**EXEMPT FROM RECORDING FEES** )

**PURSUANT TO GOVERNMENT CODE** )

**SECTIONS:** **27383 and 27388.1(a)(2)(D)** ) )

Recording Requested by and )

When Recorded Please Return To: )

)

Department of Developmental Services )

Office of Community Development )

P.O. Box 944202, MS 7-20 )

Sacramento, California 94224-2020 )

Attn: Section Chief, CPP-HDO Housing )

)

**APN**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**DEPARTMENT OF DEVELOPMENTAL SERVICES**

**COMMUNITY PLACEMENT PLAN AND**

**COMMUNITY RESOURCE DEVELOPMENT PLAN PROGRAMS**

**RESTRICTIVE COVENANT**

**Project Number: XXRC-XXXX-X (Street Name)**

This Restrictive Covenant (“***CPP/CRDP Restrictive Covenant***”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, for reference purposes only, is entered into by and between [Name of HDO], a California nonprofit public benefit corporation, as trustor, whose business address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its successors and assigns (“***HDO***”), the \_\_\_\_\_\_\_\_\_\_\_ Regional Center, a California nonprofit public benefit corporation dba \_\_\_\_\_\_\_\_ Regional Center, whose business address is \_\_\_\_\_\_\_\_\_ (“***Regional Center***”) and the Department of Developmental Services, a California public agency of the State of California, whose business address Office of Community Development, P.O. BOX 944202, MS 7-20, Sacramento, California 94224-2020, Attn: Section Chief, CPP-HDO Housing (**“*Department***”).

