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AGENCY )  
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Sacramento, CA 95814 )

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**CALIFORNIA HOUSING FINANCE AGENCY**

**MHSA REGULATORY AGREEMENT**  
(Mental Health Services Act Housing Program)  
**CalHFA Development No. \_\_\_\_\_**

This Regulatory Agreement (the “*MHSA Regulatory Agreement*” or the “*Agreement*”), dated as of \_\_\_\_\_, 20 \_\_\_ for informational purposes, is made and entered into by and between \_\_\_\_\_, California \_\_\_\_\_ (the “*Borrower*”), and the California Housing Finance Agency (the “*Agency*”), a public instrumentality and political subdivision of the State of California created by the Zenovich-Moscone-Chacon Housing and Home Finance Act (the “*Act*”), Division 31 of the California Health and Safety Code.

**RECITALS**

A. The Borrower is the owner of the real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the “*Development*”), and has applied to the Agency and the California Department of Mental Health (“*DMH*”) for an MHSA Permanent Loan (defined below)

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under the Mental Health Services Act of 2004, Proposition 63, Executive Order S-07-06 (“**MHSA**”) and the terms of the Application as approved by the Agency and DMH (collectively the “**MHSA Housing Program**”).

B. The Borrower, in coordination with the \_\_\_\_\_ (“**County**”) and DMH, has agreed to make the Development, and in particular, the MHSA Housing Units (defined below) available to MHSA Eligible Residents (defined below) pursuant to the MHSA Housing Program.

C. It is understood that the MHSA Eligible Residents, in addition to housing, will require supportive services which will be funded, in part, from allocations of the Mental Health Services Fund (California Welfare & Institutions Code Section 5890) (the “**Fund**”) by DMH to the County. In addition, monies from the Fund shall be the source of funds for loans provided by the MHSA Housing Program.

D. Pursuant to Chapter 6.3 of Part 3 of Division 31 of the California Health & Safety Code, the Agency has authority to provide for the financing of special needs housing, and the Agency participation in the MHSA Housing Program constitutes authorized financing for special needs housing.

E. Executive Order S-07-06 recognizes that the Agency has unique expertise in real estate development, underwriting and financing of affordable housing, and accordingly the Agency has agreed to originate and service loans from the Fund as a contract administrator on behalf of DMH pursuant to the Interagency Agreement dated May 30, 2008.

F. As inducement for the Agency to make the MHSA Permanent Loan, the Borrower has agreed to enter into this Agreement and has consented to be and to have the Development regulated and restricted by the Agency as provided in this Agreement, and by the MHSA Housing Program and the rules, policies and procedures of the Agency and DMH, as such may be amended from time to time.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date of recordation of this Agreement in the county in which the Development is located (“**MHSA Permanent Loan Closing Date**”) and shall remain in full force and effect and shall apply to the Development until the later of: (i) payment in full of the MHSA Permanent Loan; or (ii) \_\_\_\_\_ (\_\_\_) years.

2. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

(a) “**Annual Self-Certification Form**” is the form attached as **Exhibit E**.

(b) “**Application**” means the Mental Health Services Act Housing Program Application submitted to the Agency.

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(c) “***Area Median Income (“AMF”)***” means the median gross income of the area in which the Development is located as determined by the Secretary of the Treasury of the United States for the purposes of Section 42 of the Internal Revenue Code of 1986, adjusted for family size in accordance with 26 USC 42(g)(2)(c)(ii).

(d) “***Capitalized Operating Subsidy Reserve (“COSR”)***”, if applicable, is an account held by the Agency to cover deficits in operating expenses attributable to a portion or all of the COSR MHSA Housing Units and is further defined in the Capitalized Operating Subsidy Reserve Agreement (“***COSRA***”). The use of the COSR funds shall be subject to the COSRA. Section 3 of this Agreement indicates whether this Development has a COSR and if so, how many MHSA Housing Units are subject to the COSRA.

(e) “***Certificate of Occupancy***” means a certificate, or equivalent, issued by a local building department to the Borrower that indicates that the Development has met all local code requirements and is ready for occupancy.

(f) “***COSR MHSA Housing Unit***” means an MHSA Housing Unit which receives the benefit of a subsidy from the COSR. In the case of Shared Housing Development, each bedroom which is covered by the COSR is considered a COSR MHSA Housing Unit.

(g) “***County***” means the entity defined in the Recitals herein.

(h) “***Distribution***” means any withdrawal, taking or payment of any assets, subsidies, earnings or income of the Development excluding payments for current and budgeted Operating Expenses of the Development. Distributions shall not be permitted to be payable from excess of the Capitalized Operating Subsidy Reserve.

(i) “***Fair Housing***” means all federal, state and local laws, as applicable, relating to prohibitions on discrimination in rental housing.

(j) “***Fiscal Year***” means the twelve (12) month accounting period ending on the date stated in Section 3(b).

(k) “***Gross Income***” means all rents, rental subsidies, operating subsidies, Supportive Services operating fees and any other income of the Development, and without limitation, such income derived from commercial facilities of the Development, if any.

(l) “***Homeless or at Risk of Homelessness***” means living on the streets or lacking a fixed and regular night-time residence. This includes living in a shelter, motel or other temporary living situation in which the individual has no tenant rights. “At Risk of Homelessness” may be due to one of the following situations: (i) transition age youth exiting the child welfare or juvenile justice systems; (ii) discharge from crisis and transitional residential settings, a hospital, including acute psychiatric hospitals, psychiatric health facilities, skilled nursing facilities with a certified special treatment program for the mentally disordered, and mental health rehabilitation centers; (iii) release from city or county jails, but not a parolee from state prison; (iv) temporary placement in a residential

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care facility upon discharge from (ii) or (iii) above; and (v) certification by the County Mental Health Director as an individual who has been assessed by and is receiving services from the County and who has been deemed to be at imminent risk of being homeless.

(m) “***MHSA Deed of Trust***” means that certain deed of trust entitled “California Housing Finance Agency, MHSA Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing, CalHFA Development No. \_\_\_\_\_” which was executed by the Borrower, secures the Note, this Agreement, the COSRA (if applicable), the MHSA Permanent Loan Disbursement Agreement (if applicable), and all other MHSA lending and regulatory agreements and encumbers the Development. It is intended that this Agreement shall be recorded ahead of and have priority over the MHSA Deed of Trust.

(n) “***MHSA Eligible Resident***” means a person who is Homeless or at Risk of Homelessness and who has a mental illness in accordance with California Welfare & Institutions Code Section 5600.3(a) and/or California Welfare & Institutions Code Section 5600.3(b) and DMH rules in effect at the time the Agency provides a final commitment to provide financing under the MHSA Housing Program, as evidenced by the executed Final Commitment Letter dated \_\_\_\_\_. Determination of who qualifies as an MHSA Eligible Resident shall be made by DMH and the County.

