

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

For

Fiscal Year 2015-16 Requests and Amendments

Updated September 2015

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 Department of Developmental Services
 Community Placement Plan Housing Guidelines Fiscal Year 2015-16

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Department of Developmental Services

Guidelines for Purchasing and Developing Permanent Housing

The “Effective Date” of these Housing Guidelines is July 1, 2015. These Housing Guidelines apply to all Housing Proposals submitted by a regional center (RC) to the Department after the Effective Date; and where a nonprofit ownership-entity organization (NPO) will be the fee owner of a property purchased in part with Community Placement Plan (CPP) funds.

I. Introduction

The Department of Developmental Services’ (Department or DDS) CPP Housing Guidelines (Housing Guidelines) were created to achieve the development of safe, affordable and sustainable housing for individuals with a developmental disability. To protect the State of California’s (State) interest and investment, the Department uses CPP funds in collaboration with RCs to develop permanent housing through the “Buy It Once” model. This model is designed for the RCs to contract with NPOs to purchase real property that will be used exclusively, in perpetuity¹, by individuals who receive services from the RC (consumers). Pursuant to these FY 2015-16 Housing Guidelines, a RC must submit a CPP Housing Proposal to the Department that describes the use of CPP start-up funding (CPP funds) for the acquisition (purchase) of housing and the modification of the housing to meet the unique housing needs of consumers.

The RC’s CPP Housing Proposal(s) must:

- Be consistent with the RC’s authority to conduct resource development as described in Welfare and Institutions Code (WIC) Section 4418.25 and be submitted and approved through the CPP process.
- Be consistent with the Department issued FY 2015-16 CPP Guidelines (CPP Guidelines) released on January 8, 2015, and these Housing Guidelines.
- Demonstrate a contractual agreement between the RC and a NPO that will own the property through an Agreement or Contract that includes, but is not limited to, the following: the tasks to be accomplished, who is responsible for those tasks, and an accountability by each entity for the timely development of the project.
- 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).

¹ For purposes of the Housing Guidelines, “in perpetuity” is interchangeable with “for 99 years.”

- Contain sufficient detail for the Department to determine the intended use of the requested funds.
- Demonstrate the restrictive use of the property, in perpetuity, for consumers.
- Demonstrate compliance with State fiscal oversight, accountability and audit requirements in Title 17 Regulations.

The Department may, by means it deems appropriate, determine the accuracy of the proposal, and may contact any entity named in the proposal, including funding sources, contractors, and other agencies for the purpose of clarifying the information provided in the proposal. Prior to making contact with any third-party, the Department will notify the RC.

The approval of RC proposals is contingent on the RC's current and future 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. Further, by submitting a CPP Housing Proposal and accepting CPP funds, the RC agrees to submit to all reviews conducted 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 to interviews with its principals, agents, and employees.

II. Authority

Development of permanent housing must adhere to resource development provisions pursuant to WIC Section 4418.25, in which the development of community resources are allowed within a RC's approved CPP.

CPP funding requests must adhere to the submission and approval process outlined in the FY 2015-16 CPP Guidelines, these Housing Guidelines, and all provisions contained in the RC contract with the Department. Approval and funding priority will be aligned with the priorities and goals in the CPP Guidelines. The Department supports collaborative proposals between two or more RCs to develop specialized resources to meet the statewide needs of individuals who have challenging service needs.

Proposals for the development of community residential resources shall be for:

- Individuals residing in developmental centers (DC), mental health facilities ineligible for federal financial participation (FFP), or out-of-state placements;
- Residential homes that offer specialized services for individuals with challenging service needs, e.g., Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN), Enhanced Behavioral Supports Homes, etc.;
- Delayed egress and secured perimeter homes that maximize community living options and provide specialized residential services and supports to individuals who have challenging behavioral or health and safety needs; and

- Projects approved to utilize CPP funds earmarked for strategic development to meet the residential needs of individuals who have challenging service needs, as outlined in the FY 2015-16 CPP Guidelines.

III. Regional Center Requirements

The Department uses CPP funds in collaboration with RCs to develop permanent housing through the “Buy It Once” model where NPOs purchase residential property that will be used exclusively by consumers in perpetuity. To ensure that homes purchased using CPP funds are always available for use by consumers, RCs and NPOs are required to fully comply with each of the requirements in these Housing Guidelines including, but not limited to, the following:

- The recordation of a restrictive covenant against the developed property as outlined in Section V(A) of these Housing Guidelines. [see also Appendix A]
- The DDS Profit Participation Agreement (see also Appendix B) or Promissory Note (see also Appendix C), acceptable to the Department, is completed and fully executed, as outlined in Section V(C) of these Housing Guidelines.
- The recordation of a Deed of Trust in favor of the Department as outlined in Section V(B) of these Housing Guidelines. [see also Appendix D]
- If the NPO is obtaining a secured loan, the recordation of Requests for Notice as outlined in Section V(H) of these Housing Guidelines (referenced under Section 2924b, Civil Code). [see also Appendixes E and F]
- If the NPO is obtaining a secured loan, the NPO’s secured lender’s execution of an Agreement to Provide Notice and Cure Rights, as outlined in Section V(H) of these Housing Guidelines. [see also Appendix G]
- Details of the provisions to be included in the agreement/contract between the NPO and RC and in the agreement/lease between the NPO and the RC service provider regarding the adjustment of the lease rate and the service provider reimbursement/service rate upon reduction or elimination of the debt service. [see also Section V(J) of these Housing Guidelines]
- Details of the provisions to be included in the lease between the NPO and the RC service provider. This includes, but is not limited to, the terms for funding short and long term maintenance and a replacement reserve for the replacement of capital improvements.

