**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**

**PROFIT PARTICIPATION AGREEMENT**

**Project Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Profit Participation Agreement (“***CPP/CRDP*** ***PPA***”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for reference purposes only, is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a California nonprofit public benefit corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, California \_\_\_\_\_\_\_\_ (“***HDO***”) and the Department of Developmental Services, a public agency of the State of California, whose address is Office of Community Development, P.O. Box 944202, MS 7-20, 94224-2020, Attn: Section Chief, CPP-HDO Housing (“***Department***”).

1. The Property; the Effective Date. The HDO is the fee owner of that certain real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_, California \_\_\_\_\_\_\_\_, identified by the assessor’s parcel number (APN) above and more particularly described in **Exhibit A** attached hereto and incorporated herein (“***Property***”). The “***Effective Date***” of this CPP/CRDP PPA is the date that certain document entitled “Department of Developmental Services, Community Placement Plan and Community Resource Development Plan Programs, Restrictive Covenant, Project Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” (the “***CPP/CRDP Restrictive Covenant***”) of even date herewith and recorded concurrently herewith in the Official Records of the \_\_\_\_\_\_\_\_ County Recorder (“***Official Records***”).

2. The Regional Center. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Regional Center, a California nonprofit public benefit corporation dba \_\_\_\_\_\_\_\_\_\_\_\_ (“***Regional Center***”) provides services to individuals with intellectual and 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). 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 CPP/CRDP Funds. Through funds made available by Department, Regional Center has provided to HDO the sum of $\_\_\_\_\_\_\_\_\_ to assist HDO in the purchase of the Property (the “***CPP/CRDP Funds***”).

4. Reasonable and Appropriate Provisions. HDO acknowledges that: (i) but for the CPP/CRDP Funds, it could not have acquired the Property; (ii) the CPP/CRDP Funds are derived from State of California funds, the purpose of which is to provide long term affordable housing to individuals with intellectual and developmental disabilities; and (iii) this CPP/CRDP PPA is in lieu of a promissory note equal to the CPP/CRDP Funds and is also in lieu of interest that would have accrued on such note. It is therefore reasonable and appropriate that Profit Participation (as defined in Section 6 below) be returned to Department.

5. Definitions.

1. Conveyance. The term "***Conveyance***" means the transfer of the Property, or any of HDO's interest therein, for consideration. If HDO 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 HDO shall also constitute a Conveyance. Notwithstanding the foregoing, a Regional Center-approved lease between HDO and a service provider for the purpose of providing services to Consumers at the Property is not a Conveyance.
2. Gross Proceeds. The term “***Gross Proceeds***” means the greater of (i) all funds and other consideration received by HDO or its Affiliate (defined below) or received by other for the benefit of HDO or its Affiliate upon a Conveyance or relating to a Conveyance; (ii) the fair market value of the Property on the 60th day before the date of the Conveyance, as determined by Department in its reasonable discretion.
3. Affiliate. The term “***Affiliate***” means any person or entity in which HDO or any of its principals or, if HDO 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 HDO and any family member of HDO or any of HDO's principals or, if HDO 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 (c), a “***principal***” shall be any person or entity who owns or controls, directly or indirectly, a 10% or greater voting or financial interest in HDO or the entity at issue, and “***financial interes****t*” shall mean any interest in the profits and/or losses of, and/or equity in, such entity.
4. Allowed Costs. The term “***Allowed Costs***” means the total of the following: (i) the funds required to repay the loan secured by a senior lender’s deed of trust encumbering the Property (except for any late charges, penalties or default interest owed due to HDO'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 the Department (except for any late charges, penalties or default interest owed due to HDO's failure to make payments thereunder); and (iii) HDO's documented and reasonable out-of-pocket costs related to the Conveyance of the Property (including escrow fees, title fees, attorneys' fees, brokerage fees, closing costs and other reasonable, associated costs paid to third parties).
5. Net Proceeds. The term “***Net Proceeds***” means Gross Proceeds less the Allowed Costs.

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

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

8. HDO’s Projected Profit Participation Report. At least thirty (30) days prior to the anticipated close of escrow or other effectuation of the Conveyance of the Property, HDO shall complete and submit to Department for its approval or correction, a report showing the projected Profit Participation owing to the Department, along with supporting documentation and calculations in support of said amount. The report shall be signed by an officer of HDO who shall certify that the information on the report is accurate. Once approved by Department, in writing, the projected Profit Participation (as it may be corrected by Department) shall be the amount of the Profit Participation.