(o) “***MHSA Housing Unit***” means those Units which are targeted to be occupied by an MHSA Eligible Resident.

(p) “***MHSA Permanent Loan***” means the loan or loans to the Borrower originated by the Agency as evidenced by the Note, and funded from the Fund.

(q) “***MHSA Permanent Loan Documents***” means this Agreement, the Note, Deed of Trust, COSRA (if applicable) as defined herein, and any other document evidencing or securing the Loan.

(r) “***MHSA Promissory Note***” means that certain promissory note entitled “California Housing Finance Agency, MHSA Promissory Note, CalHFA Development No. \_\_\_\_\_ (Permanent Financing/Residual Receipts)” of the Borrower in the face amount of \_\_\_\_\_ and No/100s Dollars (\$\_\_\_\_\_).

(s) “***Mixed Population Development***” means a development that has a specific number of MHSA Housing Units dispersed within the development to house MHSA Eligible Residents, with other Units open to occupancy by persons who are not MHSA Eligible Residents.

(t) “***Non-Standard Operating Expenses***” means expenses as approved in writing by the Agency payable after all Operating Expenses and before Distributions. Non-Standard Operating Expenses may include (if applicable) the following: (i) the 0.42% annual interest payment due to the California Department of Housing and Community Development (“***HCD***”); (ii) annual bond issuance fees, only if the project is funded with bond proceeds and the bond issuer charges an annual bond issuance fee; (iii) annual deferred developer fees, only if the project was funded with the proceeds from the sale of tax credits and the project has a limited partner investor, payable over ten (10)

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years or up to the fifteen (15)-year tax credit compliance period if there is not sufficient cash flow to pay within ten (10) years; (iv) Partnership Asset Management Fees, as defined herein; (v) non-Agency required operating reserves funded from Development cash flow; and (vi) onsite Supportive Services costs, only if there is an onsite service coordinator and sufficient Development cash flow. Use of COSR funds (if applicable) for payment of Non-Standard Operating Expenses shall be subject to the COSRA. See Exhibit D, Part B for amounts applicable to the Development.

(u) “***Operating Expense***” means all reasonable and proper expenses, as approved by the Agency, of the operation of the Development including, but not limited to, loan payments payable before the calculation of allowable Distributions as specified on **Exhibit D**, the annual Servicing Fee, fidelity bonds, insurance, real estate taxes, ordinary maintenance and repair, costs of marketing, Development management, Supportive Services, fuel, utilities, garbage disposal, sewer charges, audit expenses, all sums due or currently required to be paid under the terms of the MHSA Permanent Loan Documents, the Agency required impounds, reserve and escrow deposits, reasonable attorney fees incurred in operating the Development, and such other payments as the Agency may require or specifically approve in writing as Operating Expenses. In no event shall attorney fees or litigation costs other than as stated, or expenditures normally required to be paid out of the Replacement Reserve, be treated as Operating Expenses unless specifically approved in writing by the Agency. Nonrecurring expenses in excess of Twenty-Five Thousand and No/100s Dollars (\$25,000.00) shall not be considered an approved Operating Expense unless specifically approved in writing by the Agency, which such approval shall not be unreasonably withheld.

(v) “***Operating Expense Loan***” means any loan by the Borrower or affiliate of the Borrower for the purpose of paying Operating Expenses of the Development. The Borrower shall not permit any interest to be charged or to accrue on any advances to the Development from the Borrower or any affiliate of the Borrower, except upon the following conditions: (i) prior written notice of such advance and the terms thereof shall have been given to the Agency; (ii) interest shall be limited to no more than the lesser of three percent (3%) simple interest or the interest rate as specified in the MHSA Promissory Note; (iii) the amount of such advance shall be no greater than necessary to pay current expenses; and (iv) such advances shall be repaid after payment of, or the reservation of funds for payment of, all Operating Expenses of the Development and prior to any Distributions and Residual Receipts loan payments, if applicable, from the Development. Failure of any of these conditions shall render the party making the advance liable to refund and/or forfeit all interest paid or due and shall be an event of default pursuant to this Agreement.

(w) “***Partnership Asset Management Fee***”, “***Partnership Management Fee***” or “***PAMF***” means those annual asset management fees payable pursuant to the Borrower’s organizational documents, but subject to limitations as approved by the Agency or which may be imposed by other lenders or subsidy providers. Such fees shall be payable only if the Development was funded with the proceeds from the sale of tax credits and the project has a limited partner investor, and only for the fifteen (15)-year tax credit compliance period. Such fees are Non-Standard Operating Expenses payable only after all Operating Expenses and before Distributions. Unless otherwise stated on **Exhibit D**, at the MHSA Permanent Loan Closing Date the maximum amount of approved PAMF shall be the lesser of: (i) Three hundred sixty and No/100s Dollars (\$360.00) per Unit; or (ii) Eighteen thousand and No/100s Dollars (\$18,000.00). The PAMF may be

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adjusted for inflation as finally determined by the Agency. The PAMF is payable prior to the Borrower’s allowable Distribution.

(x) “***Primary Service Provider***” means the entity responsible for overall implementation and delivery of the Supportive Services to the tenants as specified in the DMH-Approved Supportive Services Plan (attached as **Exhibit B**), including coordination among Service Providers.

(y) “***Property Management Agreement***” means a contract between the Borrower and the property management agency which defines the roles and responsibilities of each party for the operation of the Development and includes a property management plan.

(z) “***Rental Housing Development***” is defined as an apartment building or buildings containing at least five (5) Units targeted to be occupied by MHSA Eligible Residents, each with its own lease. A Rental Housing Development shall not include a development which is subject to any State of California licensure requirements.

(aa) “***Residual Receipts***” means the balance of Surplus Cash remaining after payment of Borrower’s allowable Distribution.

(bb) “***Service Provider***” means a provider of supportive services designed to meet the special needs which may be applicable to MHSA Eligible Residents. Service Providers qualifications are subject to approval by the County and DMH.

(cc) “***Servicing Fee***” means 0.42% of the original MHSA Permanent Loan principal amount which shall be paid in advance to the Agency annually as an administrative fee.

(dd) “***Shared Housing Development***” means at least two (2) unrelated adults each of whom meet the definition of an MHSA Eligible Resident and who are sharing a single-family residence as house-mates. Single family residences include a single-family home, condominium, duplex, half-plex, triplex or four-plex. A Shared Housing Development shall not include a development which is subject to any State of California licensure requirements.