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.

IV. CPP Housing Proposal Contents

A. Proposal Overview

The proposal² shall include a detailed description that:

- i. Demonstrates that the NPO's³ mission includes the development and management of safe, accessible, affordable and sustainable housing to meet the needs of consumers with challenging service needs, as specified in their Individual Program Plans.
- ii. Identifies the type of housing to be developed. The type of housing may include, but is not limited to, Adult Residential Facility, Residential Care Facility for the Elderly, Specialized Residential Facility, ARFPSHN, Family Home Agency, or units within a multifamily housing development⁴ (five or more units in a condominium, apartment, or single story structure).
- iii. Identifies the applicable NPO that will acquire ownership of the property. In instances where the Developer is different than the NPO, the Department may request additional information including, but not limited to, information that demonstrates the Developer's experience, financial strength and development ability. All documents required in Section IV(C) of these Housing Guidelines must be included in the proposal, or upon selection and approval by the Department of the NPO, prior to the acquisition of real property. If the RC has not selected an NPO at the time the 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. For further details, see Section IV(C)(v) of these Housing Guidelines.
- iv. Describes how the proposed property meets the needs of consumers who are moving into the community from a DC, a mental health facility ineligible for FFP, or out-of-state placement, and/or for consumers at risk of admission to FDC or SDC due to an acute crisis, a mental health facility ineligible for FFP, and/or out-of-state services consistent with the provisions of AB 1472 (Chapter 25, Statutes of 2012).
- v. Describes the design features of the proposed property that supports consumers to remain in the property as they age. The California Department of Housing and Community Development (HCD) created a resource guide on aging in place/universal design that can be accessed electronically at www.hcd.ca.gov/hpd/aginginplace.pdf.

² Proposals and accompanying documents, once received by the Department, are subject to disclosure pursuant to the Public Records Act (California Government Code Section 6250 et seq.).

³ If an RC proposes to use a Limited Partnership or Limited Liability Company as the property owner, the RC should contact the Department to discuss requirements and request approval prior to proposal submission.

⁴ If an RC is interested in developing multifamily projects, the RC should contact their CPP Liaison for guidance.

- vi. Describes the neighborhood of the proposed property, the impact of the project on the surrounding community, and local resources for support and services, including day program and vocational services that are available for consumers residing in the proposed development.
- vii. Describes the capacity of the NPO to expedite new development, any specialty services the home will provide, whether the proposal is for new construction or renovation, and parking considerations.
- viii. Provides detailed financial information and audited financial statements of the NPO that demonstrate the ability and capacity of the NPO to secure long-term financing (e.g., “letters of commitment”, lending history, etc.) to fund the required percentage of costs associated with the acquisition, development and management of the housing. For additional requirements regarding audited financial statements of the NPO, refer to Section IV(C)(iii).
- ix. Describes the RC and NPO’s long-term plan for the NPO to maintain the property, which may include a plan for maintenance and/or a replacement reserve account.
- x. Demonstrates that property ownership and management will be separate and distinct from the provision of services and supports (i.e., the NPO cannot be both the property owner and the service provider).
- xi. Describes a schedule for development (implementation plan), including project milestones. [see Appendix H]
- xii. Demonstrates how the NPO shall 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. (This can be demonstrated through appropriate language in the agreement between the NPO and the RC adequate to the satisfaction of the Department.)

B. Budget Section

The proposal shall include a detailed budget that:

- i. Describes 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, demonstrates, a leverage ratio of a minimum of three dollars in leveraged funds to each one dollar in CPP funds. For “multifamily” projects, the leverage ratio applies to, either the units to be occupied by consumers, or to the entire project.

- iii. Includes sources of funds.
 - a) Priority will be given to plans and developments demonstrating leveraging of funds from grants, gifts and other like sources rather than, or in addition to, funds from long-term financing.
 - b) Entities providing project funds may include, but are not limited to, federal, state and county housing programs, private parties, banks and foundations.
- iv. Outlines the terms of the loan(s) and/or debt service (mortgage).
 - a) If long-term funding is a mortgage loan, includes proposed loan terms.
 - b) Mortgage loans shall not exceed a 15-year term without Department approval.
- v. Includes a detailed Sources and Uses of Funds for the project. If the Sources and Uses of Funds are not available, the budget must describe the funds targeted for acquisition, administrative cost of the NPO (to include developer fees), pre-development cost, renovation and transition estimate. Sources and Uses will need to be updated, as needed, at the following times:
 - a) Upon the acquisition of the property (during escrow period);
 - b) Upon approval of the renovation bid/budget;
 - c) Upon submission of a request to modify the approved Housing Proposal;
 - d) At reconciliation of CPP funds upon completion of each project; and,
 - e) At any time requested by the Department.
- vi. Includes the projected cost for acquiring and/or renovating the property and 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) (e.g., flat fee, percentage of CPP funds, percentage of total project costs, etc.) or if it is separately calculated for acquisition, renovation or rehabilitation of new construction. The Department may request discussion with the RC regarding the methodology and administrative cost prior to approving the CPP Housing Proposal and/or the acquisition of a property.
- vii. Addresses the proposed use of any unused CPP funds toward the completion of the proposed project or excess funds deposited into a replacement reserve account, and ensures that permanent financing and CPP funds are not utilized for the same cost/expense. Examples of unused CPP funds include funds that may be generated from funds (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 construction costs, or reimbursement due to tax exempt status. The purpose(s) for which unused funds of five thousand dollars (\$5,000), or greater, will be used requires Department approval. 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.