9. Books and Records. HDO 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, HDO shall have prepared audited financial statements for the three prior fiscal years, which shall be made available to Department upon request prior to the close of escrow. These financial books and records, along with all supporting documentation, shall be maintained by HDO for at least seven years after a Conveyance.

10. 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 Department shall have the right to audit HDO’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 Department (the “***Audit***”). The results of the Audit shall be binding upon the parties. HDO shall make available to Regional Center and Department’s auditors all of the books and records of HDO and its Affiliates which such auditor deems necessary or desirable for the purpose of completing the Audit. Any deficiency in amounts due to Department, as determined by the Audit, shall be immediately due and payable by HDO, together with interest thereon at ten percent (10%) per annum commencing on the date or dates such amount should have been paid. If such deficiency is in excess of five percent (5%) of the previously remitted Profit Participation, HDO shall also pay to Department the cost of the Audit. If the Audit establishes that HDO has overpaid the Department, the Department shall refund the amount of the overpayment within ninety (90) days. Regional Center is a third-party beneficiary to this paragraph.

11. Term of CPP/CRDP PPA. This CPP/CRDP PPA, and Department’s profit participation rights, shall automatically terminate and expire on the ninety-ninth (99th) anniversary of the Effective Date.

12. Purpose of CPP/CRDP PPA. This CPP/CRDP PPA 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. CPP/CRDP PPA 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 Department and its successors and assigns.

14. Obligations Secured; Violation of CPP/CRDP PPA by HDO; Department’s Remedies. HDO’s obligations to Department under this CPP/CRDP PPA are secured by a 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 hereof, for the benefit of the Department and recorded in the Official Records concurrently herewith (the “***CPP/CRDP Deed of Trust***”). In the event of a breach or violation of the provisions of this CPP/CRDP PPA, Department shall give written notice to HDO at the address stated in the CPP/CRDP Deed of Trust. If the 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, Department may declare a default and may seek any legal and equitable remedies including those as provided in the CPP/CRDP Deed of Trust. They include, without limitation, the following:

a. Collect the entire CPP/CRDP Funds amount or the Net Proceeds in the case of a Conveyance.

b. Elect to void the Conveyance.

c. Collect all income in connection with the operation of the Property, including but not limited to receipt of insurance proceeds or reimbursements, and use the same and the reserve funds for the operation and maintenance of the Property.

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

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

f. Accelerate all amounts, including all outstanding interest, due under the CPP/CRDP Deed of Trust and judicially or nonjudicially foreclose on the Property.

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

15. Subordination. This CPP/CRDP PPA and all rights arising under such instrument is, by its terms, subject and subordinate to the lien of that certain deed of trust given by HDO (as trustor) in favor of [Name of Senior Lender] to secure a loan in the principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Senior Lender’s Deed of Trust***”). The Senior Lender’s Deed of Trust is in the first lien position and has been recorded against the Property concurrently with recordation of this CPP/CRDP PPA. This CPP/CRDP PPA is subordinate to the CPP/CRDP Restrictive Covenant and the CPP/CRDP Deed of Trust which are also subject and subordinate to the Senior Lender’s Deed of Trust.

16. Violation of CPP/CRDP PPA by HDO; Specific Performance. The parties agree that damages are an inadequate remedy for HDO’s breach of this CPP/CRDP PPA, and that Department 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 Department contained in this CPP/CRDP PPA shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and 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 PPA.

18. Waiver. If the Department waives the performance of any term, covenant or condition contained in this Agreement, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by the Department to enforce any terms, covenants or conditions of this CPP/CRDP PPA for any length of time shall not be deemed to waive or decrease Department’s right to insist thereafter upon strict performance by HDO or its successors-in-interest.

19. Amendment or Termination of CPP/CRDP PPA. Subject to Section 11 above, this CPP/CRDP PPA shall only be amended or terminated by an instrument executed and notarized by Department and HDO and filed for record in the Official Records.

20. Partial Invalidity. If any provisions of this CPP/CRDP PPA 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 PPA and all such other provisions shall remain in full force and effect unless, in the sole discretion of Department, the invalidity, illegality or unenforceability of the affected provision negates or impairs the purpose of Department’s CPP/CRDP plans. 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.

21. Counterparts. This CPP/CRDP PPA 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 PPA 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 Profit Participation Agreement 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 Profit Participation CPP/CRDP PPA as of the date first above written.

**Department**:

**DEPARTMENT OF DEVELOPMENTAL SERVICES**, a

public agency of the State of California

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

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

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

**EXHIBIT A TO CPP/CRDP PROFIT PARTICIPATION AGREEMENT**

**LEGAL DESCRIPTION OF THE PROPERTY**

**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)*