(ee) “***Single Population Development***” means a development in which all Units are targeted to MHSA Eligible Residents.

(ff) “***Supportive Services***” means assistance made available to MHSA Eligible Residents, and other tenants within the Development who may benefit from such services, to help them maintain stable housing and/or achieve improvements in health, wellness, recovery, employment, income, socialization and quality of life.

(gg) “***Surplus Cash***” means the balance of Gross Income of the Development remaining at the end of each Fiscal Year after payment of: (i) Operating Expenses; (ii) reservation of cash required to meet current thirty (30) day obligations; (iii) Agency-approved Non-Standard Operating Expenses; and (iv) Agency-approved Operating Expense Loans. For the purpose of

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computing Surplus Cash, Gross Income of the Development shall include any rent insurance proceeds, but shall exclude fire or other insurance proceeds, condemnation proceeds, and any security deposit which shall not have become the property of the Borrower free of the claim of any person claiming as or through the tenant having made such deposit. Priority of payments and application of Surplus Cash shall be in accordance with **Exhibit D**.

(hh) “*Unit*” is defined as: (i) a traditional apartment residence containing at least one (1) bathroom and a kitchen in the case of Rental Housing Developments; or (ii) a separate lockable bedroom in the case of Shared Housing Developments, with each bedroom being subject to a separate individual rental agreement.

3. Type of Development.

(a) This Development is a:

- Rental Housing Development
- Shared Housing Development

(b) The Development’s Fiscal Year end is \_\_\_\_\_.

(c) This Development:

- does have a COSR
- does not have a COSR

(d) This Development has:

- \_\_\_\_\_ total units
- \_\_\_\_\_ total MHSA Housing Units
- \_\_\_\_\_ total COSR MHSA Housing Units

(e) With regards to the COSR MHSA Housing Units, Borrower agrees to the following:

(i) Any default under the COSRA shall constitute a default of this Agreement.

(ii) The amount of the COSR shall be based upon: (1) amount of MHSA funding available; and (2) the Agency’s determination of the anticipated subsidy needs for the Development.

(iii) Upon depletion of all amounts set aside for the Development, neither the Fund nor the Agency is responsible for providing any additional monies to the COSR.

(iv) If the COSR or other project- or tenant-based subsidy is exhausted and is not renewed, the tenant portion of the rent on the MHSA Housing Units may be increased to the

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restricted rent (thirty percent (30%) of fifty percent (50%) AMI) with the Agency’s written permission. Permission to raise rents is contingent on the Borrower having established that it has diligently sought all available reserves or subsidies, including seeking a subsequent allocation of COSR and/or rent subsidies from all available state, federal and local sources, including the County, and will be unable to meet fiscal integrity requirements as determined by the Agency. In order to allow for a reasonable transition and a gradual adjustment, the Borrower shall petition to increase rents on MHSA Housing Units twenty-four (24) months prior to the estimated date of the depletion of the COSR or other applicable subsidy.

(v) Upon termination of this Agreement, any monies remaining in the COSR held by the Agency, along with any COSR held by the Borrower shall be returned to an Agency-held account for the benefit of the MHSA Housing Program.

4. Rental and Occupancy Requirements. Borrower agrees and covenants that:

(a) All MHSA Housing Units shall be occupied or targeted for occupancy by at least one MHSA Eligible Resident. In Mixed Population Developments, specific Units shall not be permanently assigned to MHSA Eligible Residents, and must be evenly disbursed within the Development. For Mixed Population Developments, Development waiting lists shall ensure that MHSA Eligible Residents shall be provided equal access to non-designated MHSA Housing Units to the extent that they qualify for occupancy of those Units.

(b) Rents for the MHSA Housing Units occupied by an MHSA Eligible Resident shall be restricted to no more than thirty percent (30%) of fifty percent (50%) of AMI, adjusted for number of bedrooms, household size and applicable utility allowances.

(c) The portion of rent payable by the MHSA Eligible Resident for COSR MHSA Housing Units, if any, shall not exceed thirty percent (30%) of the current California Department of Social Services Supplemental Security Income/State Supplementary Payment (“**SSI/SSP**”) grant amount for a single individual living independently, or thirty percent (30%) of total household income, whichever is greater and as adjusted for a utility allowance, if applicable. If during the term of the MHSA Permanent Loan the COSR is exhausted, the rent payable by the MHSA Eligible Resident may be increased to thirty percent (30%) of fifty percent (50%) of the area median income SUBJECT TO THE TERMS AS SPECIFIED IN THE COSRA AND SECTION 3.(e)(iv) OF THIS AGREEMENT.

(d) The Borrower shall require each Unit to be subject to a rental agreement in a form which may be subject to approval by the Agency, and shall not lease any Unit for less than thirty (30) days or for more than one (1) year. The rental agreement, executed by all adult or emancipated youth household members, shall provide for the following:

(i) For COSR MHSA Housing Units, the rental agreement shall provide that once the MHSA Eligible Resident qualifies for and begins collection of SSI/SSP and/or tenant-based subsidies, the MHSA Eligible Resident shall pay its back-portion of rent that was due and unpaid during the time the MHSA Eligible Resident was attempting to qualify for such benefits.

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(ii) Evictions shall be carried out in accordance with California and, if applicable, federal law governing month to month tenancies and reasonable accommodation consistent with not causing undue administrative or financial burden upon the Development.

(iii) If the basis for eviction is abandonment or failure to occupy, the Borrower shall comply with California Civil Code Section 1952.3 and any other applicable laws unless the Borrower receives notification or has actual knowledge that the non-occupancy of the MHSA Housing Unit is due to hospitalization or institutionalization (other than in state prison) of the MHSA Eligible Resident. Under these conditions, the Borrower shall hold the Unit available for the MHSA Eligible Resident for three (3) months, provided the rent for the Unit is fully paid as agreed to in the rental agreement.

(iv) If an MHSA Eligible Resident abandons or fails to occupy the MHSA Housing Unit, but non-MHSA Eligible Residents of the household remain in the MHSA Housing Unit and continue to pay the rent, the following applies:

(1) In a Mixed Population Development the other household members may continue to occupy the MHSA Housing Unit provided a comparable non-MHSA Housing Unit is available to lease and is leased to an MHSA Eligible Resident, and the existing household member's/members' occupancy is in compliance with the property management agreement and the rental agreement. Rents may be adjusted to maximum allowable rents according to the property management plan and in accordance with federal, state and local law.