- viii. Includes contract provisions between the RC and NPO that will require the NPO to return CPP funding to the RC and the Department for properties that will not be completed, projects that do not conform to the purpose of these Housing Guidelines, and/or projects that have unspent funds.
 - a) Projects where CPP funds are used for renovation require a contract between the RC and the NPO and/or the service provider. The contract shall include a detailed plan and description for recoupment of CPP funds to the Department in the event that, for any reason whatsoever, the real property ceases to be used as housing for RC consumers; provided, however, a temporary cessation of use of the housing by RC consumers due to casualty or temporary condemnation not effected by the NPO shall not require the NPO to repay CPP funds.
- ix. Includes a fifteen (15) year pro forma budget that demonstrates the project's financial feasibility along with anticipated rent roll (lease payment) as follows:
 - a) Anticipates income from all sources to be used to fund and operate the project to completion.
 - b) Accounts for required replacement or maintenance reserve funds.
 - c) Estimates total amount of debt service (e.g., mortgage payment), property taxes, property insurance, and property management expenses (if applicable).
 - d) Details the process and management of application for property tax exemption and payment of property taxes as required by the city, county or local municipality.
 - e) Demonstrates ongoing pro forma of costs and lease terms that support financial sustainability.

C. NPO Documents

For NPOs, the RC shall submit with the proposal:

- i. 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.). The proposal should include resumes, a description of the financial ability to complete the project, a summary of past projects, and a narrative of proposed property ownership from acquisition to conversion to permanent financing.
- ii. As applicable, the RC may elect to submit the required NPO documents listed below, one-time annually with the first housing proposal of the funding year, excluding the Certificate of Good Standing with the California Secretary of State. If any of the information changes in the required documents, the RC must provide the Department with the updated document(s) within 30 days of the change.

Required NPO documents include, but are not limited to, the following:

- a) Internal Revenue Service approval of 501(c)(3) status.
 - b) A current, within 240 days of proposal submission, Certificate of Status of Good Standing with the California Secretary of State.
 - c) Articles of Incorporation demonstrating that the organization's mission includes the development and management of housing for RC consumers.
 - d) By-laws of the NPO.
 - e) A list of current officers and Board of Directors.
 - f) A corporate resolution authorizing the execution of documents by the designated signatory of the NPO.
 - g) A summary of the history of development of housing for individuals with a developmental disability or special needs. For projects developed using CPP funds, an accounting by property, of funds maintained in a replacement reserve account.
 - h) All required NPO documentation listed in Appendix I.
 - i) An executed Conflict of Interest Statement. [see Appendix J]
- iii. Three (3) years of audited financial statements with the most recent audit being an unqualified audit opinion completed by a Certified Public Accountant using generally accepted accounting and auditing standards. The following is required for NPOs that have operated for less than three (3) years:
- a) For NPOs that have operated for at least one (1) year but less than two (2) years, the audit for the year of operation.
 - b) For NPOs that have operated for two (2) years but less than three (3) years, audits for both years of operation with the most recent audit being an unqualified audit.

To ensure the current fiscal viability of the NPO, 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.

- iv. Current year-to-date financial statements of the NPO.
- v. If an NPO has not been selected prior to the submission of the Housing Proposal, please outline the process for NPO selection. Upon selection of the NPO, the RC shall submit to the Department the above listed documents. The Department will not issue a final approval until the RC is in current contract with an NPO. There shall be no property acquisitions until final approval of the NPO by the Department.

V. Housing Requirements

A. Restrictive Covenants

An approved project (property) shall have a recorded restrictive covenant entered into between the RC and NPO (owner of the property) and be filed/recorded on the

property on the day the NPO becomes the fee owner of the property (close of escrow), subsequent to the recordation of a private or federal governmental agency lender's Deed of Trust (if any). The purpose of the restrictive covenant is to restrict the use of the property as housing for consumers in perpetuity. Accordingly, the restrictive covenants 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.

Failure to record a Department approved restrictive covenant on current and prospective properties acquired with CPP funds shall impact future RC CPP project and fund approvals and/or recoupment of funds with respect to such RC and the applicable NPO. If (i) the RC has provided acquisition funding to an NPO under any prior fiscal year DDS Housing Guidelines, (ii) the NPO has used any portion of such funding to purchase one or more properties, and (iii), as of July 1, 2015, any of those properties are not encumbered by a restrictive covenant, or are encumbered by restrictive covenants that contain terms inconsistent with the terms of such prior fiscal year Housing Guidelines, then (iv) the RC must cause each of such properties to be encumbered by the form of restrictive covenant attached to these FY 2015-16 Housing Guidelines prior to the Department's approval of such RC's FY 2015-16 CPP Housing Proposal, unless the RC has received an alternative written approval from the Department.

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

- Default Notice: A requirement that the RC and the Department receive written notification from the NPO within five (5) days upon any default by the NPO under its loan with its lender.
- 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 RC consumers, occur without the prior written consent of the Department.
- 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 lender by not later than 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 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 and may seek legal and equitable remedies.

