department, an extension which includes, but is not limited to, a revised timeline, notification, and a plan for mitigation related to additional time lost.
- vi. If the project is to be licensed, a courtesy notification procedure, as determined by the RC, must be included in the Housing Proposal to inform the local licensing entity regarding plans for acquiring, developing, and/or renovating/rehabilitating homes within its jurisdiction.

VI. CPP Property Documents

After the Department has issued the approval of the HAR, the following CPP Property documents shall be used at the closing of the acquisition of the CPP property: (i) Restrictive Covenant (Appendix A); (ii) DDS CPP Deed of Trust (Appendix D); (iii) DDS Community Placement Plan Promissory Note Secured by Deed of Trust (Appendix B) or Profit Participation Agreement (Appendix C); (iv) Agreement to Provide Notice and Cure Rights (Appendix G); and (v) each Request for Notice (Appendix E and Appendix F). Collectively, these documents are the CPP Property Documents. All CPP Property Documents shall be executed, and the applicable recordable documents submitted to escrow, together with the loan document(s) from the senior and/or other lenders. Consistent with the Department-approved escrow instructions, escrow will not close until all of the required applicable CPP Property Documents have been received by escrow.

Changes to the required documents and any future encumbrances against the property are not allowed without the prior written consent of the Department. Proper adherence to these requirements will ensure that the property will be properly maintained, in perpetuity, for use by consumers.

The RC must ensure that the following CPP Property Documents are completed with each property owned by an NPO consistent with the requirements outlined in these Housing Guidelines.

A. Restrictive Covenant

An approved project (property) shall have a recorded restrictive covenant (the DDS Restrictive Covenant) entered into between the RC and NPO (owner of the property) and concurrently recorded with other DDS Property Documents, subordinate only to the senior lender or governmental agency lender's deed of

trust, if any. The purpose of the DDS Restrictive Covenant is to restrict the use of the property as housing for consumers in perpetuity. Accordingly, the DDS Restrictive Covenant shall include a restriction on the use of the property as housing for consumers in perpetuity, from the date of the close of escrow, on which the NPO becomes the fee owner of the property.

The enclosed Restrictive Covenant template (Appendix A), as approved by the Department, should be utilized. The RC may submit a request for approval of an alternative document; however, it must contain language that is substantially similar to Appendix A. An alternative restrictive covenant proposed by the RC must be consistent with these Housing Guidelines that includes, but is not limited to, the following:

- i. Third Party Beneficiary: A requirement that the Department is named as a third party beneficiary.
- ii. Default Notice: A requirement that the RC receives written notification from the NPO within five (5) days upon any default by the NPO under its loan with its lender(s).
- iii. Consent Notification: A requirement that no real property encumbrance, sale, pledge, assignment, hypothecation, or conveyance of the property, or any of its interest therein, including the benefit of use of the property for consumers, occur without the prior written consent of the Department.
- iv. Agreement to Provide Notice of Cure Rights: A requirement that the RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the senior lender as part of the close of escrow (in a form substantially similar to Appendix G).

In the event of a breach or violation of the provisions of the DDS Restrictive Covenant, the Department may give written notice to the NPO. If the breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than twenty (20) days, the Department may declare a default in accordance with law and equity, and the Department may seek legal and equitable remedies.

Note: The Department may not approve or conditionally approve any Housing Proposal until such RC has caused a DDS Restrictive Covenant to be signed and recorded on all existing properties within such RC's catchment area that have been purchased with CPP funds. If, as of the Effective Date of these Housing Guidelines, (i) an NPO is the fee owner of a property purchased in part with CPP funds, and (ii) the NPO's property is not yet encumbered by a recorded DDS Restrictive Covenant, then the RC shall cause the NPO to execute and record a DDS Restrictive Covenant consistent with the restrictive covenant requirements set forth in these Housing Guidelines before the Department will fund any new Housing Proposal from such RC.

B. DDS CPP Deed of Trust

An approved project (property) shall have a deed of trust in favor of the Department (DDS Deed of Trust) signed by the NPO (as owner of the property) and recorded concurrently with the DDS Restrictive Covenant on the day the NPO becomes the fee owner of the property (as part of the close of escrow). The DDS Deed of Trust may subordinate only to a senior lender's deed of trust when the NPO obtains a secured loan from an institutional lender or governmental agency lender to finance a portion of the purchase price. The enclosed sample DDS Deed of Trust (Appendix D) is approved by the Department for use by the RC. The RC may submit a request for approval of an alternative format; however, it must contain content substantially similar to Appendix D.

Within the DDS Deed of Trust, the Department delegates, unless delegation is withdrawn by the Department, non-monetary obligations under the DDS Deed of Trust to the RC, including, but not limited to, responsibility to maintain current property (hazard) and liability insurance and perform property inspections.

C. Profit Participation Agreement or DDS Community Placement Plan Promissory Note Secured by Deed of Trust

The NPO shall either (i) enter into a Profit Participation Agreement (PPA), or elect to (ii) execute a DDS Community Placement Plan Promissory Note Secured by Deed of Trust (Promissory Note), as follows:

- i. **PROFIT PARTICIPATION AGREEMENT:** The NPO shall execute with acknowledgement a Department-approved PPA reflecting the receipt of CPP funds. This agreement must be recorded against the property on the same day the NPO becomes the fee owner of the property (as part of escrow) and recorded concurrently with the DDS Deed of Trust and DDS Restrictive Covenant. The PPA will be recorded in order to provide notice to any potential purchaser that CPP funds must be paid to the Department upon conveyance and that various approvals are required in order to affect any valid sale of the property. A sample of a Department-approved PPA is included as Appendix B.
- ii. **PROMISSORY NOTE:** The RC and NPO may elect the option to execute a promissory note, in lieu of a PPA as described above. If so elected, the NPO shall execute with acknowledgement a Department-approved Promissory Note in favor of the Department reflecting the receipt of CPP funds. The Promissory Note must be delivered to the Escrow Officer prior to the day the NPO becomes the fee owner of the property (close of escrow). In consideration of the receipt of CPP funds, the NPO agrees that occupancy of the property will be restricted in perpetuity for consumers. This obligation shall continue even if the CPP funds are repaid. The DDS Restrictive Covenant may only be terminated consistent with the terms of the DDS Restrictive Covenant or as may be acceptable to the Department

at its sole discretion. The Department-approved Promissory Note is included as Appendix C.

Should the RC and NPO elect to submit alternative language for the documents in Appendix A, Appendix B, or Appendix D, specified above, the RC and NPO should anticipate a minimum turnaround time of thirty (30) days, although the Department will use reasonable efforts to respond within sixty (60) days.

D. Lender Notices

This section applies when the NPO obtains financing from a lender other than the Department to assist in the acquisition and renovation, or construction of the property.

The RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the senior lender by not later than the close of escrow (in a form substantially similar to Appendix G). The RC shall provide the form to the NPO for coordination of its execution with the lender. A copy of the executed Agreement to Provide Notice and Cure Rights shall be submitted by the RC to the Department no later than fifteen (15) days after close of escrow.

In addition, the RC must record Requests for Notice in the form provided in Appendix E [Request for Notice (benefit of the Department)] and Appendix F [Request for Notice of Default (benefit of the RC)]. Each Request for Notice shall be recorded against the property on the same day the NPO becomes the fee owner of the property (as part of escrow) and recorded concurrently with the DDS Property Documents.

E. Order of Recordation

The Department's documents may only be recorded subordinate to an approved senior lender's deed of trust. The Department's escrow instructions, enclosed as Appendix L, are to be used by the RC to facilitate the recordation of the Department's documents.

F. Title Insurance

The RC must ensure the NPO procures lender's title insurance for the Department. The amount of such insurance shall be equal to the full value of the CPP acquisition and renovation funds the RC provides to the NPO for such property. The RC also must ensure that the NPO procures owner's title insurance. The cost of both policies of title insurance is an allowable acquisition cost as referenced in VII.A. of these Housing Guidelines.

G. Escrow Instructions

The use of Department-approved escrow instructions is required in each CPP housing acquisition. Consistent with these escrow instructions, escrow cannot

close until all of the requirements outlined in the escrow instructions have been satisfied. The Department-approved escrow instructions are included as Appendix L.

The RC may only release CPP funds into escrow following receipt of the Department's written approval of a submitted HAR. See also Section X.B. of these Housing Guidelines.

VII. Eligible Acquisition and Renovation Costs

CPP funds shall be used only for acquisition and renovation of real property as described below. CPP funds cannot be encumbered, expended, or otherwise legally obligated to an NPO or developer until the RC receives the Department's approval of its Housing Proposal.³

A. Acquisition Costs

Eligible CPP costs for the acquisition of real property include, but are not limited to, down payment, pre-development costs, due diligence costs, closing costs, property inspections and replacement reserve analysis, developer fee, environmental mitigation reports, legal, accounting, consultant, and project management fees, lender's title insurance, home warranty contract, etc. Once the Department approves a HAR, some pre-development costs relating to such CPP property may be eligible for reimbursement even if the prospective property is not eventually purchased.

B. Renovation Costs of NPO Owned Property

To ensure that the unique needs of individuals with a wide-range of disabilities can be accommodated, CPP funds may be used to renovate or construct new improvements involving changes to the layout of real property and amenities.

Eligible costs for the renovation of real property include, but are not limited to, the following:

- i. Specialized items that provide benefit to meet consumers' needs, (e.g., ramps, bathroom modifications, hardened or softened walls, etc.). The consumers' identified needs should be comprehensively evaluated prior to the start of renovation or construction to limit future unanticipated costs.
- ii. Replacement of old systems [e.g., water heaters, or heating, ventilation and air conditioning (HVAC) systems, etc.].
- iii. Building code compliance, and other state and local government requirements for code compliance, including, but not limited to repainting, patching, and repairing of items.

³ Allocation of any funds for CPP is conditioned on appropriation of the annual State budget.

- iv. Environmental mitigation expenses; the cost of removing, disposing and replacing hazardous building materials, including, but not limited to, lead based paint and asbestos, and the removal and disposal of hazardous substances, including, but not limited to, expenses and fees related to testing, oversight, such as environmental consultants and state and local jurisdiction permits and fees.
- v. Energy efficient upgrades, e.g., the replacement of plumbing, lighting, HVAC systems with more energy efficient models, the installation of drought tolerant landscaping, solar power systems, patio covers, awnings, etc.
- vi. State and local jurisdiction permits and fees, including, but not limited to, building and planning fees, traffic and school impact fees, plan review fees, hook-up fees for water lines, sewer connections, etc.
- vii. State licensing fees.
- viii. Upon approval by the Department, the use of up to ten thousand dollars (\$10,000) of CPP funds to pay for costs associated with pool removal.
- ix. Legal, accounting, consultant, project management, and developer fees.
- x. Housing development holding costs, not to exceed a period of six (6) months without prior written approval from the Department. Extensions will be time-limited and only be considered in rare and extraordinary circumstances. The expenses may include monthly debt service payment, utility expenses, yard maintenance, and property insurance policy costs required by the Department, including hazard, general liability, and recommended deductibles for all policies.
- xi. Fire sprinkler installation and maintenance at each property.