(2) If the Development is a Single Population Development, or is a Mixed Population Development that has no vacant non-MHSA Housing Unit available, and so long as the household member(s) otherwise meets the criteria or conditions for the occupancy for the Development, the other household member(s) may continue to occupy the MHSA Housing Unit for the three (3) month grace period while seeking alternative living accommodations, and Borrower shall make reasonable attempts to assist the other household member(s) in finding alternative living accommodations.

(3) If the MHSA Housing Unit is not vacated at the end of the three (3) month grace period, the rent amount shall be adjusted to the maximum allowable rent according to the property management plan and applicable law, and/or eviction proceedings may commence.

(4) For purposes of this section, the three (3) month grace period shall begin on the first day of the next tenancy period following notification by the Borrower to other household member(s) that the MHSA Eligible Resident is no longer occupying the MHSA Housing Unit.

(e) The Agency may, from time to time, revise the maximum rental limits on MHSA Housing Units restricted herein by a percentage equal to any percentage change in AMI. Until the Agency posts the change on the Agency's Website, the previously existing charges shall apply.

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(f) The Borrower shall not discriminate against tenants or applicants who are recipients of federal rent subsidies pursuant to Section 8 of the United States Housing Act of 1937 (42 USC Section 1437(f)) (“**Section 8**”), as amended, or any successor subsidy program. Borrower agrees to comply with terms of existing subsidies and actively seek extensions to existing project-based subsidies and other new project- and/or tenant-based subsidies. Committed subsidies as of the date of this Agreement include those as stated on **Exhibit F**. Borrower shall re-apply for other project-based operating or rental subsidies prior to expiration of the committed subsidies.

(g) Use of the commercial facilities of the Development, if any, shall be compatible with the residential uses of the Development. Any commercial tenants, improvements and lease provisions may be subject to approval by the Agency. The Agency shall have the right to require existing and future commercial tenants to enter into nondisturbance and attornment agreements on commercially reasonable terms. The Borrower agrees to do any acts and execute any documents necessary to effectuate the Agency's rights in this regard.

(h) The Borrower agrees to make available any and all Units of the Development for the purposes of physical inspection by the Agency personnel upon prior notice and in accordance with the Agency’s policies and procedures. Borrower shall require that its managing agent inspect each Unit at least on an annual basis. In the case of Shared Housing developments, Borrower shall engage an independent third party acceptable to the Agency to annually provide a physical inspection report to both Borrower and the Agency.

(i) Borrower shall collect and maintain tenant security deposits in accordance with applicable laws.

(j) Borrower shall assist MHSA Eligible Residents in applying for any and all benefits for which they may be eligible including but not limited to tenant-based rental subsidies and medical benefits.

5. Development Management.

(a) The Borrower shall provide for the management of the Development in a manner satisfactory to the Agency, shall employ a bonded and licensed management agent, develop a management plan, and use a management agreement which may be subject to review by the Agency. A fidelity bond shall be maintained in an amount equal to one month's gross rent for the entire Development and shall insure the Borrower and the Agency against misapplication of Development funds. **All management agreements shall include a copy of this Agreement, which shall be incorporated therein, and made a part of the contract.** The management agreement shall be structured so that it is subject to termination with or without cause by the Borrower or the Agency, and without penalty, upon not less than thirty (30) days prior written notice to the management agent. Any liability associated with the termination of the management contract shall be the sole obligation of the Borrower. Upon notice of termination, the Borrower agrees to make immediate alternative arrangements, reasonably satisfactory to the Agency, for the continued management of the Development. In the event that the Borrower shall fail to make such alternative arrangements for a

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substitute managing agent within a reasonable time (which in no event shall exceed sixty (60) days from the date of the sending of the termination notice), the Agency shall have the unilateral right to make such alternative arrangements subject to the reasonable consent of the investor limited partner, if applicable. The amount of the management agent's compensation shall be subject to approval by the Agency, which shall not be unreasonably withheld.

(b) Borrower shall begin marketing of the Development at least ninety (90) days prior to the availability of the Units for occupancy. All marketing efforts shall be consistent with applicable laws associated with nondiscrimination, and referrals from the County (or other referring entities) shall not result in a disparate impact as it relates to equal housing opportunities.

(c) Borrower shall assure that all advertising (including letterheads, brochures and media advertising) shall include a “Fair Housing” logo. To the extent federal, state and/or local accessibility laws apply, Borrower shall also include an “Accessibility” logo.

(d) Where a significant number of persons in the community have limited fluency in the English language, Borrower shall comply with applicable state and local law regarding the need to provide publications, information, brochures and leases in the household’s native language of such persons; “*significant number of persons*” is deemed to be at least twenty-five percent (25%).

(e) Borrower shall develop and maintain a policy and procedure for the selection and rejection of applicants and a grievance and eviction policy and procedure for tenants of the Development.

(f) Borrower shall assure compliance with all Fair Housing laws. Occupancy of the Development shall be open to all regardless of race, gender, gender orientation, marital status, familial status, age (except for senior citizen housing pursuant to state and federal law), color, religion, disability, source of income, national origin or ancestry. The Borrower shall require that its officers, agents, employees, management agent, contractors and subcontractors, and employees associated with the Development provide equal opportunity for employment and that they not engage in any unlawful discriminatory conduct. In addition, the Borrower agrees to conduct its own affirmative marketing and outreach programs in conformance with DMH and/or County requirements, the MHSA Housing Program and, if applicable, federal requirements associated with any federal funding applicable to the Development. Borrower further acknowledges the Fair Housing considerations set forth in the Application or acknowledgement letter provided to the Agency, as applicable.

6. Supportive Services.

(a) Plan. Borrower shall comply with the DMH-Approved Supportive Services Plan (attached hereto as **Exhibit B**), which may be amended from time to time by DMH and the County.

(b) Execution of Plan. Borrower shall not mandate participation in on-site and off-site Supportive Services provided pursuant to the DMH-Approved Supportive Services Plan as a

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condition of occupancy. In the case of a Rental Housing Development, any space dedicated to Supportive Services shall be physically separated from the property management office space.

(c) Memorandum of Understanding (“MOU”). For the term of this Agreement, there shall be in place an MOU which delineates the roles and responsibilities of the Service Provider, County, property manager and Borrower which has been approved by DMH.

(d) Annual Self-Certification Form. Within ninety (90) days following the Development’s Fiscal Year end, Borrower, in consultation with the Service Provider, shall submit an Annual Self-Certification to the Agency, substantially in the form of the attached **Exhibit E**, which form may be amended from time to time, with a copy to DMH and the County, which shall include data on MHSA tenants’ access to supportive services and rental subsidies. Borrower shall confirm with the Agency that Borrower is using the most recent Annual Self-Certification Form.

