APPENDIX “A”

FORM OF RESTRICTIVE COVENANT

RECORDING REQUESTED BY AND )

WHEN RECORDED RETURN TO: )

)

Department Developmental )

Services )

P.O. Box 944202 )

Sacramento, CA 94244-2020 )

Attention: Director of the Department )

\_APN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Department of Developmental Services**

**Community Placement Plan Program**

**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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 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 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 “A” 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. DDS 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 Senior Lender (defined below) in connection with the Property. Owner and Regional Center represent to DDS that the Senior Lender delivered to the Regional Center an Agreement to Provide Notice and Cure Rights, signed by the Senior 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:
   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.
   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:
   1. Enter into any leases, subleases, occupancy agreements or licenses concerning the Property.
   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.
   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.
   4. Assign or transfer any right to manage the Residence.
   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 Senior Lender Deed of Trust (the "**Senior Lender** **Deed of Trust**") given by Owner (as trustor) in favor of [*Name of Lender*] (the “**Senior** **Lender**”) to secure a loan in the principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Senior Lender 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 Senior Lender Deed of Trust, and any all renewals and extensions thereof. This Restrictive Covenant shall be terminated upon foreclosure of the Senior Lender 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:
    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.
    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.
    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 provide adequate relief to DDS, in light of the purposes of the Property, would be impossible to ascertain.
    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.
    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 Senior Lender’s Documents. A breach or violation by Owner of any lender’s documents associated with the Property including, but not limited to, Senior Lender’s promissory note or Senior Lender 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]  By:  Name:  Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Regional Center, a California nonprofit corporation  By:  Name:  Title: |

**ACKNOWLEDGEMENTS**

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.

Signature *(Seal)*

|  |  |
| --- | --- |
|  |  |
| Notary Public |  |

**EXHIBIT “A” TO RESTRICTIVE COVENANT**

LEGAL DESCRIPTION OF PROPERTY

[Insert Legal Description Here]