B. The DDS Deed of Trust

An approved project (property) shall have a Deed of Trust in favor of the Department (the “DDS Deed of Trust”) signed by the NPO (as owner of the property) and filed for record concurrently with the Restrictive Covenant on the day the NPO becomes the fee owner of the property (e.g., on the close of escrow). If an NPO obtains a secured loan from a private or federal governmental agency lender to finance a portion of the purchase price, then the DDS Deed of Trust may be filed subsequent to the recording of such lender’s deed of trust. The enclosed sample DDS Deed of Trust (Appendix D) is approved by the Department for use by RCs. An RC may submit a request for approval of an alternative format; however, it must contain content substantially similar to Appendix D.

The Department delegates, unless delegation is withdrawn by the Department, non-monetary obligations under the DDS Deed of Trust to the RC, to include, but not be limited to, insurance and inspections.

C. The DDS Profit Participation Agreement or Promissory Note

The NPO shall either (i) enter into a Profit Participation Agreement, or elect to (ii) execute a Promissory Note, as follows:

- i. Profit Participation Agreement: The NPO shall execute a Department approved Profit Participation Agreement 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 (close of escrow) and at the same time the DDS Deed of Trust and Restrictive Covenant are recorded. The Profit Participation Agreement will be recorded in order to provide notice to any potential purchaser that CPP funds must be paid to the Department on conveyance and that various approvals are required in order to affect any valid sale of the property. A sample of a DDS approved Profit Participation Agreement 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 Profit Participation Agreement as described in Section V(C)(i), above. If so elected, the NPO shall execute a Department approved Promissory Note in favor of the Department reflecting the receipt of CPP funds. This promissory note must be executed and delivered to the RC 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 is agreeing that occupancy of the property will be restricted in perpetuity for RC consumers. This obligation shall continue even if the CPP funds are repaid. The Restrictive Covenant may only be terminated consistent with the terms of the Restricted Covenant or as may be acceptable to the Department at its sole discretion.

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

D. Order of Recording

The Department's documents may be recorded subordinate to another Lender's Deed of Trust. The Department's sample Escrow Instructions, enclosed as Appendix L, may be used by an NPO to facilitate the recordation of the Department's documents.

E. Performance Bond

The RC must outline in their proposal how the RC and NPO will provide documentation that the NPO has secured a sufficient performance bond to cover the proposed housing project(s). If the NPO cannot secure a sufficient performance bond, the RC may request approval from the Department to use alternative performance assurances, such as:

- Contract provisions based on achievement of project milestones;
- A contract with an independent licensed, and/or professional construction manager, who will review and verify project performance and progress prior to the release of contractor payments;
- A stipulation in the NPO/RC contract that the NPO must require its Contractor to accept payments based upon performance, as well as, commit to providing interim mechanics lien releases; and,
- Retaining ten percent (10%) of the NPO contract funds. These funds would be released only when a Certificate of Occupancy (or its equivalent) is provided by the local agency (e.g., building inspector), Construction Manager/Consultant, and upon delivery of appropriate lien releases and final walk through approval by the RC.

Any alternative performance assurance must be approved by the Department prior to the start of construction.

F. Property Safety Standard

The RC's proposed plan shall outline how it will ensure the interior, exterior, and any detached structures of the property(ies) are in good condition and properly maintained, are decent, safe and sanitary, and pose no threat to the health, welfare, and safety of individuals living or working at the property(ies).

G. Insurance Requirements

These requirements are consistent with those required by HCD. The RC must ensure that the NPO-owner procures and maintains the minimum property hazard insurance of one million dollars (\$1,000,000) / two million dollars (\$2,000,000) in the aggregate of general liability requirements related to the property(ies) as specified in the DDS Deed of Trust. The Department must be named as loss payee. The recommended deductible for all policies is ten thousand dollars (\$10,000) per policy.

H. Requirement Regarding Lender Notices

This section applies only if the NPO obtains financing from a lender to assist in the acquisition and/or renovation of the property.

The RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the lender by not later than the close of escrow (in form substantially similar to Appendix G). The RC should provide the form to the NPO so the NPO can coordinate execution of such instrument with the lender. A copy of the executed Agreement to Provide Notice and Cure Rights shall be submitted 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 (benefit of the RC)]. The Requests for Notice shall be recorded within fifteen (15) days after the closing of escrow, and as soon as practicable after the RC has the necessary information from the escrow company to complete the forms. Any delayed filing post fifteen (15) days requires Department approval.

I. Property Tax Exemption Requirement

When the service provider is a 501(c)(3) nonprofit organization, the agreement between the RC and the NPO shall contain a provision obligating 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, but in any event not later than the first day the first consumer occupies the property.

- 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 (i) or (ii), above, the RC shall reduce the service provider reimbursement rate by the same amount.
- 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.

J. Debt Service Pay Off

Once the initial Department approved real estate loan on the project property is paid in full, the RC must ensure that the existing service provider rate agreement, along with the lease rate, is adjusted accordingly to reflect the reduction in debt service.

VI. Allowable Costs

A. Acquisition

CPP funds shall be used only for pre-development and acquisition as described below and cannot be encumbered, expended, or otherwise legally obligated to any provider of service or entity until the RC receives Department approval of its CPP Housing Proposal.⁵

⁵ Allocation of any funds for CPP is conditioned on appropriation of the annual State budget.