VIII. Ineligible Costs

A. Ineligible property costs include, but are not limited to, the following:

- i. The acquisition or development of real property that would ultimately be owned by the RC, a consumer or their family members, a provider of services, or any entity other than the Department-approved NPO.
- ii. Purchase of real property for which another funding source is available, or if CPP funds are proposed to be used to supplant existing funding. CPP funds may supplement or enhance funding combinations (leverages), but cannot be used in lieu of other available sources.
- iii. Ancillary costs that are associated with other activities than the production of, or improvements to, the CPP property, as determined by the Department at

its sole discretion. For example, the Department will not pay for structure or barn removals, unless the RC demonstrates to the Department's satisfaction that such removals are beneficial.

- iv. NPO holding costs that exceed a period of six (6) months without the Department's approval.
- v. Commissions related to real estate transactions.

IX. DDS Review of the Housing Proposal

A. Development and Ownership Capacity

The Department will make an initial determination of the merits of each Housing Proposal and the ownership capacity of the proposed NPO based on the following criteria:

- i. The RC has satisfactorily transitioned consumers in prior CPP-funded housing projects.
- ii. The RC has demonstrated the need in their community for the added capacity for consumers living in a developmental center, an IMD facility ineligible for FFP, an out-of-state placement, and/or for consumers at risk of admission to FDC or SDC due to an acute crisis, an IMD facility ineligible for FFP, or an out-of-state service.
- iii. The RC has demonstrated satisfactory progress, including timely submission of quarterly reports and all required documents identified in Appendix H, for all previously approved CPP-funded housing projects. As a general Department guideline, the time period from close of escrow to the completion of renovation (certificate of occupancy) should not exceed six (6) months for a single-family project.
- iv. The Housing Proposal includes sufficient organizational and financial documentation, specified in Appendix J and Section V. of these Housing Guidelines that provides evidence of the NPO's organizational capacity to own and operate the property before, during, and after the project is completed based on history of resource development, experience, background, and financial/staffing resources.

B. Housing Proposal Review

The Department will conduct a detailed review of each Housing Proposal using the following criteria and/or procedural guidelines:

- i. The feasibility and reasonableness of the proposed project.
- ii. The proposed housing is consistent with the unique and specialized service

and support needs of consumers transitioning from a developmental center, IMD facility ineligible for FFP, or an out-of-state service.

- iii. The proper submission of all components of the proposal and project requirements.

The Department may determine the accuracy and completeness of the submitted proposal and documents. The Department may contact any entity named in the proposal, including funding sources, contractors, clients, and other agencies for the purpose of verifying the information provided in the proposal.

X. Housing Approval Process

A. Housing Proposal

- i. If the Housing Proposal meets the requirements contained in these Housing Guidelines, the Department will issue a written letter of conditional approval to the RC that authorizes the RC to implement the proposal, including proceeding with the search for the CPP property(ies). The Department will use the same CPP project identification number(s) as indicated in the RC's Department-approved CPP for communication and tracking purposes.
- ii. If the Housing Proposal does not meet the requirements contained in these Housing Guidelines, the Department will work with the RC to modify its submitted Housing Proposal to come into compliance. Once the Housing Proposal meets the requirements, the Department will issue a written letter of conditional approval.

B. Housing Acquisition Request

The RC shall submit a written HAR for each property to the Department, no later than five (5) business days after receipt of evidence of an accepted final offer by the seller and NPO. With written approval from the Department, the HAR may be submitted after the five (5) days after signing the purchase agreement (acceptance of the final offer by seller and NPO), but no later than seven (7) business days prior to the end of the "contingency period," as outlined in the property purchase agreement, that could risk the NPO's earnest money deposit.

The RC is required to obtain the Department's final written approval for the acquisition of each property prior to close of escrow. The Department's written approval also provides authorization for the RC to electronically transfer CPP funds into escrow, as described in the escrow instructions. The HAR shall contain the following:

- i. A copy of the executed purchase agreement, including any counter offers and/or addendums. This must be a complete package showing an accepted offer.

- ii. A preliminary title report.
- iii. An appraisal conducted by a licensed State appraiser. An appraisal completed for the lender(s) is acceptable to meet this requirement.
- iv. An updated estimated development Sources and Uses of funds.
- v. An updated estimated itemized operating budget.
- vi. An estimated fifteen (15) year pro forma. (If the proposed term of the loan is different than 15 years, the pro forma must be consistent with this length of time).
- vii. A replacement reserve analysis that supports the requested replacement reserve amount. (See also Section IV.M.iv. of these Housing Guidelines.)
- viii. A senior lender loan commitment letter(s) on company letterhead specifying the loan amount, interest rate, amortization terms, loan fee, etc.
- ix. A brief summary of the property/project including the development type (e.g., ARFPSHN, Specialized Residential Facility, etc.).
- x. A certification by the RC that the home qualifies for licensure (i.e., does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5, etc.).

The request shall be sent to:

Nancy Record
Department of Developmental Services
1600 Ninth Street, Room 320 (MS 3-9)
Sacramento, CA 95814
nancy.record@dds.ca.gov

Upon receipt of all documents specified above, the Department shall review the RC's submitted HAR for completeness and accuracy. The Department will provide final approval or disapproval to the RC's request for the acquisition of a proposed CPP property within five (5) business days of the Department's verified receipt of a complete and accurate HAR. Note: The Department's decision may be delayed past five (5) business days if the Department requires follow-up documentation or information regarding a submitted HAR.

i. Modification Request

If the RC intends to request a modification to the Housing Proposal or to an approved or existing project, including requests to change acquisition and/or renovation funds, the RC must submit the Department's Modification Request Form, along with any documents necessary to support and implement the new proposal, amended current Housing Proposal, or proposed changes to an

approved housing project. The Department will review the request using review standards described in these Housing Guidelines. The RC must not make any significant changes to projects without prior written approval from the Department. Following the written approval of a request, the RC must continue to maintain satisfactory performance as described above.

A significant change includes, but is not limited to, a proposed change in the following:

- i. The NPO.
- ii. Additional funds needed to complete a project. These may be for unanticipated renovation or construction costs, including, but not limited to person-centered modifications, environmental hazards, local planning requirements, etc.
- iii. A release of unused funds of five thousand dollars (\$5,000), or greater.
- iv. The number of beds/units (capacity).
- v. The address/location of the property, when specified in the proposal or subsequent updates.
- vi. The purpose of the project and use of the funds.
- vii. The replacement reserve amount.

XI. Project Status and Reporting

The purpose of these documents and status reporting requirements is to protect and preserve homes developed with CPP funds for use by consumers.

A. Project Completion Documents

All documents from closing to project reconciliation must be submitted according to Appendix H.

B. Reporting

Once the Housing Proposal is approved by the Department, the RC must provide quarterly and annual progress reports based on the State FY.

i. Quarterly

The RC completes quarterly reports using the CPP Management Tool sent to RCs every FY quarter. Quarterly reporting starts the next full FY quarter following the Department's approval of a Housing Proposal. For example, if the Housing Proposal is approved in September, the initial quarterly report

would track progress through December and would be due in January.

The RC may also submit completed project documents for the CPP property at this time. (See also Appendix H.)

ii. Annually

Quarterly reports convert to annual reports upon all of the following conditions:

- a) The submission of a reconciliation of CPP funds. Within ninety (90) days of completion of the project, the RC shall require the NPO to submit to the RC for verification, a reconciliation statement of final cost and CPP funds expended and claimed. The RC shall provide to the Department a statement of verification of reconciled funds, by project.
- b) The RC has submitted all required documents for the project, e.g., restrictive covenant, executed long-term lease agreement, executed property management agreement, etc.
- c) The RC must submit an annual report to the Department by February 1 of each year. The CPP Housing Annual Report form is included as Appendix M.

C. Performance Measurement

Prior to the review of a Housing Proposal, the Department assesses the RC's performance on previous projects. The purpose of this review is to determine if the RC and NPO demonstrate a history of successfully completing housing projects for the intended residents.

The Housing Proposal must describe measurable performance expectations and results, including:

- i. Progress reports submitted to the Department on project status (1) quarterly during pre-development and development phases, and (2) annually thereafter upon the conditions specified above.
- ii. Evidence that the property will be made available for occupancy by consumers within one (1) year of the Department's approval of a HAR. If housing will not be available for occupancy within one (1) year, provide detailed information outlining the cause for development delays and requesting an extension.

If development is substantially delayed on any project, the Department, in partnership with the RC, will review the cause(s) of the delay. If necessary, the Department may require the RC to submit, for the Department's review and approval, a revised targeted development plan to resolve any issues impeding

the ability of the project to meet and maintain satisfactory progress. The plan may include, but not be limited to, the following actions:

- i. Increased development monitoring requirements for the project.
- ii. Increased fiscal review and financial reporting requirements.
- ii. The Department may monitor services and supports provided by the RC, including fiscal reports, with or without prior notice, pursuant to WIC Section 4648.1.

The plan will remain in effect until the non-performing project achieves satisfactory progress as jointly determined by the Department and the RC. If the delayed project does not achieve satisfactory progress, the Department may take some or all of the following actions:

- i. The reversion of some or all of allocated CPP funds held by the RC.
- ii. Disapprove, or temporarily stay, the RC's and NPO's development of any housing project(s) in which CPP funds are used.
- iii. Any other action the Department deems appropriate.

APPENDIX A

FORM OF RESTRICTIVE COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

[Name of Regional Center]
[Address of Regional Center]

(Space Above For Recorder's Use)

APN _____

RESTRICTIVE COVENANT

This Restrictive Covenant, dated as of _____, 20__ (this “**Restrictive Covenant**”), is executed by _____ a [type of entity, e.g., *California nonprofit corporation*] (“**Owner**”), which address is _____, for the benefit of _____ Regional Center, a California nonprofit corporation (“**Regional Center**”) which address is _____.

1. The Property; the Effective Date. On the date this Restrictive Covenant is filed for record Owner is the fee owner of certain real property in the County of _____, California and legally described on Exhibit “1” attached hereto (the “**Property**”). The common address of the Property is: _____. The “**Effective Date**” is the date Owner acquired fee title to the Property, which is the same date this Restrictive Covenant is filed for record.

2. Regional Center. Regional Center is a nonprofit corporation which provides services to individuals with developmental disabilities (“**Consumers**”).