7. Establishment and Use of Reserve and Development Accounts. If indicated on **Exhibit C**, the Borrower shall establish and maintain the following reserve and escrow accounts. The reserve and escrow accounts shall be an asset of the Development and may be used at the end of the MHSA Permanent Loan term to pay off the MHSA Permanent Loan. Initial and annual deposits, required Agency approvals, and possession and control over such accounts shall be in accordance with **Exhibit C**.

(a) Operating Expense Reserve. An Operating Expense Reserve (“**OER**”) shall be established and made available to cover payment of Operating Expenses associated with the Development which exceed available Gross Income, as determined and approved by the Agency. Annual deposits may be required if indicated in **Exhibit C**. In addition, if the Development receives COSR, the OER shall be available, to the extent funds exist, to provide financial assistance to the COSR MHSA Housing Units upon depletion of the COSR. Any amounts remaining in this account when the MHSA Permanent Loan is paid in full shall be returned to the Borrower.

Except as provided below, the OER shall be fully funded with the proceeds of the MHSA loan. At the Agency’s discretion, if the Development receives COSR funding, the OER may be funded with other available funds at permanent loan conversion. If the OER is funded from a source other than the MHSA loan, the first payment from the COSR will be contingent upon the full funding of the OER.

(b) Replacement Reserve. A Replacement Reserve (“**RR**”) shall be established and maintained until the termination of this Agreement. The RR shall be used to replace major structural elements or equipment of the Development or for any other purpose consistent with maintaining the physical integrity of the Development. The initial and annual deposits are payable as indicated in **Exhibit C** and shall be based upon the total number of units (i.e., not limited to the MHSA Units). Disbursements from the RR shall require advance approval by the Agency. The Agency may from time to time review and adjust the annual deposit.

(c) Supplemental Capital Operating Subsidy Reserve. A Supplemental Capital Operating Subsidy Reserve (“**SCOSR**”) may be established if indicated on **Exhibit C** and used to pay

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Operating Expenses associated with the MHSA Housing Units to the extent that Development’s Gross Income is insufficient. This SCOSR will be used prior to any disbursements from the COSR.

***[IF APPLICABLE]*** (e) Cash Flow Operating Reserve. A Cash Flow Operating Reserve (“***CFOR***”) may be funded as a Non-Standard Operating Expense, if indicated on **Exhibit C**, and may have an annual contribution of up to three percent (3%) of annual Gross Income remaining after approved Operating Expenses, excluding any COSR contribution. This CFOR shall be used for \_\_\_\_\_.

(e) Development Account. The Borrower shall establish an account (the “***Development Account***”) with a depository which is insured by the Federal Deposit Insurance Corporation (“***FDIC***”) or by a successor in interest to FDIC into which all Gross Income, tenant security deposits and COSR (if applicable) of the Development shall be deposited when received. If otherwise required by another lender, security deposits may be held in a separate account (“***Security Deposit Account***”). The Borrower or any person receiving funds of the Development other than as permitted by this Agreement shall immediately deposit such funds in the Development Account or Security Deposit Account, if applicable, and failing to do so shall hold such funds in trust for the Development. The Borrower or any person receiving any property of the Development in violation of this Agreement shall immediately deliver such property to the Agency, and failing to do so shall hold such property in trust for the Development. Reserves, subsidies, deposits, rents, charges, fees and any other deposits and/or income of the Development as used herein shall also include, without limitation, such income derived from commercial facilities of the Development, if any.

(i) Disbursements from the Security Deposit Account shall be in accordance with state law. Disbursement from the Development Account shall be permitted only to pay Operating Expenses, Non-Standard Operating Expenses (if applicable), permitted Distributions, required Residual Receipts Loan payments and, if the Agency approves in advance, repayment of Operating Expense Loans, if any.

(ii) Subject to the security interests of senior lenders, Borrower agrees that upon the Agency’s written request the Agency shall be granted a security interest in all required reserve and escrow funds not held by the Agency, which are intended to benefit the Development. To the extent the Agency holds reserve and escrow funds, Borrower hereby grants the Agency a first security interest therein. Borrower also agrees that any conveyance, voluntary or involuntary, shall have the effect of transferring to the grantee/transferee of all Borrower’s interest and all of its rights to reserve and escrow accounts held by the Agency, without further act by the Borrower, and upon termination of the requirement of this account, the Agency shall return the balance to the then legal owner of the Development. Borrower hereby appoints the Agency, during the term of this Agreement, as its attorney-in-fact to substitute any new owner of the Development, or the Agency itself, as signatory of the reserve and escrow accounts, in the place of Borrower.

(f) Security Interest. If at any time the Agency requires a first priority security interest in accounts not held by the Agency, Borrower shall notify the Agency of the identity of the depository, the branch where the accounts are established and the account number. Borrower agrees

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that it will require that the depository execute a deposit account control agreement within the meaning of Article 9 of the California Uniform Commercial Code (“***Control Agreement***”), in a form acceptable to the Agency, to perfect the Agency’s security interest in such account. The Agency shall be entitled to exercise its rights under the Control Agreement upon Borrower’s default, as determined by the Agency in its sole discretion, under the MHSA Permanent Loan Documents. However, the Agency shall not be obligated to give the Borrower the advance notice of default required by Section 15 of this Agreement prior to giving the depository the written “Notice of Exclusive Control” provided for in the Control Agreement.

If any of the Development accounts are subject to the security interest described above, and are subject to a Control Agreement, Borrower may not transfer that/those accounts to another depository without the prior written consent of the Agency, which consent, if granted in the Agency’s sole discretion, may be conditioned upon the new depository executing a Control Agreement.

(g) Application of Reserve Accounts if Default. In the event of a default under this Agreement, or any of the other MHSA Permanent Loan Documents, the Agency in its sole discretion may apply or authorize the application of the funds then held by the Agency in any of the accounts provided for in this Section, to any amounts then due under this Agreement or the other MHSA Permanent Loan Documents, or use such funds for the continued operation of the Development, provided, however, that if the default is cured, all remaining funds shall be returned to the appropriate account.

8. Financial Covenants. In addition to, but not by way of limitation of, all other duties of the Borrower set forth herein, the Borrower shall comply with the following:

(a) Servicing Fee. As of the MHSA Permanent Loan Closing Date, the Borrower shall have paid a *pro rata* amount of the Servicing Fee. The annual Servicing Fee in the amount specified on **Exhibit D** shall be due in advance on January 1<sup>st</sup> of each year thereafter until the later of: (i) payment in full of the MHSA Permanent Loan; or (ii) termination of the MHSA Regulatory Agreement. The first annual payment of the Servicing Fee shall be due January 1, 20\_\_.