Eligible costs are subject to the following:

- Unless the RC receives prior written approval by the Department, requested CPP funds cannot exceed twenty-five percent (25%) per property of the total acquisition cost.⁶ Given unique and compelling circumstances, a different match ratio *may* be considered by the Department. Prior to the close of escrow, the RC shall submit, along with the written request for consideration, site identification, an updated Sources and Uses Budget and fifteen (15) year pro forma.
- Eligible property acquisition cost cannot exceed the appraised value of the property. The NPO may use the lender's appraisal in establishing the property's appraised value for the purposes of this provision.
- 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.
- Resulting services from Housing development must be eligible for FFP [WIC § 4418.25(b)(5)], unless the RC receives prior written approval by the Director of the Department.

Eligible Acquisition Costs

Acquisition costs include pre-development costs, which are costs incurred prior to final purchase and long-term financing of a property and are required to ensure proper due diligence for assessing the purchase, estimating the capital cost for renovation, and long term sustainability of the home. Costs include:

- Acquisition and Development Costs: Acquisition funds may be used as down payment by the NPO to acquire property or "set asides" in scattered-site units. The funds used for the down payment are subject to a three-to-one (3:1) match requirement (e.g., three dollars to every one CPP dollar), as referenced in Section IV(B)(ii) of these Housing Guidelines.
- Due Diligence Costs: It is expected that the NPO and RC conduct a thorough due diligence process to determine the feasibility of developing a property. Due diligence is performed during the period of escrow. For existing structures, due diligence includes various inspections and reports related to pests and other physical aspects (e.g., termite reports, roof inspections, etc.), jurisdiction required building inspections, and a determination of code compliance. Additionally, research is performed related to title, including preliminary title reports, Covenants, Conditions, and Restrictions (CC&Rs), and zoning and easement restrictions. All findings are reviewed for consistency with the intended use.
- Preliminary Title Report (PTR): The RC/NPO shall secure and provide a copy of the PTR that details all existing encumbrances, levies, liens, and CC&Rs, as well as other pertinent information about the identified property that is in escrow.
- Licensing: The RC and NPO must verify with the appropriate State licensing entity (Department of Public Health or Department of Social Services) that

⁶ "Total acquisition cost" is defined as costs associated with the acquisition and escrow closing of each property.

the home does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5.

- Architectural and Engineering: Design professionals, including mechanical, civil, and structural engineers, may be employed to conduct preliminary construction review and estimate costs required for the renovation or construction of an identified property.
- Appraisal Cost: Prior to closing, both the Department and an institutional or governmental lender may require an appraisal to establish the value of the subject property.
- Closing Cost: The cost associated with the “close of escrow,” including payment of DDS title policy. The RC/NPO may request one hundred percent reimbursement of closing costs with a claim to CPP funds when the requirements in Section IV(B)(vii) of these Housing Guidelines are met and justification is provided. Reimbursement will not be considered for closing costs that are funded by the seller or rolled into a mortgage loan.
- Environmental Impact Report (EIR) and Reviews: Some properties may require an EIR to determine existing or potential impacts to the environment from the project. Impacts may include impacts to endangered species. A team of experts may be required to determine the most cost-effective means and methods to mitigate an environmental impact. It is incumbent on the RC and NPO to make this determination. Some properties may require an environmental review to determine if historical use of the site included any handling or storage of toxic substances.
- Survey and Soil Analysis: A land surveyor may be engaged to determine proper site boundaries, to determine if the proposed project fits on the site, or to determine if the subject property is encroaching on adjacent properties. Some properties require a soils expert to determine what is needed to overcome poor soil conditions so a structure can be placed on the property and to assist in estimation of cost impact to the project. It is incumbent on the RC and NPO to make this determination.

B. Renovation 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.

Allowable Renovation Costs

Allowable renovation costs include the following:

- Specialized items required to provide a benefit to new or existing consumer’s needs. (e.g., ramps, bathroom modifications, etc.)
- Replacement of old items with new items. (e.g., water heaters, HVAC, etc.)
- Repainting, patching, and repairing of items in an existing structure for code compliance.
- Upon approval by the Department, utilizing up to \$10,000 of CPP funds to pay for costs associated with pool removal, only when the project proposal demonstrates to the Department’s satisfaction that such removals have a

total project cost savings or the identified home with the pool meets the specific needs of consumers.

- Permits and Fees – Local jurisdictions require a variety of permits and fees to be paid prior to the start of any construction or renovation. Requisite demolition, lead paint abatement, asbestos abatement, grading, sewer, water, fire, school, building permit, or other fees required by the local agencies must be paid before the project can begin.
- Legal, Accounting, Consultant, and Project Management Fees – A variety of professional expertise may be required to effectively manage the pre-development phase of the project. Associated costs may be allowable and should be included in the Sources and Uses budget.
- Housing development transition costs, but 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.
- Allowable transition costs include monthly debt service payment, utility expense, yard maintenance, and property insurance policy costs required by the Department, including hazard, general liability, and recommended deductibles for all policies.
- Fire sprinkler installation and maintenance at each property.

C. Ineligible Costs

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

- RCs acquiring or developing real property for CPP housing.
- Purchase of real property that would be owned by a consumer or their family members, a provider of services, or any entity other than the Department approved NPO.
- Purchase of real property for which another funding source is available or 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].
- Ancillary costs not associated with the production of, or improvements to, housing, as determined by the Department at its sole discretion.
- NPO transition expenses exceeding a period of six (6) months without Department approval.

VII. **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:

- Realistic, but structured, timeframes projected at the time of submittal for the type of projects proposed by the RC.
- 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.

- A process that ensures compliance with all state and local building 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.
- 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 (additional time lost).
- If the CPP project is to be licensed, a courtesy notification procedure 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.