3. DDS; Third Party Beneficiary. The Department of Developmental Services, a public agency of the State of California (“**DDS**”) which address is MS 2-13, P.O. Box 944202, Sacramento, CA 94244-2020, Attn: Director of the Department, is a third party beneficiary under this Restrictive Covenant. As a third party beneficiary, DDS has the right to directly enforce each and every term and condition of this Restrictive Covenant, independent of the Regional Center’s rights of enforcement.

4. Advance Notice to DDS of Owner’s Purchase of the Property. Owner and Regional Center represent that they provided notice to DDS of Owner’s intention to purchase the Property at least 15 days prior to the Effective Date.

5. Use Restriction. Owner hereby covenants that the Property shall be maintained and used solely for the benefit of Consumers, in compliance with the requirements in the

Lanterman Act (California Welfare and Institutions Code §4500 et seq), in perpetuity, commencing on the Effective Date.

6. Notices to DDS of Owner's Default; Right to Cure. If Owner defaults under any loan encumbering the Property, Owner shall notify DDS and Regional Center of such default within five days after its occurrence. DDS and Regional Center shall have the right, but not the obligation, to cure any default under any loan encumbering the Property with at least the same cure period as provided in the Agreement to Provide Notice and Cure Rights entered into by the Lender (defined below) in connection with the Property. Owner and Regional Center represent to DDS that the Lender delivered to the Regional Center an Agreement to Provide Notice and Cure Rights, signed by the Lender, prior to the Effective Date.

7. Transactions and Actions Requiring DDS and Regional Center Approval. Owner shall not, without the prior written approval of DDS and Regional Center (which approval may be withheld in their sole and absolute discretion and may be conditioned upon the satisfaction of such terms and conditions as DDS and Regional Center may prescribe), do any of the following:

7.1 Sell, encumber, hypothecate, assign, refinance, pledge, convey, exchange, or otherwise transfer in any other form of the Property or any part thereof or of any of its interest therein, whether voluntarily or involuntarily, or by operation of law; provided, however, Owner may enter into leases, licenses or occupancy agreements concerning the Property with Regional Center written approval (as noted in Section 8 and 8.1 below) and without obtaining DDS's approval.

7.2 Materially remodel, add to, reconstruct, demolish, or damage any part of the residence on the Property (the "**Residence**") in violation of any lease or in a manner that could materially impair the value of the Property; provided, however, Owner may renovate the Residence to comply with the Americans With Disabilities Act and other laws for the protection of the Consumers occupying the Property, without obtaining Regional Center's and DDS's consent.

8. Transactions and Actions Requiring Regional Center Approval. Owner and any party leasing the Property from Owner (the "**Service Provider**") shall not, without the prior written approval of Regional Center (which approval may be withheld in its sole and absolute discretion and may be conditioned upon the satisfaction of such terms and conditions as Regional Center may prescribe), do any of the following:

8.1 Enter into any leases, subleases, occupancy agreements or licenses concerning the Property.

8.2 Cause or permit the Residence to be maintained in a condition which Regional Center deems as an impairment or a violation of Owner's obligation to maintain the Residence in a safe, sanitary and decent condition.

8.3 Make any change in Service Provider. In connection with such change, Regional Center shall require any proposed new service provider to provide information Regional Center deems necessary in determining whether such a change will be approved.

8.4 Assign or transfer any right to manage the Residence.

8.5 Require, as a condition of the occupancy or leasing of any portion of the Residence to a Consumer, that a Consumer pay any rent, consideration or deposit.

9. Purpose of Restrictive Covenant. This Restrictive Covenant is being recorded to provide notice to any and all subsequent interests in the Property of the use restrictions in this instrument that requires the Property to be used and maintained for the benefit of Consumers.

10. Restrictive Covenant Runs With the Land. The provisions herein burden the Property and run with the land. All successive owners of the Property shall be bound hereby for the benefit of Regional Center and DDS and their successors and assigns.

11. Attorneys' Fees. If the Regional Center or the Owner files a lawsuit or other action to enforce or interpret this Restrictive Covenant, the prevailing party shall be entitled to reimbursement of its attorney's fees from the non-prevailing party.

12. Subordination. This Restrictive Covenant, and all rights arising hereunder are, by their terms, subject and subordinate to the lien of that certain Deed of Trust (the "**Deed of Trust**") given by Owner (as trustor) in favor of [*Name of Lender*] (the "**Lender**") to secure a loan in the principal amount of \$ _____. The Deed of Trust has been recorded against the Property concurrently with recordation of this Restrictive Covenant. This Restrictive Covenant is subject and subordinate to such Deed of Trust, and any all renewals and extensions thereof. This Restrictive Covenant shall be terminated upon foreclosure of the Deed of Trust.

13. Violation of Restrictive Covenant by Owner; DDS's Remedies. In the event of a breach or violation of the provisions of this Restrictive Covenant, DDS may give written notice to Owner at the address set forth in the first paragraph herein. If the breach or violation is not cured to the satisfaction of DDS within the time period specified in the notice, which shall not be less than twenty (20) days, DDS may declare a default hereunder and may seek all applicable legal and equitable remedies, including but not limited to the following:

13.1 Collect all income in connection with the operation of the Property and use the same and all reserve funds for the operation and maintenance of the Property, for the benefit of the Consumers.

13.2 Take possession of the Property and bring any action necessary to enforce any rights of the Owner growing out of the operation of the Property, and operate the Property in accordance with the terms of this Restrictive Covenant until such time as DDS, in its sole discretion, shall determine that the Owner is again in a position to operate the Property in accordance with the terms of this Restrictive Covenant.

13.3 Apply to the court for specific performance of this Restrictive Covenant by temporary restraining order, preliminary injunction and permanent injunctive relief, and/or for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Restrictive Covenant; or for such other relief as may be appropriate. It is agreed by Owner that the injury to DDS arising from a default under any of the terms of this Restrictive Covenant would be irreparable and that the amount of compensation which would be provide adequate relief to DDS, in light of the purposes of the Property, would be impossible to ascertain.

13.4 Seek a judicial order obligating Owner to convey its fee title interest in and to the Property to a party designated by DDS, on such terms as the court may determine to be equitable and to best serve the interests of the Consumers.

13.5 Seek such other remedies as may be available under law or equity.

14. Violation of Restrictive Covenant by Owner; Regional Center's Remedies; Specific Performance. The parties agree that damages are an inadequate remedy for Owner's breach of this Restrictive Covenant, and that Regional Center may specifically enforce the provisions herein by temporary restraining order, preliminary injunction and permanent injunctive relief.

15. Violation of Any Lender's Documents. A breach or violation by Owner of any lender's documents associated with the Property including, but not limited to, Lender's promissory note or Deed of Trust, shall be a breach of this Restrictive Covenant and shall be subject to the remedies included in Sections 13 and 14 of this Restrictive Covenant.

16. Cumulative Rights and Remedies. To the maximum extent permitted by law, all rights, options and remedies of Regional Center and/or DDS contained in this Restrictive Covenant shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Regional Center and DDS shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or equity, whether or not stated in this Restrictive Covenant.

17. Amendment or Termination of Restrictive Covenant. Subject to the provisions in Paragraph 12 (entitled, "Subordination"), this Restrictive Covenant shall only be amended or terminated by an instrument executed and notarized by, Owner, DDS and Regional Center and filed for record with the County Recorder's Office where the Property is situated.

18. Partial Invalidity. If any provisions of this Restrictive Covenant shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Restrictive Covenant and all such other provisions shall remain in full force and effect unless, in the sole discretion of DDS, the invalidity, illegality or unenforceability of the affected provision negates or impairs the purpose of DDS's Community Placement Plan. If any provision of this instrument is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall be determined to have the meaning which renders it valid.

19. Counterparts; Delivery. This Restrictive Covenant may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute a single instrument. Signed copies of this Restrictive Covenant delivered by PDF attachments to emails shall be deemed the same as originals.

Executed in _____ County, California as of the date first above written.

[*Name of Owner*], a [*e.g.*, California nonprofit corporation] _____ Regional Center, a California nonprofit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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 _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

**EXHIBIT "1" TO RESTRICTIVE COVENANT
LEGAL DESCRIPTION OF PROPERTY**

[Insert Legal Description Here]

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Department of Developmental Services
MS 2-13
P.O. Box 944202
Sacramento, CA 94244-2020
Attn: Director of the Department

(Space Above For Recorder's Use)

APN _____

PROFIT PARTICIPATION AGREEMENT

This Profit Participation Agreement (this “**Agreement**”), dated for reference purposes as of _____, 20____, is executed by _____ a [type of entity, e.g., *California nonprofit corporation*] (“**Owner**”), which address is _____, for the benefit of the Department of Developmental Services, a public agency of the State of California (“**DDS**”), which address is MS 2-13, P.O. Box 944202, Sacramento, CA 94244-2020, Attn: Director of the Department.

1. The Property; the Effective Date. On the date this Agreement is filed for record, Owner is the fee owner of certain real property in the County of _____, California and legally described on Exhibit “1” attached hereto (the “**Property**”). The common address of the Property is: _____. The “**Effective Date**” is the date Owner acquired fee title to the Property, which is on or about the date this Agreement is filed for record.

2. The Regional Center. _____ Regional Center, a California nonprofit corporation (“**Regional Center**”) is a nonprofit corporation which provides services to individuals with developmental disabilities (“**Consumers**”). The Property is located within the Regional Center’s catchment area, and it is intended that Consumers served by the Regional Center and other regional centers will occupy the Property.

3. The DDS Funds. Through funds made available by DDS, Regional Center has provided to Owner the sum of \$_____ to assist Owner in the purchase of the Property (the “**DDS Funds**”).

4. Certain Definitions.

4.1 Conveyance. The term “**Conveyance**” means the transfer of the Property, or any of Owner’s interest therein, for consideration. If Owner is an entity, the transfer individually or in the aggregate, directly or indirectly, of a 50% or greater voting or financial interest of any of the partners, members, shareholders or principals of Owner shall also constitute a Conveyance. (A Regional Center-approved lease between Owner and a service provider for the purpose of providing services to Consumers is not a Conveyance.)

4.2 Gross Proceeds. The term “**Gross Proceeds**” means the greater of (i) all funds and other consideration received by Owner or its Affiliate (defined below), or received by others for the benefit of Owner or its Affiliate, upon a Conveyance or relating to a Conveyance or (ii) the fair market value of the Property on the 60th day before the date of the Conveyance, as determined by DDS in its reasonable discretion.