(b) Annual Operating Budget. The Borrower shall submit to the Agency a proposed operating budget (“***Annual Operating Budget***”) for the Development not later than sixty (60) days prior to the beginning of each Fiscal Year following completion of construction of the Development. The proposed Annual Operating Budget shall set forth the anticipated Gross Income of the Development and a detailed estimate of all Operating Expenses thereof, which shall include an itemization of such expenses. The Annual Operating Budget shall be subject to approval by the Agency and shall otherwise be consistent with the requirements of this Agreement. The non-Supportive Services expenses associated with the MHSA Housing Units shall be in proportion to the total number of Units. If the Development has a COSR, and less than one hundred percent (100%) of the Units are MHSA Housing Units, the proposed Annual Operating Budget shall be bifurcated and expenses shall be allotted proportionately in terms of the number of total Units compared to COSR MHSA Housing Units per the COSRA. The Agency may request further delineation of expenses as it deems necessary.

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(c) Annual Supportive Services Budget. At the time the Annual Operating Budget is submitted to the Agency, Borrower shall also submit to both DMH and the Agency a County-approved Supportive Services Budget (the “***Annual Supportive Services Budget***”) in conformance with Agency requirements. The Annual Supportive Services Budget shall identify funding sources, staff requirements and on-site and off-site Supportive Services operating cost projections.

(d) Annual Audit. The Borrower shall provide the following reports to the Agency not later than ninety (90) days following the end of each Fiscal Year following completion of construction of the Development:

(i) A complete annual financial report for the Development based upon an examination of the books and records of the Development prepared in accordance with the requirements of the Agency (“***Annual Audit***”). If the Development contains more than twenty-five (25) Units the Annual Audit shall be certified, at the Borrower's expense, by an independent certified public accountant licensed in California and acceptable to the Agency. Each such Annual Audit shall be subject to the approval by the Agency. If the Development has a COSR and if fewer than one hundred percent (100%) of the Units are COSR MHSA Housing Units, allocation of income and expenses shall be proportionate to the total number of Units to the MHSA Housing Units; and

(ii) Any other financial report as may be required by the Agency.

(e) Quarterly Reports. Within thirty (30) days following the end of each quarter following completion of construction of the Development, the Borrower shall provide the Agency with a complete quarterly financial report. The quarterly financial report must include a detailed accounting of, without limitation, all income and expenses, accounts receivable, accounts payable and disbursements received or made in the quarter reported.

(f) Audit Books and Records. The Borrower shall maintain the books and records of the Development in accordance with the requirements of the Agency. The Development and all equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination, inspection and copying at any reasonable time by the Agency or by its authorized representative upon reasonable notice to the Borrower.

(g) Furnishing Information. Upon the Agency’s request, Borrower shall furnish such reports, financial statements, projections and analyses as may be required by the Agency, including information as requested by the Agency related to any construction (if applicable) and shall provide information the Agency requests regarding the income, expenses, assets, liabilities, contracts, operations and conditions of the Borrower and the Development. Borrower understands and agrees that the content of such reports, statements, projections, analyses and any other information may be publicly disclosed.

(h) Single Asset Entity. Unless the Agency agrees otherwise in writing, Borrower shall maintain its status as a single asset entity.

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(i) Property Tax Exemption. Until the end of the term of this Agreement, Borrower shall take any and all actions necessary to maintain the Development's property tax exemption pursuant to California Welfare & Tax Code Section 214.

9. Distributions.

(a) Annual distribution of Surplus Cash to the Borrower shall be in accordance with **Exhibit D**. The Agency shall review the Annual Audit which shall be prepared in accordance with requirements of the Agency and determine whether a Distribution of Surplus Cash should be approved. All Distributions may be taken annually but only after the Agency's prior written approval. Approved Distributions shall be up to the proportionate amount of Surplus Cash specified in **Exhibit D**. There shall be no accrual of Distributions from year to year.

(b) The proceeds of any unapproved Distribution shall be held in trust for the Development and shall be immediately refunded to the Development upon the Agency's demand. The Borrower shall be obligated to pay interest thereon to the Development at the rate of ten percent (10%) until the unapproved Distribution is returned in full to the Development.

10. Residual Receipts. All remaining funds, after the Agency-approved Distribution, shall be payable in the proportion specified in **Exhibit D**, to Residual Receipts loans, including the MHSA Permanent Loan. Failure to make the required annual payments on the Residual Receipts loans on or before the earlier of thirty (30) days from the date of Agency approval of the Annual Audit or one hundred fifty (150) days after the end of each Fiscal Year shall constitute a default under the MHSA Permanent Loan Documents.

11. Certain Acts Prohibited and Events of Default. The Borrower shall not, without the prior written approval of the Agency, do any of the following. The granting of the Agency's approval shall be in its sole, unfettered discretion and may be conditioned upon the satisfaction of such terms and conditions as the Agency may prescribe.

(a) Make any sale, assignment, conveyance or transfer in any other form of the Development or any part thereof or of any of its interest therein, whether voluntarily or involuntarily, or by operation of law.

Notwithstanding the foregoing, if the Borrower has a tax credit limited partner, Agency consent is not required for any transfer of tax credit limited partner's interest in Borrower provided that all investor pay-ins have been made to Borrower, or if all of the investor pay-ins have not been made, then Agency consent is not required for any transfer of tax credit limited partner's interest in Borrower provided that the transfer is to an Affiliated Entity. For this purpose, an "Affiliated Entity" is an entity that controls, is controlled by or is under common control with Borrower's tax credit limited partner. Any such transfer shall include the assumption of all of the tax credit limited partner's rights, obligations and liabilities under the Borrower's Partnership Agreement dated \_\_\_\_\_. Borrower shall provide any amendments to the Borrower's partnership agreement, along with any other pertinent information related to the transfer.