VIII. Project Status and Reporting

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

A. Documentation

All documents must be submitted according to Appendix H, Required Proposal and Project Documents.

B. Reporting

Once the Housing Proposal is approved by the Department, the RC must provide progress reports on a quarterly and annual basis (State fiscal year) starting on the next calendar quarter (e.g., a Housing Proposal is approved in September; the first quarterly progress report is due by the end of December). Quarterly reports convert to annual reports (see Appendix M) upon all of the following conditions:

- i. The last consumer is placed in the home;
- ii. The submission of a reconciliation of CPP funds. A final Sources and Uses Budget may be used to confirm the utilization of CPP funds; and,
- iii. DDS issues verification that the RC submitted all required Milestone documents for the project (e.g., restrictive covenants).

C. Performance Measurement

- i. Describes measurable performance expectations and results, including:
 - a) Progress reports submitted to the Department on project status, including data regarding the amounts and use of CPP funds, (1) quarterly during pre-development and development phases, and (2) annually thereafter upon the conditions specified in Section VIII(B) of these Housing Guidelines.
 - b) Evidence that the property will be made available for occupancy by consumers within one (1) year of the CPP funding allocation. 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.
 - c) If applicable, a schedule of installment payments tied to meeting the milestones.

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:

- Increased development monitoring requirements for the project.
- Increased fiscal review and financial reporting requirements.

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:

- The reversion of some or all of allocated CPP funds held by the RC;
- Disapprove, or temporarily stay, the RC and NPO from any CPP Housing Project in which Department funds are used; and/or,
- Any other action the Department deems appropriate.

ii. CPP Modification Requests (changes to approved projects or plans)

If the RC intends to submit an amended Housing Proposal using CPP funds or to request modification to an existing project, including requests to change acquisition and/or renovation funds, the RC must submit a CPP Modification Request to the Department that contains 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 CPP Modification Request using review standards as 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 CPP Modification 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:

- NPO;
- Request for additional, or release of unused funds;
- Number of beds/units (capacity);
- Address/location of the property when specified in the proposal or subsequent updates;
- Purpose of project and use of the funds.

iii. Required Documents and Checklist

The CPP Proposal Checklist (Appendix K) is provided as a reference for document verification. It is incumbent on the RC to ensure the proposal includes all requested information outlined throughout these Housing Guidelines. The CPP Proposal Checklist must be submitted with the Housing Proposal.

D. Reconciliation of 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.

IX. Review of Proposal

A. Initial Determination

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 feasibility and reasonableness of the proposed project.
- ii. The RC has satisfactorily placed consumers in prior CPP-funded housing projects.
- iii. The RC has demonstrated the need in their community for the added capacity for consumers living in a developmental center, a mental health facility ineligible for FFP, an out-of-state placement, and/or for RC consumers at risk of admission to FDC or SDC due to an acute crisis, a mental health facility ineligible for FFP, or an out-of-state service consistent with the provisions of AB 1472 (Chapter 25, Statutes of 2012).
- iv. The proposed housing is consistent with the unique and specialized service and support needs of consumers transitioning from a developmental center, mental health facility ineligible for FFP, or an out-of-state service.
- v. 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.]
- vi. The proposal includes sufficient organizational and financial documentation, detailed in Appendix I and Section IV(C) 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 proposal using the following criteria and/or procedural guidelines:

- i. **Project Requirements Checklist**: The Department shall use this checklist to ensure that all components of the proposal and project requirements have been properly submitted; including milestone documents to be submitted by the RC (see Appendix H).
- ii. **Accuracy and Completeness**: The Department shall, by means it deems appropriate, determine the accuracy and completeness of the proposal and the documents provided, and 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.
- iii. **Documentation**: All required supporting documents are submitted.
- iv. **Records Review**: Pursuant to WIC Section 4648.1, the Department shall monitor services and supports provided by the RC, including fiscal reports, with or without prior notice.
- v. **Continuous Property Safety Standard**: Prior to and during occupancy, the RC must certify that 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 RC consumers living or working at the property.
- vi. **RC Monitoring**: The RC shall ensure the satisfactory progress of all the Department approved proposals (projects). The RC shall regularly monitor projects and shall report the progress of the projects on a quarterly basis, as outlined in Section VIII of these Housing Guidelines.

X. Housing Approval Process

A. Conditional Approval

- i. The Department will not approve or conditionally approve any RC housing proposal until such RC has caused Restrictive Covenants 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 Restrictive Covenant, then the RC shall cause the NPO to execute and record a 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.

- ii. If the proposal meets the requirements contained in these Housing Guidelines, the Department will issue a Letter of Conditional Approval to the RC that authorizes the RC to implement the proposal and proceed with the acquisition of the property(ies). Upon conditional approval, the proposal will be referred to as the “CPP Housing Project” and the Department will assign a CPP identification number to each project property for communication and tracking purposes.
- iii. If the proposal does not meet the requirements contained in these Housing Guidelines, the Department will work with the RC to modify its submitted proposal to come into compliance. Once the proposal meets the requirements, the Department will issue a Letter of Conditional Approval.