4.3 Affiliate. The term “**Affiliate**” means any person or entity in which Owner or any of its principals or, if Owner is a partnership or limited liability company, any of its partners or members or principals of its partners or members, has, individually or in the aggregate, directly or indirectly, a 25% or greater voting or financial interest. The term “Affiliate” shall include any principal, partner or member of Owner and any family member of Owner or any of Owner’s principals or, if Owner is a partnership or limited liability company, any family member of any of its partners or members or the principals of its partners or members. As used in this Section 4.3, a “principal” shall be any person or entity who owns or controls, directly or indirectly, a 10% or greater voting or financial interest in Owner or the entity at issue, and “financial interest” shall mean any interest in the profits and/or losses of, and/or equity in, such entity.

4.4 Allowed Costs. The term “**Allowed Costs**” means the total of the following: (i) the funds required to repay the loan secured by the Lender’s Deed of Trust described in Section 15 below (except for any late charges, penalties or default interest owed due to Owner’s failure to make payments thereunder); (ii) the funds required to repay any other secured real property loans encumbering the Property that have been expressly approved by DDS (except for any late charges, penalties or default interest owed due to Owner’s failure to make payments thereunder); and (iii) Owner’s documented and reasonable out-of-pocket costs related to the Conveyance (including escrow fees, title fees, attorneys’ fees, brokerage fees, closing costs and other reasonable costs paid to third parties).

4.5 Net Proceeds. The term “**Net Proceeds**” means Gross Proceeds less the Allowed Costs.

5. Profit Participation; Remittance to DDS or Designee. Upon Owner’s Conveyance of the Property, Owner shall remit to DDS the lesser of (i) an amount equal to the DDS Funds or (ii) 100% of the Net Proceeds. Such payment is hereinafter referred to as the “**Profit Participation**”.

6. Payment of Profit Participation. Owner shall pay the Profit Participation to DDS directly from the close of escrow or on the date such Conveyance is otherwise effectuated, unless DDS directs otherwise.

7. Owner’s Report. At least 30 days prior to the anticipated close of escrow or other effectuation of the Conveyance of the Property, Owner shall complete and submit to DDS for its approval or correction, a report showing the projected Profit Participation owing to DDS, along with back up documentation and calculations in support of such amount. The report shall be signed by an officer of Owner who shall certify that the information on the report is accurate.

Once approved by DDS, the projected Profit Participation (as it may be corrected by DDS) shall be the amount of the Profit Participation.

8. Books and Records. Owner shall keep and maintain accurate financial books and records with respect to the acquisition and development of the Property in accordance with generally accepted accounting principles. Prior to the conveyance and as a condition precedent, Owner shall have prepared audited financial statements for the three prior fiscal years, which shall be made available to DDS upon request prior to the close of escrow. These financial books and records, along with all supporting documentation, shall be maintained by Owner for at least seven years after a Conveyance.

9. Right to Audit. At any reasonable time during escrow in connection with a Conveyance, or after the occurrence of the Conveyance, Regional Center and/or DDS shall have the right to audit Owner's and its Affiliates' books and records for the purpose of verifying the calculation of Gross Proceeds, Allowed Costs, Net Proceeds and the Profit Participation due to DDS (the "Audit"). The results of the Audit shall be binding upon the parties. Owner shall make available to Regional Center's and DDS's auditor all of the books and records of Owner and its Affiliates which such auditor deems necessary or desirable for the purpose of completing the Audit. Any deficiency in amounts due to DDS, as determined by the Audit, shall be immediately due and payable by Owner, together with interest thereon at 10% per annum commencing on the date or dates such amount should have been paid. If such deficiency is in excess of five percent of the previously remitted Profit Participation, Owner shall also pay to DDS the cost of the Audit. If the Audit establishes that Owner has overpaid DDS, DDS shall refund the amount of the overpayment within 90 days. Regional Center is a third party beneficiary to this paragraph.

10. Reasonable and Appropriate Provisions. Owner acknowledges that: (i) but for the DDS Funds, it could not have acquired the Property; (ii) the DDS Funds are derived from State of California funds, the purpose of which is to provide long term affordable housing to individuals with developmental disabilities; and (iii) the Profit Participation is in lieu of a promissory note equal to the DDS Funds and is also in lieu of interest that would have accrued on such note. It is therefore reasonable and appropriate that Profit Participation be returned to DDS.

11. Term of Agreement. This Agreement, and DDS's profit participation rights, shall automatically terminate and expire on the 99th anniversary of the Effective Date.

12. Purpose of Agreement. This Agreement is being recorded to provide notice to any and all potential purchasers and subsequent interests in the Property of the Profit Participation requirements in this instrument.

13. Agreement Runs With the Land. The provisions herein burden the Property and run with the land. All successive owners of the Property shall be bound hereby for the benefit of DDS and its successors and assigns.

14. Obligations Secured; Violation of Agreement by Owner; DDS's Remedies. Owner's obligations to DDS under this Agreement are secured by a deed of trust entered into as

of even date by Owner for the benefit of DDS (the “**DDS Deed of Trust**”). In the event of a breach or violation of the provisions of this Agreement, DDS shall give written notice to Owner at the address stated in the DDS Deed of Trust. If the breach or violation is not cured to the satisfaction of DDS within the time period specified in the notice, which shall not be less than twenty (20) days, DDS may declare a default and may seek any legal and equitable remedies including those as provided in the DDS Deed of Trust. They include, without limitation, the following:

14.1 Collect the entire Net Proceeds.

14.2 Elect to void the Conveyance.

14.3 Collect all income in connection with the operation of the Property and use the same and the reserve funds for the operation and maintenance of the Property.

14.4 Take possession of the Property and bring any action necessary to enforce any rights of Owner growing out of the operation of the Property, and operate the Property in accordance with the terms of this Agreement until such time as DDS, in its sole discretion, shall determine that Owner is again in a position to operate the Property in accordance with the terms of this Agreement or that the Property should be transferred to a different entity for the benefit of Consumers.

14.5 Apply to the court for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement; or for such other relief as may be appropriate. It is agreed by Owner that the injury to DDS arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation which would be provide adequate relief to DDS, in light of the purposes of the Property, would be impossible to ascertain.

14.6 Accelerate all amounts, including all outstanding interest, due under the DDS Deed of Trust and judicially or nonjudicially foreclose on the Property.

14.7 Seek such other remedies as may be available under law or equity.

15. Subordination. This Agreement and the DDS Deed of Trust, and all rights arising under such instruments are, by their terms, subject and subordinate to the lien of that certain deed of trust given by Owner (as trustor) in favor of [*Name of Lender*] to secure a loan in the principal amount of \$ _____ (the "**Lender's Deed of Trust**"). The Lender's Deed of Trust has been recorded against the Property concurrently with recordation of this Agreement and the DDS Deed of Trust. This Agreement and the DDS Deed of Trust are subject and subordinate to the Lender's Deed of Trust.

16. Violation of Agreement by Owner; Specific Performance. The parties agree that damages are an inadequate remedy for Owner's breach of this Agreement, and that DDS or its designee may specifically enforce the provisions herein by temporary restraining order, preliminary injunction and permanent injunctive relief.

17. Cumulative Rights and Remedies. To the maximum extent permitted by law, all rights, options and remedies of DDS contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and DDS shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or equity, whether or not stated in this Agreement.

18. Amendment or Termination of Agreement. Subject to Section 11 above, this Agreement shall only be amended or terminated by an instrument executed and notarized by DDS and Owner and filed for record with the County Recorder's Office where the Property is situated.

19. Partial Invalidity. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Agreement and all such other provisions shall remain in full force and effect unless, in the sole discretion of DDS, the invalidity, illegality or unenforceability of the affected provision negates or impairs the purpose of DDS's Community Placement Plan. If any provision of this instrument is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall be determined to have the meaning which renders it valid.

-No Further Text on This Page-

20. Counterparts; Delivery. This instrument may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute a single instrument. Signed copies of this instrument delivered by facsimile or a PDF attachments to emails shall be deemed the same as originals.

Executed in _____ County, California as of the date first above written.

[*Name of Owner*], a [*e.g.*, California nonprofit corporation] Department of Developmental Services, a public agency of the State of California

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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 _____)

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

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

**EXHIBIT "1" TO AGREEMENT
LEGAL DESCRIPTION OF PROPERTY**

[Insert Legal Description Here]

**DEPARTMENT OF DEVELOPMENTAL SERVICES
COMMUNITY PLACEMENT PROGRAM
PROMISSORY NOTE SECURED BY DEED OF TRUST**

LOAN NUMBER _____

NPO:

Dated: _____

PRINCIPAL LOAN AMOUNT:

U.S. \$ _____

FOR VALUE RECEIVED, the undersigned, (hereinafter referred to as the "NPO") hereby promises to pay to the Department of Developmental Services, a public agency of the State of California (hereinafter referred to as the "Department"), which has its principal office at 1600 Ninth Street, Sacramento, California 95814 (mailing address: P.O. Box 944202, Sacramento, CA 94244-2020), or order, the total principal amount of _____ Dollars (\$_____), or so much thereof as may be advanced by the Department to or on behalf of the NPO, together with interest thereon as specified herein (the "Loan").

1. PURPOSE: This Note evidences the disbursement of funds from the Department to the NPO to assist the NPO in the acquisition of certain rental housing property (as described in the DDS Deed of Trust defined below), for the benefit of persons with developmental disabilities.

2. SECURITY: This Note is secured by a DDS Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date hereof, recorded in the Official Records of the County Recorder of _____ County, California (the "DDS Deed of Trust"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the DDS Deed of Trust.

3. LOAN TERMS:

3.1 For so long as NPO is not in default under this Note, this Note shall bear no interest. In the event of default, the Note shall bear interest at 10% per annum from the date of this Note until repaid in full.

3.2 For so long as NPO is not in default under this Note, NPO shall not be required to make any payments of principal.

3.3 If the NPO is not in default under this Note on the 15th/30th anniversary of the date of this Note [insert date], the Department shall forgive this Note in full and consider it to be repaid.

3.4 Upon full forgiveness of this Note, or upon receipt of full payment of any unforgiven principal balance plus any accrued interest, the Department shall return this Note to NPO marked "paid in full" and reconvey the DDS Deed of Trust.

4. METHOD OF REPAYMENT, IF REQUIRED: The amount due under this Note is payable in lawful money of the United States of America at the principal office of the Department set forth above, or at such other place or places as the Department may designate to the NPO in writing from time to time.

5. DUE ON SALE: The DDS Deed of Trust contains the following provisions, which are incorporated herein by this reference:

If all or any part of the Property or an interest therein is sold or transferred by Trustor without Beneficiary's prior written consent, Beneficiary may, at Beneficiary's option, declare all the sums under the Note and other sums secured by this Deed of Trust to be immediately due and payable. Beneficiary may, prior to the sale or transfer, in the exercise of its sole discretion, reach agreement in writing with the transferee that the indebtedness under the Note may be assumed, provided Trustor's successor in interest has executed a written assumption agreement accepted in writing by Beneficiary in its sole discretion. Beneficiary shall release Trustor from its obligations under this Deed of Trust only upon the assumption of the indebtedness by a successor in interest as set forth herein.