**RECITALS**

1. The Property; the Effective Date. On the date this CPP/CRDP Restrictive Covenant is filed for record in the Official Records of \_\_\_\_\_\_\_\_ County (“***Official Records***”) HDO is the fee owner of certain real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, California \_\_\_\_ and legally described on Exhibit “A” attached hereto and incorporated herein (“***Property***”). The “**Effective Date**” is the date this CPP/CRDP Restrictive Covenant recorded in the Official Records.
2. Regional Center. Regional Center is a nonprofit corporation that provides services to individuals with developmental disabilities (“***Consumers***”), as defined in the Lanterman Developmental Disabilities Services Act and related laws (Divisions 4.1, 4.5, and 4.7 of the Welfare and Institutions Code and Title 14 of the Government Code).
3. CPP/CRDP. Pursuant to the California Welfare and Institutions Code sections 4418.25(a), 4679, 4684, 4684.80, and 4694.81 the Department is authorized to support development of permanent housing and establish policies and procedures of a Community Placement Plan (“***CPP***”) and Community Resource Development Plan (“***CRDP***”) programs (collectively “***CPP/CRDP***”) for housing.
4. Purpose. As an inducement for the Department to provide financing for the purchase of the Property, the parties have agreed to (i) restrict the use of the Property solely for the benefit Consumers; and (ii) this CPP/CRDP Restrictive Covenant is a covenant running with the land and a burden on the Property. This CPP/CRDP Restrictive Covenant is being recorded in the Official Records to provide notice to any and all subsequent interest in the Property of the use restriction on this Property.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. Use Restriction. HDO hereby covenants and agrees that the Property shall be maintained and used solely for the benefit of Consumers in perpetuity commencing on the Effective Date.
2. CPP/CRDP Restrictive Covenant Runs with the Land. The provisions herein burden the Property and run with the land. The current owner, future owner and all successors in interest to the Property shall be bound hereby for the benefit of the Regional Center, Department and their successors and assigns.
3. Definitions.
   1. “***CPP/CRDP Agreement to Provide Notice and Cure Rights***” means that certain agreement entitled “Department of Developmental Services, Community Placement Plan and Community Resource Development Plan Programs, Agreement to Provide Notice and Cure Rights, Project Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”) signed by the Senior Lender, defined below, in which the Senior Lender agrees to notify the Department and Regional Center in case of a default under the Senior Lender Loan, defined below.
   2. “***CPP/CRDP Deed of Trus***t” means that certain deed of trust entitled “Department of Developmental Services, Community Placement Plan and Community Resource Development Plan Programs, Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, Project Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” of even date herewith and recorded concurrently in the Official Records.
   3. “***CPP/CRDP Documents***” means collectively the CPP/CRDP Restrictive Covenant, CPP/CRDP Deed of Trust and the CPP/CRDP Note and/or CPP/CRDP Profit Participation Agreement, as applicable. Any reference to the CPP/CRDP Documents includes any amendments, renewals, or extensions now or hereafter approved by the Department in writing and executed by the applicable parties.
   4. “***CPP/CRDP PPA***” means that certain profit participation agreement entitled “Department of Developmental Services, Community Placement Plan and Community Resource Development Plan Programs, Profit Participation Agreement, Project Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” of even date herewith and recorded concurrently in the Official Records, in the principal sum of \_\_\_\_\_\_\_\_\_\_\_ and No/Dollars ($\_\_\_\_\_\_).
   5. “***CPP/CRDP Note***” means that certain promissory note entitled “Department of Developmental Services, Community Placement Plan and Community Resource Development Plan Programs, Promissory Note Secured by a Deed of Trust, Project Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” of even date herewith, in the principal sum of \_\_\_\_\_\_\_\_\_\_\_ and No/Dollars ($\_\_\_\_\_\_).
   6. “***Replacement Reserve***”means funds set aside by the HDO to cover future expenses related to capital improvements on the Property.
   7. “***Senior Lender***”means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ providing permanent financing for the Property in first (1st) lien position.
   8. “***Senior Lender Deed of Trust***”means that deed of trust securing the Senior Loan on the Property in the first (1st) lien position.
   9. “***Senior Lender Loan***”means that loan in the principal sum of \_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_ ) from Senior Lender to HDO and secured by the Senior Lender Deed of Trust.
   10. “***Senior Lender Documents***”means collectively the Senior Lender Deed of Trust, Senior Lender promissory note and any other document evidencing or securing the Senior Lender Loan on the Property.
4. Compliance with All Laws and Department Requirements. The HDO and Regional Center agree that at all times its actions regarding the Property and the use of the Property and CPP/CRDP funds shall be in conformity with all local, state and federal laws and regulations, the requirements of the CPP/CRDP Documents and the CPP/CRDP program guidelines, currently in effect or as amended.
5. Management and Maintenance. The HDO is responsible for the ongoing maintenance and repair of the Property. The HDO is responsible and shall keep the Property in a decent, safe sanitary, habitable, rentable, tenantable condition and repair.
6. Insurance. The HDO shall ensure the Property is insured for the term of this CPP/CRDP Restrictive Covenant at the types and amounts as set forth by the Department.
   1. The HDO shall maintain property insurance which provides hazard coverage in the amount at least equal to the replacement value of the Property and improvements. The Department shall be named as loss payee.
   2. The HDO shall keep general liability insurance for the Property in the amount and type as required by the Department. The Department shall be named as an additional insured.
7. Replacement Reserves.
   1. The HDO shall at all times maintain a Replacement Reserve for the Property in the amounts agreed upon with the Regional Center.
   2. The Replacement Reserve funds shall be deposited and maintained in a bank account solely used to hold replacement and operating (if applicable) reserves for properties funded by CPP/CRDP. HDO and Regional Center must be able to identify the amounts of Replacement Reserves by and for each CPP/CRDP property. Records, documents and other papers related thereto shall at all times be maintained in a reasonable condition and shall be subject to examination by the Department, Regional Center or by their authorized representative upon reasonable notice to the HDO.
   3. The Replacement Reserve is intended for the major repair and replacement of capital improvements to the Property. Any other use requires Regional Center and Department approval in writing.
   4. Regional Center written approval is required prior to the use of the Replacement Reserve.
   5. Regional Center must obtain Department written approval to use Replacement Reserves in excess of ten thousand ($10,000) for any one item and for amounts exceeding twenty-five thousand ($25,000) in the aggregate in any fiscal year.