B. Acquisition Approval

The RC is required to obtain the Department’s final written approval for the acquisition of each property prior to close of escrow. The RC shall submit the acquisition approval request for each property to the Department, no later than five (5) business days after signing the purchase agreement (acceptance of the final offer by seller and NPO). With written approval from the Department, the request may be submitted after the five (5) days, but no later than seven (7) business days prior to the end of the “contingency period,” as outlined in the property purchase agreement. The acquisition approval request shall contain the following:

- i. A copy of the purchase agreement;
- ii. A loan commitment letter(s) specifying interest rate, amortization terms, and loan fees.
- iii. An estimated Sources and Uses Budget;
- iv. An estimated fifteen (15) year pro forma;
- v. The name of the institutional lender;
- vi. A summary of the project’s financial structure (e.g., loan terms, leveraged funds, etc.); and
- vii. A brief summary of the property/project including the service type (e.g., ARFPSHN, specialized residential home, etc.).
- viii. Certification by the RC that the home qualifies for licensure (e.g., does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5, etc.).

Upon receipt of all documents specified in Section X(B), above, the Department shall provide final approval or disapproval to the RC’s request for the acquisition of the property within five (5) business days of the Department’s verified receipt of such request. 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

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 anyway 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 Budget – Total project estimate

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 Budget upon selection of contractor and RC approval of estimated construction costs
7. Evidence of property purchase (such as copy of Grant Deed and final HUD settlement statement)
8. Recorded DDS Deed of Trust (DDS as beneficiary), if applicable.
9. Lender's Deed of Trust/Promissory Note
10. Evidence of property insurance
11. Recorded Restrictive Covenants

12. Recorded Request for Notice – DDS
13. Recorded Request for Notice – RC
14. Executed Agreement to Provide Notice and Cure Rights
15. Owner's Title Insurance Policy
16. Performance bond documentation or its equivalent
17. Fully executed and completed DDS Promissory Note or Profit Participation Agreement, as applicable.

C. Milestone 2: Project Development

1. Updated Sources and Uses Budget, 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 the Housing Guidelines]
4. Final Sources and Uses Budget
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 Budget (required in 4 above).

FY 2015-16 CPP Housing Guidelines

One-Time Annual Submission of NPO Documents

In order to streamline the submission of documents and reduce the use of resources and materials, the RC on behalf of the NPO, may submit the following required documentation on a one-time, annual basis for Department approval. 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.

2. NPO Ownership Entity Documentation

- a. A regional center 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. For projects developed with the use of CPP funds, an accounting of the Replacement Reserves by each property.
- i. An executed Conflict of Interest Statement. (See Appendix J)

3. NPO Audited Financial Statements (Audits)

- a. For NPOs who 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 _____

Community Placement Plan Housing Guidelines Proposal Checklist

The following checklist is intended for regional center use as a reference only as all requirements may not be included.

1. Narrative Description

- Comprehensive description of project proposal.
- Description of resource need and intended target population including number units to be developed.
- Description of accommodations for individuals with enduring medical challenges and individuals who have mobility impairment.
- Demonstration of ability and capacity to complete project (Letters of Commitment, lending history, etc.).
- Process that ensures compliance with state and local building requirements.

2. Proposed Financing

- Description of how CPP funds will be used for predevelopment and construction costs and how such funds will be reimbursed at permanent loan closing, if any.
- Identified source(s) of sufficient leveraged funds to complete the project.
- Estimated Sources and Uses Budget.
- 15 year pro forma operations budget.

3. Proposed Ownership

- Included a narrative description of the property ownership structure from acquisition through conversion, if any, to permanent financing.
- Identified proposed property owner.
- Provided necessary documents for selected NPO and description of selection process.

4. Development Team

- List of proposed development team, including name, address, phone number, and resumes of the following team members as applicable: NPO, Architect, Accountant, General Contractor, Property Management Company, Attorney, and Bond Underwriter,

etc. Resumes include a listing of completed projects similar in nature to the proposed project.

5. Organizational Documentation from NPO

- Regional center vendor approval letter.
- Internal Revenue Service 501(c)(3) recognition letter.
- Certificate of Status of Good Standing from Secretary of State of California.
- Copy of current Articles of Incorporation.
- Copy of current by-laws.
- List of current officers and board members.
- Corporate resolution authorizing non-profit organization signatory to sign documents.
- List of completed projects similar in nature to the proposed project.
- Copies of audited financial statements as specified in the Housing Guidelines.
- Contract between regional center and NPO.
- Organizational Clearance Certificate.
- Tax exempt correspondence from County Tax Assessor.

6. Proposed Schedule of Development/Implementation Plan

- Timeframes for project completion.
- Sequenced development activities.
- Courtesy notification procedure included for projects that are to be licensed.

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 320, MS-9
SACRAMENTO, CA 95814
TDD 654-2054 (For the Hearing Impaired)
(916) 654-1958



[Date]

SAMPLE

DDS ESCROW INSTRUCTIONS

To: [Contact - Escrow Company]
[Contact Title – Escrow Company]
[Address – Escrow Company]
[Email; Phone – Escrow Company]

From: Department of Developmental Services
Yvonne McCuistion Tucker, Chief
Community Placement Plan Program (CPP)
1600 Ninth Street, Room 320, MS 3-9
Sacramento, CA 95814
yvonne.mccuistion@dds.ca.gov; (916) 654-1571

RE: **Escrow No. [Number]**
[Property Address]

Dear Mr./Ms. [Contact Last Name]:

Delivered to you herewith are certain documents executed by the new owner of record, [NPO Name], to secure the interests of the California Department of Developmental Services (“DDS”). DDS directs [Escrow Company Name] to record in the Official Records of the county where the subject property is located (a) the DDS Restrictive Covenant executed by the new owner of record [NPO Name], (b) the DDS Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by the new owner of record, [NPO Name], (c) the DDS Profit Participation Agreement executed by the new owner of record, [NPO Name], (d) the Request for Notice to DDS; and (e) the Request for Notice to [Regional Center Name]. These documents are to be recorded in the following order, without intervening documents:

First: the [Lending Institution Name] Deed of Trust executed by the new owner of record, [NPO Name], in the amount of [\$ _____] in favor of [Lending Institution Name];

Second: the DDS Restrictive Covenant;

Third: the DDS Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing;

"Building Partnerships, Supporting Choices"

Fourth: the DDS Profit Participation Agreement (remove if the Promissory Note is used instead of the DDS Profit Participation Agreement);

Fifth: the Request for Notice to DDS;

Sixth: the Request for Notice to [Regional Center Name].

The DDS documents are junior and subsequent to the first Deed of Trust executed by [NPO Name] in the amount of [\$] in favor of [Lending Institution Name]. However, the DDS documents listed herein must be recorded as soon as title is vested with new owner of record, [NPO Name], and are subordinate only to the Deed of Trust executed by [NPO Name] in the amount of [\$] in favor of [Lending Institution Name].

DDS does require a title policy.

Please confirm that the recording has been accomplished as directed herein and mail copies of the recorded documents to the following address:

California Department of Developmental Services
Community Placement Plan Program (CPP)
1600 Ninth Street, Room 320, MS 3-9
Sacramento, CA 95814
Attention: Yvonne McCuistion Tucker, Chief

Thank you for your attention to this important matter.

Community Placement Plan (CPP) Housing Annual Report
(9/2015)

California Department of Developmental Services

Property Address:	Prepared By:
Regional Center:	Title:

Initial Due Date: Six (6) months after the first Fiscal Year (FY) Quarter that the property achieved first occupancy.

Annual Due Date: July 1. There must be 12 months between the initial annual report and subsequent reports due July 1.

For Department of Developmental Services (DDS) use only

CPP Project #/Applicable FY CPP Housing Guidelines¹: _____ Date of available occupancy for regional center consumers: _____ Date last consumer moved into the project: _____

REGIONAL CENTER: PLEASE CERTIFY TO THE BELOW INFORMATION FOR THE CURRENT OPERATING YEAR² OF THE PROPERTY:

1. The property is restricted, in perpetuity, for use by individuals with intellectual and developmental disabilities; 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, an accounting of replacement reserve funds is maintained for the CPP-funded property.
3. The property is operated in compliance with all requirements of the CPP Housing Guidelines and 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 DDS 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 regional center housing proposal that was approved by DDS.
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 DDS approval.

CERTIFICATION STATEMENT

As an authorized representative of the regional center, I certify to the best of my knowledge, the foregoing statements and information are true and correct.

Authorized Regional Center Representative Signature

Date

Title

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

² "Operating Year" means July 1 through June 30.

EXECUTIVE SUMMARY

Fiscal Year (FY) 2015-16 Community Placement Plan (CPP) Housing Guidelines

Updated September 2015

This Executive Summary is an overview of the changes to the FY 2015-16 CPP Housing Guidelines (Guidelines). The changes are based upon input and/or discussion with a Housing Advisory group, which included the Association of Regional Center Agencies, regional centers, and non-profit housing organizations (NPO). These stakeholders participated in meetings convened by the Department of Developmental Services (Department or DDS) in August and November 2014, and June 2015. Stakeholders identified the need for the Department to improve the clarity of the Guidelines, streamline the proposal submission process, as well as, for the Department to provide additional technical support throughout the housing proposal submission and project development processes. Subsequent to the June 2015 release of the Guidelines, representatives attending the July 2015 Regional Center Community Services Directors meeting also provided feedback on the Guidelines.

Based upon these meetings, the Department changed the Guidelines as follows:

- With the exception of the Certificate of Status of Good Standing issued by the California Secretary of State, the NPO's organizational and financial documents may be submitted to the Department one-time annually, for all CPP housing projects to be developed in that year.
- Loan commitment letter(s), previously submitted with the housing proposal, are to be submitted with the Housing Acquisition Request.
- **Update** The DDS Deed of Trust no longer specifies the instrument number and date related to the Institutional Lender's Deed of Trust. The language describing the order of recordation for the DDS Deed of Trust also has been changed.
- **Update** Allowable renovation costs include up to \$10,000 for the removal of an existing swimming pool, with Department approval.
- **Update** The Department's approval for the subordination of the Department's documents to another Institutional Lender's Deed of Trust is not required.

To enhance clarity and to provide technical resources, the Department changed the Guidelines as follows:

- Property insurance requirements are now specified in the Guidelines.
- A hyperlink that includes information about best practice(s) related to aging in place/universal design has been added.

- **New** Sample escrow instructions (Appendix L) are provided.
- **New** The CPP Housing Annual Report (Appendix M) has been added.

New policy decisions were established by the Department as follows:

- Fire sprinkler systems are required for each CPP property to increase the health and safety for residents, guests, and staff.
- The regional center's submitted housing proposal must include the NPO's financial information that specifies, by home, the amount of funds set aside in a replacement reserve account.
- The submitted Certificate of Status of Good Standing must be current within 240 days.
- Removal of submission to the Department, mechanics lien releases related to the developed project. The NPO now submits these to the regional center.
- **Update** Allowable acquisition costs include the purchase of a title policy for the Department.