6. DEFAULTS: In addition to the provisions in Section 5 above, the following shall also constitute a default under this Note: (a) the NPO's becoming insolvent or bankrupt, being unable to pay its debts as they mature or making a general assignment for the benefit of creditors; (b) proceedings by any third party for the appointment of a receiver, trustee, or liquidator of the assets of the NPO or a substantial part thereof, being authorized or instituted by or against the NPO, which proceedings are not dismissed within sixty (60) days of institution; (c) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against the NPO, which proceedings are not dismissed within sixty (60) days of institution; (d) dissolution of the corporate, partnership or limited liability company structure of the NPO; (e) a change in control of the management of the NPO, unless the Department consents thereto in writing, which consent shall not be unreasonably withheld; or (f) the loss by NPO of its status as a 501(c)(3) organization under the Internal Revenue Code.

7. REMEDIES. If any default occurs under this Note or the DDS Deed of Trust, then after the expiration of any applicable cure period, the entire principal amount outstanding thereon shall become due and payable immediately at the option of the Department. The date specified for payment shall not be less than thirty (30) days from the date the Department mails such notice of default to NPO. In the event of default, the Department may at its option exercise all of its rights and remedies the Department may have under applicable law. The Department may exercise this option to accelerate during any default by NPO regardless of any prior forbearance by the Department. No delay or failure of the Department in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy. No single or partial exercise of any such right or remedy by the Department shall preclude any further exercise thereof. No action taken or omitted by the Department shall be deemed a waiver of any such right or remedy.

8. NPO's AGREEMENTS: Every party who is now or hereafter becomes liable for the payment of this Note, and any person who guarantees the same, (i) waives diligence, presentment, protest, demand for payment, notice of protest, dishonor and notice of nonpayment of this Note, (ii) expressly agrees that this Note, or any payment under this Note, may be unilaterally extended by the Department from time to time, (iii) consents that the Department may (but will not be required to) release all or any part of the Property encumbered by the DDS Deed of Trust, and (iv) consents to the acceptance of additional security for this Note, all without in any way affecting the liability of any party.

9. COSTS OF ENFORCEMENT; ATTORNEY'S FEES: The NPO hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the Department in the enforcement of this Note, the DDS Deed of Trust, or any term or provision thereof.

10. NON-RECOURSE; CARVE OUTS: The obligations under this Note shall be without recourse against NPO or any of its partners, members, shareholders or officers; provided, however, the NPO shall be fully liable for any of the following: (i) fraud or willful misrepresentation on the part of the NPO or its representatives; (ii) bad faith waste; (iii) NPO's failure to pay any taxes, assessments or other charges attributable to NPO which create liens on any portion of the Property (to the full extent of any such taxes, assessments or other charges); (iv) a voluntary bankruptcy filing by NPO, or an involuntary filing against NPO which is not contested by NPO, or an involuntary petition filed by an affiliate of NPO, and such petition is not dismissed within ninety days; or (v) NPO contests the validity or enforceability of the Loan and/or asserts defenses which have the effect of delaying, hindering or impairing the Department's rights or remedies under this Note and the DDS Deed of Trust.

11. NOTICE: Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if (i) delivered by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated herein, or to such other address as the respective party may have designated by written notice given to the other party in the

manner provided herein or (ii) the recipient has actually received such notice, demand or other communication, notwithstanding the method of delivery. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

12. **BINDING ON SUCCESSORS:** "NPO" includes each successor owner of the property encumbered by the DDS Deed of Trust. "Department" includes each successor holder of this Note.

13. **NO PREPAYMENT:** The NPO shall not be entitled to prepay the indebtedness evidenced by this Note, or any part thereof, without the prior written consent of the Department.

14. **GOVERNING LAW:** This Note shall be construed in accordance with and be governed by the laws of the State of California.

15. **SEVERABILITY:** If any provisions of this Note shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Note and all such other provisions shall remain in full force and effect unless, in the sole discretion of the Department, the invalidity, illegality or unenforceability of the affected provision negates or impairs the purpose of the Department's Community Placement Plan. If any provision of this instrument is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall be determined to have the meaning which renders it valid.

16. **GENERAL PROVISIONS:** Captions in this Note are for convenience only and do not define, describe or limit the scope or intent of this Note. The liability of each person constituting NPO will be joint and several. The NPO hereby certifies to the Department that this is the Note described in and secured by the DDS Deed of Trust.

Executed as of the date first set forth above at _____, California.

NPO:

NPO'S ADDRESS:

By: _____

Title: _____

**FREE RECORDING IN ACCORDANCE
WITH CALIFORNIA GOVERNMENT
CODE SECTION 27383**

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Department of Developmental
Services
P.O. Box 944202
Sacramento, California 94244-2020
Attention: Director of the Department

Assessor's Parcel No. _____

DEPARTMENT OF DEVELOPMENTAL SERVICES

COMMUNITY PLACEMENT PROGRAM

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

Notice: The State of California Department of Developmental Services (DDS) Restrictive Covenant and the DDS Community Placement Program Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing must be recorded immediately following the lender's Deed of Trust on the same date as lender's deed of trust without intervening documents.

The parties to this Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (this "Deed of Trust"), dated for reference purposes as of _____, 20__, are [*Name of NPO*], a California nonprofit corporation, as trustor (the "Trustor"), _____ title company, as trustee (the "Trustee"), and the Department of Developmental Services, a public agency of the State of California ("DDS") as beneficiary and secured party (the "Beneficiary").

A. Trustor, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the property located in the County of _____, State of California and described in Exhibit A, attached hereto and made a part hereof, which has the address of

_____, California; together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given herein to Trustor to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, Venetian blinds and other furnishings, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property"; and together with all accounts, bank, reserve or other, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds arising from or related to the Property; together with all replacements, proceeds, additions and accessions to the foregoing, which shall be deemed to be and remain a part of the Property and covered by this Deed of Trust.

B. The interests herein conveyed are for the purpose of securing to Beneficiary: (1) the repayment of the indebtedness evidenced by

[a Promissory Note executed by Trustor, dated of even date herewith (the "Note") in the principal sum of _____ Dollars (\$) _____ or such lesser amount as shall equal the aggregate amounts disbursed to or on behalf of Trustor by Beneficiary, with interest thereon, if any],

or

[a Profit Participation Agreement executed by Trustor, dated of even date herewith (the "PPA") and recorded concurrently with the recordation of this Deed of Trust],

providing for full payment, due and payable as specified therein; (2) the performance of the covenants and agreements of Trustor herein contained and contained in the [Note][PPA]; and (3) any other obligation or other evidence of indebtedness of Trustor to Beneficiary now or hereafter created, whether acquired by assignment from third

parties, or otherwise, where such obligation specifically recites that it is secured by this Deed of Trust.

C. Trustor and _____ Regional Center have entered into a Restrictive Covenant dated of even date herewith; such instrument also encumbers the Property and is being recorded concurrently with the recordation of this Deed of Trust. For purposes of clarity, Trustor's obligations under the Restrictive Covenant are **not** secured by this Deed of Trust.

D. Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Trustor will warrant and defend generally the title of the Property against all claims and demands, subject to any liens, encumbrances, declarations, easements or restrictions of record as of the date of recordation of this Deed of Trust.

NOW, THEREFORE, Trustor and Beneficiary covenant and agree as follows:

1. Payment. Trustor shall promptly pay when due the indebtedness evidenced by the [Note][PPA] in accordance with its terms.
2. Charges; Liens. Trustor shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any, by Trustor making payment, when due, directly to the payee thereof. Trustor shall promptly furnish to Beneficiary all notices of amounts due under this paragraph, and in the event Trustor shall make payment directly, Trustor shall promptly furnish to Beneficiary receipts evidencing such payments. Trustor shall pay when due all encumbrances, charges, and liens, on the Property or any portion thereof and payments on notes or other obligations secured by an interest in the Property or any portion thereof, with interest in accordance with the terms thereof. Trustor shall have the right to contest in good faith any claim or lien, or payment due thereunder, provided that Trustor does so diligently and without prejudice to Beneficiary.
3. Leasehold Estate. If the estate conveyed in trust by this Deed of Trust is a leasehold, Trustor agrees to fulfill all its obligations under the lease creating such leasehold. Trustor further agrees that it shall not enter into or agree to any termination, modification or amendment to such lease without the prior written approval of Beneficiary.

4. Hazard Insurance.

- a. Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss from fire or hazards under a policy approved by Beneficiary, which provides "special form" coverage in an amount at least equal to the replacement value of the improvements. If said improvements, or any part thereof, are at any time during the term of the [Note][PPA] designated as being located within a one-hundred year flood plain by the Federal Emergency Management Agency (FEMA), Trustor shall further keep said improvements insured against loss by flood at a minimum of eighty percent (80%) of replacement cost. In addition, Trustor shall insure against loss of all furniture, equipment and other personal property owned by Trustor related to the operation of the Property as a rental housing development, against loss of rents and all other coverage required under the terms of the [Note][PPA]. Insurers who are admitted to do business in the State of California and rated A- and X or higher in the most recent edition of Best Insurance Guide shall issue all insurance policies. The insurance carrier providing the insurance shall be chosen by Trustor subject to approval by the Beneficiary. All premiums on insurance policies shall be paid by Trustor making payment, when due, directly to the insurance carrier, or in a manner agreed to by the Beneficiary.
- b. All insurance policies and renewals thereof shall be with loss payable to the Beneficiary (subject to the rights of senior lienholders). Beneficiary shall have the right to hold the policies and renewals thereof (or copies thereof), and Trustor shall promptly furnish to Beneficiary all renewal notices and all receipts of paid premiums. In the event of loss, Trustor shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor.
- c. If the Property is acquired by Beneficiary by foreclosure or otherwise, all right, title and interest of Trustor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Beneficiary.
- d. Unless Beneficiary otherwise agrees in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically

feasible and the security of this Deed of Trust is not hereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, subject to the rights of senior lienholders, if any, the insurance proceeds shall be applied to the sums secured by this Deed of Trust with the excess, if any, paid to Trustor. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within thirty (30) days from the date notice is mailed by Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

- e. All insurance coverage required by this Paragraph 4, Paragraph 5 below, and under the terms of the [Note][PPA] shall be maintained for the full term of the [Note][PPA] at Trustor's expense. In the event the Trustor fails to maintain insurance coverage, Beneficiary may purchase insurance in such amounts and in such coverages as it may elect and all amounts paid therefor shall be secured by this Deed of Trust and shall bear interest and be subject to the provisions of Paragraph 7 below. Purchase of insurance by the Beneficiary shall not be considered a waiver by Beneficiary of any right or remedy under this Deed of Trust.
5. Liability Insurance. Trustor shall keep general liability insurance for the Property in the amount and type as required by Beneficiary. The insurance carrier shall be chosen by the Trustor subject to approval by the Beneficiary, provided, that such approval shall not be unreasonably withheld. Trustor shall pay all premiums. Beneficiary shall be named as an additional insured.
 6. Maintenance of the Property. Trustor agrees:
 - a. To keep the Property in a decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;
 - b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable;
 - c. Not to construct any buildings or improvements on the Property, other than the buildings and improvements approved by Beneficiary, or add to, remove, demolish or structurally alter any

buildings and improvements now or hereinafter located on the Property;

- d. To repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust;
- e. To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property;
- f. Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Beneficiary's prior written consent; and
- g. Not to alter the use of all or any part of the Property without prior written consent of the Beneficiary.