8. Notice. If HDO defaults under any loan encumbering the Property, HDO shall notify the Department and Regional Center of such default within five (5) days after its occurrence. The Department 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 in connection with the Property. HDO and Regional Center represent to the Department that the Senior Lender delivered to the Regional Center a CPP/CRDP Agreement to Provide Notice and Cure Rights, signed by the Senior Lender, prior to the Effective Date.
9. Transactions Requiring the Department and Regional Center Approval. HDO shall not, without the prior written approval of the Department 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 the Department and Regional Center may prescribe) do any of the following:
   1. Sell, encumber, hypothecate, assign, refinance, pledge, convey, gift, 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, HDO may enter into leases, licenses or occupancy agreements concerning the Property with Regional Center written approval (as provided for in Section 10 below) and without obtaining the Department’s approval.
   2. Materially remodel, add to, reconstruct, demolish, or damage any part of the Property or improvements on the Property in violation of the CPP/CRDP Documents, of any lease or in a manner that could materially impair the value of the Property; provided, however, HDO may renovate the Property to comply with the Americans With Disabilities Act and other laws for the protection of the Consumers occupying the Property, without obtaining the Department’s and Regional Center’s consent.
10. Transactions Requiring Regional Center Approval Only. HDO and any party leasing the Property from HDO 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 Property to be maintained in a condition which Regional Center deems as an impairment or a violation of HDO's obligation to maintain the Property in a safe, sanitary and decent condition.
    3. Make any change to the service provider leasing the Property. 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 Property.
    5. Require, as a condition of the occupancy or leasing or use of any portion of the Property to a Consumer, that a Consumer pay any rent, consideration or deposit.
11. Furnishing Information; Annual Report. At the request of the Department, the Regional Center and/or the HDO shall furnish such reports, financial statements, budget projections and analysis as may be required from time to time. By February 1st of every year the Regional Center and HDO must submit to the Department an annual report for the Property on the form and manner as prescribed by the Department.
12. Attorneys' Fees. If the Regional Center or the HDO files a lawsuit or other action to enforce or interpret this CPP/CRDP Restrictive Covenant, the prevailing party shall be entitled to reimbursement of its attorney's fees from the non-prevailing party.
13. Subordination. This CPP/CRDP 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 which has been recorded against the Property concurrently with recordation of this CPP/CRDP Restrictive Covenant. This CPP/CRDP Restrictive Covenant shall be terminated upon foreclosure of the Senior Lender Deed of Trust.
14. Violation of CPP/CRDP Documents by HDO; Department's Remedies. In the event of a default, breach or violation of the provisions of the CPP/CRDP Documents, the Department may give written notice of such default, breach or violation to HDO at the address set forth in the first paragraph herein, or to an address specified by HDO in writing to the Department. If the default, breach or violation is not cured to the satisfaction of Department within the time period specified in the notice, which shall not be less than twenty (20) days, the Department 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 HDO growing out of the operation of the Property, and operate the Property in accordance with the terms of this CPP/CRDP Restrictive Covenant until such time as the Department, in its sole discretion, shall determine that the HDO is again in a position to operate the Property in accordance with the terms of this CPP/CRDP Documents.
    3. Apply to the court for specific performance of the CPP/CRDP Documents 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 CPP/CRDP Documents; or for such other relief as may be appropriate. It is agreed by HDO that the injury to the Department arising from a default under any of the terms of this CPP/CRDP Documents would be irreparable and that the amount of compensation which would provide adequate relief to the Department, in light of the purposes of the Property, would be impossible to ascertain.
    4. Seek a judicial order obligating HDO to convey its fee title interest in and to the Property to a party designated by the Department 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.
15. Violation of CPP/CRDP Restrictive Covenant by HDO; Regional Center's Remedies; Specific Performance. The parties agree that damages are an inadequate remedy for HDO's breach of this CPP/CRDP Restrictive Covenant, and that Regional Center may specifically enforce the provisions herein by temporary restraining order, preliminary injunction and permanent injunctive relief.
16. Violation of Any Other Lender's Documents. A breach or violation by HDO of any lender's documents associated with the Property including, but not limited to, the Senior Lender Deed of Trust, shall be a breach of this CPP/CRDP Restrictive Covenant and shall be subject to the remedies included in Sections 14 and 15 of this CPP/CRDP Restrictive Covenant.
17. Cumulative Rights and Remedies. To the maximum extent permitted by law, all rights, options and remedies of Regional Center and/or the Department contained in this CPP/CRDP 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 the Department 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 CPP/CRDP Restrictive Covenant.
18. Amendment or Termination of this CPP/CRDP Restrictive Covenant. Subject to the provisions in Section 13 (entitled, "Subordination"), this CPP/CRDP Restrictive Covenant shall only be amended or terminated by an instrument executed and notarized by the HDO, the Department and Regional Center and filed for record in the Official Records.
19. Partial Invalidity. If any provisions of this CPP/CRDP 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 CPP/CRDP Restrictive Covenant 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 CPP/CRDP. 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.
20. Counterparts; Delivery. This CPP/CRDP 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 CPP/CRDP Restrictive Covenant delivered by PDF attachments to emails shall be deemed the same as originals.

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[signature page follows]

**IN WITNESS WHEREOF**, HDO has executed this CPP/CRDP Restrictive Covenant as of the date first above written.

**HDO**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a

California nonprofit public benefit corporation

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF**, the Department has executed this CPP/CRDP Restrictive Covenant as of the date first above written.

**DEPARTMENT**:

**DEPARTMENT OF DEVELOPMENTAL SERVICES**, a

public agency of the State of California

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF**, the Regional Center has executed this CPP/CRDP Restrictive Covenant as of the date first above written.

**REGIONAL CENTER:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ REGIONAL CENTER**, **INC**.,

a California nonprofit corporation

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACKNOWLEDGEMENT**

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

State of California )

)

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

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)*

**EXHIBIT “A” TO CPP/CRDP RESTRICTIVE COVENANT**

**LEGAL DESCRIPTION OF THE PROPERTY**