7. Protection of Beneficiary's Security.

- a. Trustor shall protect the lien of this Deed of Trust, including without limitation, the payment and performance of all obligations secured by any prior liens or deeds of trust, payment of taxes as provided herein on the Property, payment of insurance premiums as provided herein, payment of expenses and attorneys fees as provided herein. Trustor shall appear and defend any action or proceeding purporting to affect the security hereof or the rights of the Beneficiary. If Trustor fails to make the payments or perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving insolvency, a bankrupt or decedent, then Beneficiary at Beneficiary's option, upon notice to Trustor, may make such appearances, disburse such sums and take such action as is necessary to protect Beneficiary's interest, including, but not limited to, disbursement for reasonable attorney's fees and entry upon the Property to make repairs.
- b. Any amounts disbursed by Beneficiary pursuant to this Paragraph 7, with interest thereon, shall become an indebtedness of Trustor secured by this Deed of Trust. Unless

Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at ten percent (10%) per annum. Nothing contained in this Paragraph 7 shall require Beneficiary to incur any expense or take any action hereunder.

8. Inspection. Upon reasonable prior notice, except in an emergency or following an event of default, in which event no notice shall be required, Beneficiary may make or cause to be made entries upon and inspections of the Property.
9. Condemnation.
 - a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, exercise of eminent domain, or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary subject to the rights of senior lien holders. The proceeds of such award or claim shall be applied as provided in Paragraph 10 below.
 - b. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds of any award to the sums secured by this Deed of Trust.
10. Awards and Damages. All judgments, awards of damages, settlements, claims paid and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain; (b) any damage to or destruction of the Property or any part thereof by insured casualty; and (c) any other taking, injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or

adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the amounts collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. Any and all rights granted to Beneficiary by this paragraph shall specifically be subject to the rights of the holders of senior liens and encumbrances.

11. Uniform Commercial Code Security Agreement, Financing Statement and Fixture Filing.

- a. This Deed of Trust is a security agreement and financing statement under the Uniform Commercial Code for the benefit of Beneficiary as secured party for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Trustor hereby grants the Beneficiary a security interest in said items. This Deed of Trust is filed as a fixture filing as defined in California Commercial Code Section 9102(a)(40) and covers goods, which are or are to become fixtures. The address of the principal place of business of Beneficiary (secured party) from which information concerning the security interest may be obtained and the mailing address of Trustor (debtor) are set forth in this Deed of Trust. The types or items of collateral are described in Paragraph A of this Deed of Trust. Trustor agrees that the Beneficiary may file any appropriate document in the appropriate index as a financing statement for any of the items specified above as part of the Property. In addition, Trustor authorizes Beneficiary to file any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as the Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Beneficiary may reasonably require. Without the prior written consent of the Beneficiary, Trustor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except as otherwise expressly permitted by Beneficiary. Upon acceleration as provided in Paragraph 19, the Beneficiary shall have the remedies of a secured party under the Uniform Commercial

Code and, at the Beneficiary's option, may also invoke the other remedies provided in this Deed of Trust and the [Note][PPA] as to such items. In exercising any of said remedies, the Beneficiary may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Beneficiary's rights or remedies under the Uniform Commercial Code or of the other remedies provided in this Deed of Trust, in the [Note][PPA], or by law or equity.

- b. Trustor agrees that the filing of any financing statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing this Deed of Trust and the intention of the parties hereto that those portions of the Property herein declared part of the real estate are, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether any such item is physically attached to the improvements or any such item is referred to or reflected in any such financing statement so filed at any time.
 - c. Similarly, the mention in any such financing statement of (1) compensation for damage to or destruction of the Property by insured casualty, or (2) any judgment, award, or other compensation for a taking of the Property by eminent domain, or (3) the rents, royalties, issues, accounts and profits of the Property under leases, shall never be construed as anywise altering any of the Beneficiary's rights as determined by this Deed of Trust or impugning the priority of the Beneficiary's lien granted hereby or by any other recorded document. However, such mention in the financing statement is declared to be for the protection of the Beneficiary in the event that any court or judge shall at any time hold with respect to (1), (2) or (3) of this paragraph that notice of the Beneficiary's priority of interest to be effective against a particular class of person, including without limitation the federal government or any subdivision or entity thereof, must be filed as provided for in the Uniform Commercial Code.
12. Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not

be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust. Any extension of time for payment of amounts due hereunder or under the [Note][PPA] or of performance granted by Beneficiary to Trustor, shall not operate as a waiver or release of Trustor's duties and obligations hereunder or under the [Note][PPA].

13. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.
14. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor. If there are multiple Trustors, all covenants and agreements of Trustor shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.
15. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if (i) delivered by certified mail, postage prepaid, return receipt requested or by express delivery service with delivery receipt, to the address of the respective party as indicated herein, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein or (ii) the recipient has actually received such notice, demand or other communication, notwithstanding the method of delivery. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

The address for DDS is: Department of Developmental Services, Community Services Division, P.O. Box 944202, Sacramento, California 94244-2020, with a copy to: Department of Developmental Services, P.O. Box 944202, Sacramento, California 94244-2020, Attn: Director of the Department.

The address for the Trustor is set forth next to Trustor's signature on this instrument.

16. Governing Law; Severability. The laws of the State of California shall govern this Deed of Trust. If any provisions of this Deed of Trust shall

be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Deed of Trust and all such other provisions shall remain in full force and effect unless, in the sole discretion of Beneficiary, the invalidity, illegality or unenforceability of the affected provision negates or impairs the purpose of Beneficiary's Community Placement Plan. If any provision of this instrument is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall be determined to have the meaning which renders it valid.

17. Trustor's Copy. Trustor shall be entitled to a conformed copy of the [Note][PPA] and this Deed of Trust at the time of execution or after recordation hereof.
18. Transfer of the Property; Assumption.
 - a. If all or any part of the Property or an interest therein is sold or transferred by Trustor without Beneficiary's prior written consent, Beneficiary may, at Beneficiary's option, declare all the sums under the [Note][PPA] and other sums secured by this Deed of Trust to be immediately due and payable. Beneficiary may, prior to the sale or transfer, in the exercise of its sole discretion, reach agreement in writing with the transferee that the indebtedness under the [Note][PPA] may be assumed, provided Trustor's successor in interest has executed a written assumption agreement accepted in writing by Beneficiary in its sole discretion. Beneficiary shall release Trustor from its obligations under this Deed of Trust only upon the assumption of the indebtedness by a successor in interest as set forth herein.
 - b. If Beneficiary exercises its option to accelerate under Paragraph 18(a) above, Beneficiary shall mail Trustor notice of such fact in accordance with Paragraph 15 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is effective pursuant to Paragraph 15, within which Trustor may pay the sums declared due. If Trustor fails to pay the sums due prior to the expiration of such period, Beneficiary may, without further notice or demand on Trustor, invoke any remedies permitted by Paragraph 19 hereof and other remedies available at law or equity.

19. Acceleration; Remedies.

- a. Except as provided in Paragraph 18 hereof, upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust and/or the [Note][PPA], including the covenants to pay when due any sums secured by this Deed of Trust, Beneficiary shall mail notice to Trustor as provided in Paragraph 15 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no less than twenty (20) days from the date the notice is mailed to Trustor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property through foreclosure of this Deed of Trust. The notice shall further inform Trustor of the right to reinstate after acceleration as permitted by law.
- b. If the breach is not cured on or before the date specified in the notice, Beneficiary at Beneficiary's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law and/or equity. Beneficiary shall be entitled to collect from the Trustor, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.
- c. If Beneficiary invokes the power of sale, Trustee shall give and record such written notice of the default and election to sell as the law then requires as a condition precedent to a Trustee's Sale. Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Trustor and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

- d. Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (1) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (2) to all sums secured by this Deed of Trust; and (3) the excess, if any, to the person or persons legally entitled thereto.
20. Assignment of Rents; Appointment of Receiver; Beneficiary in Possession.
- a. As additional security hereunder, subject to the rights of senior lien holders, Trustor hereby assigns to Beneficiary the rents of the Property, provided that Trustor shall, prior to acceleration under Paragraph 19 hereof (Acceleration; Remedies) or abandonment of the Property, have the right to collect such rents as they become due and use them in accordance with the provisions of the Agreement.
- b. Upon acceleration under Paragraph 19 hereof or abandonment of the Property, Beneficiary, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the Receiver shall be applied first to payment of the costs of management of the Property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received. The provisions of this paragraph and Paragraph 19 shall operate subject to the claims of senior lien holders.
21. Delegation. Beneficiary has the right, from time to time, to delegate any of its duties, rights and functions under this Deed of Trust to a regional center selected by Beneficiary.
22. Reconveyance. Upon termination of the [Note][PPA], Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals

in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

- 23. Substitute Trustee. Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.
- 24. Request for Notice. Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as of the date first above written.

TRUSTOR:

TRUSTOR'S ADDRESS:

By: _____

Title: _____

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 _____)

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

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

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A" TO DEED OF TRUST

LEGAL DESCRIPTION OF THE PROPERTY

RECORDING REQUESTED BY

[Appendix E]

AND WHEN RECORDED MAIL TO:

**California Department of Developmental Services
c/o Director of the Department
MS 3-13
P.O. Box 944202
Sacramento, CA 94244-2020**

REQUEST FOR NOTICE

UNDER SECTION 2924b CIVIL CODE

APN NO. [REDACTED]

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded [REDACTED], [REDACTED], for (property street address) [REDACTED] in Book [REDACTED] page [REDACTED] records of [REDACTED] County, (or filed for record with recorder's serial number [REDACTED], [REDACTED] County) California, executed by [REDACTED] as trustor (or mortgagor) in which [REDACTED] is named as beneficiary (or mortgagee) and [REDACTED] as trustee be mailed to:

**California Department of Developmental Services
c/o Director of the Department
MS 3-13
P.O. Box 944202
Sacramento, CA 94244-2020**

NOTICE: A copy of any notice of default and of any notice of sale will be sent to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____
[Regional Center should sign here]

Dated: _____

State of California)
County of [REDACTED])

On [REDACTED], before me, [REDACTED], Notary Public, personally appeared [REDACTED], who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

FREE RECORDING IN ACCORDANCE WITH
CALIFORNIA GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY

[Appendix F]

AND WHEN RECORDED MAIL TO:

[Name of Regional Center]
[Address of Regional Center]

REQUEST FOR NOTICE

UNDER SECTION 2924b CIVIL CODE

APN NO. _____

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, _____, for (property street address) _____ in Book _____ page _____ records of _____ County, (or filed for record with recorder's serial number _____, _____ County) California, executed by _____ as trustor (or mortgagor) in which _____ is named as beneficiary (or mortgagee) and _____ as trustee be mailed to:

[Name of Regional Center]
[Address of Regional Center]
[Attn: _____]

NOTICE: A copy of any notice of default and of any notice of sale will be sent to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____
[Regional Center should sign here]

Dated: _____

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 _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Agreement to Provide Notice and Cure Rights

[address of property]

This Agreement to Provide Notice and Cure Rights (this “**Agreement**”), dated as of _____, is entered into by _____ (“**Lender**”) for the benefit of [name of Regional Center], a California nonprofit corporation (the “**Regional Center**”) and the California Department of Developmental Services, a public agency of the State of California (“**DDS**”). This Agreement is entered into in accordance with the following facts:

A. [Name of property owner], a [type of entity, e.g., California corporation] (“**Borrower**”) is currently in escrow to purchase the property commonly known as _____, California (the “**Property**”).

B. Borrower desires to obtain a \$ _____ loan from Lender (the “**Loan**”) in order to purchase the Property. The Loan will be secured by a deed of trust that will encumber the Property in favor of Lender (the “**Trust Deed**”). The Lender’s Trust Deed, secured note and other loan documents are hereinafter collectively referred to as the “**Loan Documents**”.

C. Borrower has also requested the Regional Center to contribute funds to assist Borrower in purchasing the Property. The Regional Center is only willing to contribute such funds if, among other things, (1) Borrower executes and records a Restrictive Covenant in favor of the Regional Center and DDS (which instrument will be junior in priority to Lender’s Trust Deed) (the “**Deed Restriction**”) and (2) Lender executes and delivers this Agreement to the Regional Center by not later than one business day before the close of escrow.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Lender hereby agrees as follows:

1. Notice of Default; Cure Rights. Lender shall notify the Regional Center and DDS in writing, at the addresses stated on Exhibit “A”, by certified mail, when Borrower defaults under or breaches any of the Loan Documents (the “**Notice of Default**”). The Lender may, but is not obligated to, use the statutory Notice of Default form under Civil Code §2924c as the Notice of Default to comply with this Agreement. Lender shall mail the Notice of Default to DDS and the Regional Center within two business days after Lender mails the Notice of Default to Borrower. DDS and the Regional Center shall each have the right, but not the obligation, to cure the Borrower’s default. Lender will provide updated itemized statements of the amounts owed by Borrower on request, and Lender will accept any tender of funds from DDS or the Regional Center to cure such default.

Executed at _____, California as of the date first written above.

[Name of Lender]

By: _____

Name: _____

Title: _____

EXHIBIT "A"

ADDRESSES FOR NOTICE

REGIONAL CENTER:

_____ Regional Center

Attn: _____

[Address of Regional Center]

[Regional Center's Phone Number]

DDS:

State of California
Department of Developmental Services
Attn: Director of the Department
MS 3-13
P. O. Box 944202
Sacramento, CA 94244-2020

Required Proposal and Project Documents

A. Conditional Approval

1. Proposal description
2. Proposed property ownership
3. Long-term maintenance plan (replacement reserves)
4. Development team qualifications
5. NPO organizational documents (See Appendix I for details)
6. NPO financial statements (See Appendix I for details)
7. Proposed Schedule of Development/Implementation Plan
8. Sources and Uses of funds – Total project estimate
9. Operating budget – Total itemized monthly estimate
10. A projected pro forma budget (consistent with the number of years of proposed loan term)

B. Milestone 1: Closing and Property Acquisition

1. Final Schedule of Development/Implementation Plan
2. Proposed financing leverage ratio, mortgage terms, and funding sources, including any funding commitment letters.
3. Evidence of site control (e.g., Purchase Agreement, Option to Purchase Agreement or any other enforceable legal agreement)
4. Appraisal (lender's appraisal is acceptable)
5. Preliminary Title Report
6. Updated Sources and Uses of funds upon selection of contractor and RC approval of estimated construction costs
7. Updated estimated itemized operating budget
8. Updated pro forma budget (consistent with proposed loan term)
9. Evidence of property purchase (such as copy of Grant Deed and final HUD settlement statement)

10. Replacement reserve analysis
11. Recorded DDS Deed of Trust (DDS as beneficiary), if applicable.
12. Lender's Deed of Trust/Promissory Note
13. Evidence of property insurance
14. Recorded Restrictive Covenants
15. Recorded Request for Notice – DDS
16. Recorded Request for Notice – RC
17. Executed Agreement to Provide Notice and Cure Rights
18. Owner's Title Insurance Policy
19. Performance bond documentation or its equivalent
20. Fully executed and completed DDS CPP Promissory Note or Profit Participation Agreement, as applicable.

C. Milestone 2: Project Development

1. Updated Sources and Uses of funds, if needed to reflect changes in renovation costs.
2. Regional Center certification that renovation is complete and the property is ready for licensure and/or occupancy (may include Certificate of Occupancy or Notice of Completion).

D. Milestone 3: Final Project Reconciliation

1. Executed long-term lease agreement - NPO and service provider
2. Executed property management agreement
3. Property tax exemption verification, if applicable [see Section V(I) of these Housing Guidelines]
4. Final Sources and Uses of funds
5. Verification of Mechanic Lien Waivers and Releases to be submitted to the Regional Center.
6. Final CPP fund reconciliation, if not already detailed in the Final Sources and Uses of funds (required in 4 above).

FY 2016-17 CPP Housing Guidelines

One-Time Annual Submission of Non-Profit Organization Entity Documents

In order to streamline the submission of documents and reduce the use of resources and materials, the Regional Center (RC) on behalf of the non-profit ownership entity (NPO), may submit the following required documentation on a one-time, annual basis for approval by the Department of Developmental Services (Department). These documents will be kept on file with the Department and should only be submitted once, with the first housing proposal of the funding year. However, if any information changes occur during the funding year, the RC will be required to provide the Department with updated documents within 30 days of the change.

1. Development Team Qualifications

Please submit a description of the development and management experience of the NPO, any person, agency, business and/or organization retained by the NPO and other development team members (e.g., developer, architect, accountant, consultants, etc.), including their resumes, and a summary/list of past completed projects.

2. NPO Ownership Entity Documentation

- a. A RC vendor approval letter, pursuant to Title 17, California Code of Regulations (CCR), Section 54322(d);
- b. IRS approval of 501(C)(3) status;
- c. Articles of Incorporation stating that, as part of its mission, the organization will develop and manage affordable homes for individuals with special needs, including those with developmental disabilities;
- d. By-laws of the Corporation that identify the roles and responsibilities of the NPO's officers and board members;
- e. A list of current officers and board members; and
- f. California Secretary of State Certificate of Good Standing (valid within 240 days);
- g. A corporate resolution that authorizes, in accordance with the by-laws of the Corporation, the signatory to sign, act on behalf of, and obligate the NPO.
- h. An executed Conflict of Interest Statement. (See Appendix J)

3. NPO Audited Financial Statements (Audits)

- a. For NPOs that have submitted housing proposals to the Department in prior years, only the most current audited financial statement must be submitted with the first proposal submitted for the funding year. Audits previously submitted for the prior two (2) years will remain on file with the Department. If previous audits have not been submitted, they will be requested.

Submit the most recent audit completed by a Certified Public Accountant using generally accepted auditing standards. The following is required for NPOs that have operated for less than three (3) years:

- b. For NPOs that have operated for two (2) years but less than three (3) years, submit audits for both years of operation with the most recent audit being an unqualified audit.
- c. For NPOs that have operated for at least one (1) year but less than two (2) years, submit the audit for the year of operation.
- d. The Department will consider qualified audits, based on the nature of the qualification, as long as the qualified audits are not for the most recent full year of operation.

Name of Regional Center: _____

CONFLICT OF INTEREST STATEMENT FOR CPP FUNDING

Name of NPO: _____ Title: _____

I have read and understand Title 17, California Code of Regulations, Chapter 3, Subchapter 3, Article 1, upon which I declare under penalty of perjury:

1. (Name of NPO) _____ and its officers, directors, shareholders, owners and employees have no personal, business, or financial interests, or relationships, with (Name of Regional Center) _____ or its officers, directors or employees, that would cause a reasonable person with knowledge of the relevant facts to question (Name of NPO) _____ or (Name of Regional Center) _____'s impartiality resulting from (Name of Regional Center) _____'s engagement of (Name of NPO) _____ to provide CPP services to (Name of Regional Center) _____ and its consumers.

2. Based on the above statement, no present or potential conflict of interest exists between (Name of NPO) _____ and (Name of Regional Center) _____.

Signature/Title

Date

Received by:

Name of Regional Center: _____

Signature: _____

Name: _____

Title: _____

Regional Center: _____
 Contact Name: _____
 CPP Project ID #: _____

Community Placement Plan Housing Guidelines Single-Family Housing Proposal Checklist

The following checklist is intended for Regional Center (RC) use as a reference only as all requirements may not be included. Please indicate in the blank line, the page number(s) of the proposal that addresses the specified Housing Guidelines requirement.

1. CPP Housing Contractual Provisions (pp. 6-10)

At least the following contracts must be executed in connection with each Housing Proposal developed under these Housing Guidelines.

RC and Non-Profit Organization (NPO). _____

- The contract should include/address requirements related to:

- ◆ Project Development _____
- ◆ Housing Agreements _____
- ◆ Lease Rate Adjustment _____
- ◆ Replacement Reserve Account _____
- ◆ Maintenance _____
- ◆ Welfare Property Tax Exemption _____
- ◆ CPP Fund Recoupment _____
- ◆ Unused CPP Funds _____
- ◆ Discontinued Project _____
- ◆ Project Costs _____
- ◆ Developer Fee _____
- ◆ Performance Assurances _____
- ◆ RC Monitoring Requirements _____

RC and service provider. _____

Lease agreement between NPO and service provider. _____

2. Proposal Overview (pp. 10-12)

Type of housing (Acquisition and renovation, or new construction. ARFPSHN, SRF, RCFE, etc. Number of bedrooms. Secured perimeter and/or delayed egress devices. Needs of individuals.) _____

- NPO identified. _____
- Type of neighborhood and available resources in the area. Specific search criteria. _____
- Follows CMS guidance. _____
- Fire sprinklers required. _____

3. Financial (pp. 12-13)

- How RC and NPO will maintain accounting, financial, and other records. _____
- Minimum 20 percent down payment. _____
- Estimated Sources and Uses of funds. _____
- Terms of mortgage loan. _____
- 15 year pro forma operations budget. _____

4. NPO Documents (pg. 13 and Appendix I)

- Development team qualifications, including resumes, a list of completed projects similar in nature, etc. _____
- RC vendor approval letter. _____
- IRS 501(c)(3) recognition letter. _____
- Articles of Incorporation. _____
- By laws of the corporation. _____
- List of current officers and board members. _____
- California Secretary of State Certificate of Good Standing (valid within 240 days). _____
- Corporate Resolution authorizing NPO signatory to sign documents. _____
- Conflict of Interest Statement (See Appendix J). _____
- NPO audited financial statements. _____

5. Proposed Schedule of Development/Implementation Plan (pp. 13-14)

- Timeframes for project completion. _____
- Sequenced development activities. _____
- Strategies used to identify properties. _____
- Comply with all state and local building requirements. _____
- Process to request an extension from the Department. _____
- Courtesy notification procedure included for projects that are to be licensed. _____

6. CPP Property Documents (pg. 14)

The Housing Proposal should include/address requirements related to the:

- Restrictive Covenant _____
- DDS CPP Deed of Trust _____
- Profit Participation Agreement or DDS Community Placement Plan Promissory Note Secured by Deed of Trust _____
- Lender Notices _____
- Order of Recordation _____
- Title Insurance _____
- Escrow Instructions _____

Regional Center Letterhead

[Date]

REGIONAL CENTER ESCROW INSTRUCTIONS

To: [Escrow Officer Name]
[Escrow Company]
[Escrow Company Address]
[Email; Phone – Escrow Company]

From: [Name of Regional Center]

RE: **Escrow No.** []
[Property Address & APN]

Dear Mr./Ms. [Escrow Officer Last Name]:

THESE ESCROW INSTRUCTIONS dated as of [Month, Day, Year], are made by Name of Regional Center, a California nonprofit corporation (“Regional Center”) and the California Department of Developmental Services, a public agency of the State of California (“DDS”), to [Name of Escrow Company], located at [Address of Escrow Company], the consent of which appears at the end hereof.

References in these escrow instructions to recorded documents refer to documents recorded in the Official Records of [Name of County in which property is located] County, California (the "Official Records").

Recitals

[Name of NPO/Buyer], a California nonprofit corporation (“Buyer”) is in escrow to purchase the real property commonly known as [Full Address of Property] (the “Property”), through [Name of Escrow Company], Escrow No. [], (the “Escrow”). Regional Center has agreed to provide the sum of [DDS Loan Amount spelled out] Dollars, (\$ []) cash (the “Disbursement”) to Escrow for Buyer as part of the Property’s purchase price, subject to the conditions described below. Buyer intends to obtain additional purchase money financing in the amount of [Senior Lender Loan Amount \$], from [Name of Senior Lender] (the “Lender”) secured by a deed of trust (the “Senior Deed of Trust”). Buyer is scheduled to close Escrow and purchase the Property on or before [Month, Day, Year] (the “Escrow Closing Date”).

Deliveries to Escrow Officer

Enclosed with these Escrow Instructions from Regional Center are fully executed and notarized originals of the following:

- 1) DDS Restrictive Covenant;
- 2) DDS Deed of Trust;
- 3) DDS [Profit Participation Agreement] or [Promissory Note] (select one as applicable);
- 4) DDS Request for Notice of Default and/or Sale; and
- 5) Regional Center's Request for Notice of Default and/or Sale.

In addition, the agreed upon DDS Pro forma Lender's Title Policy is enclosed.

Escrow Instructions

These documents are to be recorded at [enter the County in which the property is located] in the following order, without intervening documents:

You are hereby instructed to record the following immediately after you record the Grant Deed to Buyer and the Senior Deed of Trust in favor of the Lender:

- 1) DDS Restrictive Covenant;
- 2) DDS Deed of Trust;
- 3) DDS [Profit Participation Agreement] (if using Promissory Note, delete item 3);
- 4) DDS Request for Notice of Default and/or Sale; and
- 5) Regional Center's Request for Notice of Default and/or Sale.

Application of Disbursement

Regional Center shall deliver the Disbursement to you via wire transfer no later than the last business day before the Escrow Closing Date.

You shall apply the Disbursement to Buyer's account and for its benefit WHEN AND ONLY WHEN:

- (1) Regional Center has informed you via email that it has received a signed Agreement to Provide Notice and Cure Rights from the Lender;
- (2) You have received a signed and acknowledged original Promissory Note from the Buyer (only applicable if using Promissory Note, otherwise delete item (2));
- (3) You are able to concurrently record the DDS Restrictive Covenant, the DDS Deed of Trust, the [DDS Profit Participation Agreement] (delete if using Promissory Note), the DDS Request for Notice of Default and/or Sale, and the Regional Center's Request for Notice of Default and/or Sale in this order, immediately after you record the Grant Deed and the Senior Deed of Trust as instructed above; and
- (4) You are able to issue the DDS Lender's Title Policy noted in the Paragraph below.

You are not authorized to apply the Disbursement until after you have recorded all the documents required in the section above in the Official Records. Authorization to deviate from this paragraph requires an express written communication from the undersigned.

Title Insurance

You are instructed to issue an ALTA Lender's Policy of title for the benefit of the California Department of Developmental Services, in the sum of [\$] (which is the same amount as shown on the [Promissory Note or DDS Profit Participation Agreement] (select one that applies) in favor of DDS, showing fee title vested in the Buyer, naming DDS as insured, (the "DDS Lender's Title Policy"). The DDS Lender's Title Policy must conform to the enclosed Proforma Title Policy.

Delay of Closing

If you cannot close this Escrow on or before the Escrow Closing Date, you shall nevertheless close this Escrow when all conditions have been met, unless after the Escrow Closing Date and prior to the close of this Escrow, you receive Regional Center's written demand for the return of the Disbursement. If such demand is made upon you, you shall return the Disbursement to the Regional Center along with the signed and unrecorded DDS Restrictive Covenant, DDS Deed of Trust, DDS Profit Participation Agreement (or Promissory Note), DDS Request for Notice of Default and/or Sale, and Regional Center's Request for Notice of Default and/or Sale.

Escrow and Title Fees

Buyer shall be responsible for paying escrow related fees to (i) record the documents delivered by the Regional Center, (ii) deliver the documents described below and (iii) issue the DDS Lender's Title Policy.

Delivery of Documents

Immediately following recordation of the documents identified in these Escrow Instructions, you shall deliver the following documents to the Regional Center and the DDS at the address shown below:

- (1) Copy of Grant Deed;
- (2) Copy of Senior Lender's Deed of Trust;
- (3) Conformed copy of DDS Restrictive Covenant;
- (4) Conformed copy of DDS Deed of Trust;
- (5) Conformed copy of DDS [Profit Participation Agreement] (provide original executed promissory note if not using Profit Participation Agreement);
- (6) Conformed copy of DDS or Regional Center's Request for Notice of Default and/or Sale (as applicable); and
- (7) DDS Lender's Title Policy as required above.

Deliver to:

California Department of Developmental Services
Community Placement Plan Program (CPP)
1600 Ninth Street, Room 320, MS 3-9
Sacramento, CA 95814
Attention: Yvonne McCuiston Tucker, Chief
Email: yvonne.mccuiston@dds.ca.gov
Phone: (916) 654-1571

[Name of Regional Center]

[Address]

[Attn: _____]

[Email: _____]

[Phone: _____]

Sincerely,

[Name of Regional Center,]
a California nonprofit corporation

By: [_____]]
Name: [_____]]
Title: [_____]]

~~~~~  
**CONSENT OF ESCROW OFFICER**

Escrow No. [\_\_\_\_\_] ]

The undersigned Escrow Officer hereby accepts and agrees to be bound by the foregoing Escrow Instructions.

Dated: \_\_\_\_\_ [Name of Escrow Company]

Signed By: [\_\_\_\_\_] ]  
Print Name: [\_\_\_\_\_] ]  
Title: [\_\_\_\_\_] ]

**Community Placement Plan (CPP) Housing Annual Report**  
(Updated 10/2017)

**California Department of Developmental Services**

|                       |              |
|-----------------------|--------------|
| Property Address:     | Prepared by: |
| Regional Center (RC): | Title:       |

**Due Date:** February 1.

|                                                                              |                                                     |
|------------------------------------------------------------------------------|-----------------------------------------------------|
| <b>For Department of Developmental Services (Department or DDS) use only</b> |                                                     |
| CPP Project #/Applicable FY CPP Housing Guidelines <sup>1</sup> : _____      | Date of available occupancy for RC consumers: _____ |
| Date last consumer moved into the project: _____                             |                                                     |

**REGIONAL CENTER:** Please certify to the below information for the current fiscal year of the property:

1. The property is restricted, in perpetuity, for use by individuals with intellectual and developmental disabilities receiving services from the RC; a DDS Restrictive Covenant, Regulatory Agreement, or deed restriction is recorded and filed in the county the property is located.
2. The interior, exterior and any detached structures of the property are in good condition and properly maintained in a safe and sanitary manner. In accordance with the CPP Housing Guidelines, attached is an accounting of replacement reserve funds maintained for this CPP-funded property.
3. The property is operated in compliance with all requirements of the CPP Housing Guidelines and CPP Property Documents.
4. The property insurance is current and meets the requirements of the CPP Housing Guidelines, including, as appropriate: the requirements in the DDS Deed of Trust which specifies that the Department is named as Lender Loss Payable (Hazard) and as Additional Insured (Liability); the provisions stated in the contract between the regional center and non-profit organization; or the insurance requirements described in the RC's CPP housing proposal that was approved by the Department.
5. If the service provider is a 501(c)(3) non-profit organization, an application for the Welfare Property Tax Exemption has been filed for the upcoming fiscal year. If not, please explain:  
\_\_\_\_\_  
\_\_\_\_\_
6. The property has not been refinanced without prior Department approval.

|                                                                                                                                                  |      |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|
| <b>CERTIFICATION STATEMENT</b>                                                                                                                   |      |       |
| As an authorized representative of the RC, I certify to the best of my knowledge, the foregoing statements and information are true and correct. |      |       |
| Authorized RC Representative Signature                                                                                                           | Date | _____ |
| Title _____                                                                                                                                      |      |       |

<sup>1</sup> "Applicable FY CPP Housing Guidelines" means the required guidelines related to the approved CPP funds used to acquire the property/project.