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- (b) Make a change or a transfer of the interest of the general partner (if a limited partnership) or the managing member(s) (if a limited liability company).
- (c) Make any Distribution not permitted by the terms of this Agreement.
- (d) Assign or transfer any right to manage the Development.
- (e) Materially remodel, add to, reconstruct, demolish or damage any part of the Development.
- (f) Require, as a condition of the occupancy or leasing of any Unit in the Development to an MHSA Eligible Resident, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one (1) month's rent to guarantee the performance of the covenants of the lease.
- (g) Incur any liability or obligation in connection with the Development, contingent or otherwise, other than for current Operating Expenses and for the indebtedness evidenced by the Note, or incur any liability or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Development.
- (h) Invest any funds from the Development in any property, real, personal or mixed, except as authorized by this Agreement, or deposit any such funds in a depository not authorized by this Agreement.
- (i) Make a loan of any funds from the Development to any person or entity.
- (j) Fail to establish or maintain the accounts required by Section 7 and **Exhibit C** of this Agreement; and failure to maintain Agency-required insurance.
- (k) Cause or permit the Development to be maintained in a condition which the Agency deems, in its sole discretion, as an impairment of its security interest, or a violation of the Borrower's obligation to maintain the Development in a safe, sanitary and decent condition.
- (l) If the Development receives project-based assistance or subsidy, cause or permit the loss of the subsidy or termination of the contract governing such subsidy, or failure to apply for or accept an extension thereof.
- (m) Fail to provide, or cause to be provided, the Supportive Services as contemplated in **Exhibit B**, unless otherwise approved in writing by DMH and the County.
- (n) Fail to pay the Servicing Fee and Residual Receipts loan payments when due.
- (o) Fail to rent MHSA Housing Units to MHSA Eligible Residents.
- (p) If the Development receives a COSR, fail to abide by the terms of the COSRA.

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- (q) Be in default under the terms of any senior lender's loan obligations.
- (r) Fail to comply with the terms of the MHSA Permanent Loan Documents.

12. Non Discrimination. Borrower shall not discriminate in providing equal access with respect to rental of Units within the Development in accordance with the mandates of state, federal and local law. Borrower shall seek such legal advice as necessary to assure such non discrimination and equal access to housing.

13. Actions. The Borrower agrees to notify the Agency promptly in writing of any action or proceeding by or against the Development or by or against the Borrower with respect to the Development. No action or proceeding seeking the recovery of a sum in excess of Twenty-Five Thousand and No/100s Dollars (\$25,000.00) or for specific performance or other equitable relief shall be instituted by the Borrower with respect to the Development, nor shall any action or proceeding seeking the recovery from the Development, or from the Borrower with respect of the Development, of a sum in excess of Twenty-Five Thousand and No/100s Dollars (\$25,000.00) or for specific performance or other equitable relief against the Development, or against the Borrower in respect of the Development, be settled or compromised by the Borrower, without the prior approval of the Agency. Any such approval may be subject to such terms and conditions as the Agency may prescribe.

14. Assignment of Rents for Security. As security for the performance of the Borrower of all its obligations under this Agreement, subject to the rights of senior lenders, if any, the Borrower hereby assigns and pledges to the Agency all of the Borrower's right, title and interest in and to the rents, profits, income and charges of whatsoever kind or nature which it may receive or be entitled to receive from the operation of the Development, subject, however, to any assignment of rents or like provision contained in the MHSA Deed of Trust or in any of the other MHSA Permanent Loan Documents; provided, however, that unless and until a default under this Agreement is declared by the Agency or a default or event of default shall have occurred under any of the other MHSA Permanent Loan Documents, the Borrower shall be permitted to collect and retain such rents, profits, income and charges, subject to the provisions of this Agreement.

15. Violation of Agreement by the Borrower. In the event of the violation of any of the provisions of this Agreement by the Borrower, which does not require immediate judicial relief due to waste or health and safety issues, the Agency shall give written notice thereof, by registered or certified mail, to the Borrower at the address stated in this Agreement, or to such other address as may have been designated by the Borrower in writing, and a copy of such notice to DMH; and if such violation is not corrected to the satisfaction of the Agency within thirty (30) days after the date such notice is mailed (or within such further time as the Agency in its sole discretion may permit), the Agency may without further prior notice declare in writing a default under this Agreement effective on the date of such declaration of default, and upon any such declaration of default, or, irrespective of any such declaration of default, upon the occurrence of a default or event of default under any of the other MHSA Permanent Loan Documents, the Agency may:

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(a) Declare the whole of the principal amount of the indebtedness evidenced by the Note immediately due and payable and proceed with the rights and remedies provided for in the MHSA Permanent Loan Documents.

(b) Collect all rents, rental subsidies, profits, income and charges in connection with the operation of the Development and use same or the proceeds thereof, in such order as the Agency may determine, toward satisfaction of the Borrower's obligations under this Agreement or any of the MHSA Permanent Loan Documents, and toward payment of the necessary expenses of preserving and operating the Development.

(c) Take possession of the Development, bring any action necessary to enforce any rights of the Borrower growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the Agency, in its sole discretion, shall determine that the Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of any of the other MHSA Permanent Loan Documents.

(d) Apply to any court, state or federal, for specific performance of this Agreement; for an injunction against any violation by the Borrower of this Agreement; for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement; or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the Agency arising from the default under any of the terms of this Agreement would be irreparable, and that it would be extremely difficult to ascertain the amount of compensation to the Agency which would afford adequate relief.

The Agency shall provide to DMH a copy of any statutorily-required notice of default provided to the Borrower.

16. Interest Charges. In the event that the Borrower fails to make timely payment of any money provided for in this Agreement, then such payment obligation shall be increased to include interest at the rate of the lesser of ten percent (10%) simple interest per annum or the maximum rate permitted by law.

17. Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice direction, consent, request or other action by the Agency is required or permitted under this Agreement, such approval, notice direction, consent, request or other action shall be in writing.

18. Integration and Amendments. The MHSA Permanent Loan Documents constitute the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral.

19. MHSA Housing Program Terms. The MHSA Permanent Loan Documents shall not be modified, except by written instrument executed by all parties. Any reference to the MHSA Permanent Loan Documents includes any amendments, renewals or extensions now or hereafter

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approved by the Agency in writing. Any changes in the MHSA Housing Program rules or lending terms made after execution of this Agreement shall not affect Borrower's obligations as agreed to herein unless otherwise approved in writing by the Agency.

20. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

21. Binding on Successors. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns; provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior approval of the Agency. Except as expressly provided herein, this Agreement shall be for the exclusive benefit of the parties hereto and shall not confer any rights upon any third party. In the event the Borrower transfers title, possession or control of the Development to a third party, the Borrower covenants to require as a condition of transfer that such third party agrees to be bound by and to operate the Development in accordance with this Agreement. The Agency is deemed to be the beneficiary of such conditions and agreements with the right to enforce them against any such third party.

22. Recordation. This Agreement shall be acknowledged by each of the parties and recorded in the official records of the county in which the Development is located.

23. Election of Remedies; Events of Default. The remedies of the Agency hereunder and under the other MHSA Permanent Loan Documents are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

24. Waiver by the Agency. No waiver by the Agency of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereof or default hereunder.

25. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. The Borrower represents and warrants that at all times its acts in connection with the Development have complied with and shall continue to comply with all applicable provisions of federal, state and local laws, all applicable provisions of the MHSA Housing Program, the rules, regulations, policies and procedures of the Agency and all agreements with the Agency and any other public entities concerning the Development as amended from time to time. The Borrower represents to the Agency that professional advice is available to the Borrower for the purpose of enabling the Borrower to be aware of and to comply with said laws, policies, procedures and agreements.

26. Legal Notices. Written notices by and between the parties hereto shall be addressed as follows unless and until a party hereto has, in writing, communicated a different address to the other party hereto, provided, for notices other than to Borrower, the Agency shall use its best efforts, and

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provided further that no legal consequences shall arise by reason of the Agency’s failure to give notice to any person other than Borrower:

Borrower: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Department of Mental Health: California Department of Mental Health  
1600 Ninth Street, Room 151  
Sacramento, California 95814

Agency: Office of General Counsel  
California Housing Finance Agency  
500 Capitol Mall, Suite 1400  
Sacramento, California 95814

County: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. Attorney Fees, Costs. In any nonjudicial foreclosure process, or action to enforce or relating to any provision of the MHSA Permanent Loan Documents, the prevailing party shall be entitled to recover from the other party its costs and expenses. The term “costs and expenses” as used herein shall include all costs and expenses actually and reasonably incurred including but not limited to attorney fees; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to Section 68093 of the California Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporter’s fees as established by statute; investigation expenses in preparing the case for trial; postage, telephone, and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits, and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

28. No Conflict With Other Documents. The Borrower warrants that it has not, and shall not, execute any other agreement with provisions contradictory to the provisions hereof, and that, in any event, the requirements of this Agreement shall be paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

29. Agency Insurance Requirements. The Borrower shall cause insurance on the Development to be maintained in substantial conformance with the requirements of the Agency as

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amended from time to time and as posted on the Agency’s website. In addition Borrower shall require that all Service Providers with which it is party to maintain adequate insurance associated with their scope of work and have both the Borrower and the Agency as additional insureds.

30. Maintenance. The Borrower shall maintain the Development in a decent, safe and sanitary condition and in a good state of repair as determined by the Agency in its sole discretion.

31. Indemnification. The Borrower shall indemnify, defend (with counsel reasonably chosen by the Agency, at the Agency’s option), and hold the Agency, and its employees, officers, agents, and board members harmless against all claims which arise out of or in connection with the ownership or occupancy of or construction on or in connection with the Development (including, without limitation, rehabilitation) by the Borrower or the Borrower’s contractors, subcontractors, agents, employees, or tenants, including claims resulting from the Borrower's failure to comply with federal, state and local Fair Housing laws regarding discrimination in rental housing, handicapped accessibility, prevailing wage (California Labor Code Section 1720 et seq.) and/or Davis Bacon (40 U.S.C. 276(a) et seq.) (as applicable), and the relocation of persons displaced by the Development. The Borrower agrees that the Borrower, and not the Agency, is responsible for assuring compliance with such laws. This section shall survive the termination of this Agreement.

32. Environmental Covenants. The Borrower represents and warrants that after reasonable investigation and inquiry, and except as indicated in the Phase I environmental report submitted to the Agency, as of the MHSA Loan Permanent Closing Date it has no knowledge of any hazardous substance or environmental condition on or within two thousand (2,000) feet of the Development which may adversely impact the security of the MHSA Permanent Loan, or which may render the Development financially infeasible, or which may affect the health and safety of the occupants, the Development, or which may present an undue risk of liability to the Agency. The Borrower agrees to comply with all laws and orders of any federal, state or local governmental agency relating to clean-up or remediation, or other response action required by applicable law or order concerning a release or threatened release of hazardous substances in or on the Development. The term “*hazardous substance*” as used in this paragraph shall mean as defined at Code of Civil Procedure Section 736(f)(3).

The Borrower shall give any and all environmental notices to tenants and/or workers (both employee and independent contractor) which may be required by state or federal law. The Borrower hereby agrees to indemnify and hold the Agency harmless for any and all liability arising out of the presence of hazardous substances on the Development during the longer of the term of the MHSA Permanent Loan or the term of the MHSA Regulatory Agreement. Liability may be established by, among other forms of demands, a demand in the form of a judgment, a settlement, or an administrative order; and may include costs, fees, penalties, interest, attorney fees, and other costs related thereto. Whereas the purpose of this indemnity is to protect the Agency from harm, the rights to recover shall accrue as soon as the liability is incurred or costs are advanced. The term “any and all liability” shall include, but shall not be limited to, liability for: (a) the clean-up of hazardous substances; (b) claims for contribution or apportionment of remedies; and (c) claims for physical or other damages to persons, property, or natural resources. The duty of the Borrower to indemnify and hold the Agency harmless shall include the duty to defend as set forth in California Civil Code Section 2778.

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33. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BORROWER:**

**AGENCY:**

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

**CALIFORNIA HOUSING FINANCE AGENCY**, a  
public instrumentality and political subdivision of  
the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENTS**

**EXHIBITS**

- Exhibit A Legal Description of the Development
- Exhibit B DMH-Approved Supportive Services Plan (including Section D9 from the Application for MHSA Funding)
- Exhibit C Impound and Reserve Accounts
- Exhibit D Priority of Payments – MHSA Permanent Loan
- Exhibit E Annual Self-Certification Form
- Exhibit F Committed Subsidies

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**Exhibit A**

**Legal Description of the Development**

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**Exhibit B**

**DMH-Approved Supportive Services Plan**

**Exhibit C  
Impound & Reserve Accounts**

<b>Type and Amount</b>	<b>Initial Deposit</b>	<b>Initial Funding Date</b>	<b>Annual Deposit Amount</b>	<b>Annual Funding Date</b>	<b>Held By</b>
Rent Up Account (RUA)		MHSA Permanent Loan Closing Date <b>[OR]</b> Certificate of Occupancy	N/A	N/A	Borrower
Operating Expense Reserve (OER)*		MHSA Permanent Loan Closing Date <b>[OR]</b> Certificate of Occupancy	N/A	N/A	California Housing Finance Agency (“ <i>CalHFA</i> ”) <b>[OR]</b> Other Lender
Replacement Reserve (RR)*	[if acq/rehab \$1,000 per MHSA Unit]	MHSA Permanent Loan Closing Date <b>[OR]</b> Certificate of Occupancy	Minimum \$500 per unit	Monthly in advance	Borrower
Cash Flow Operating Reserve (CFOR)	N/A	N/A	Up to three percent (3%) of annual cash flow as approved by the Agency		Borrower

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Capitalized Operating Subsidy Reserve (COSR)		MHSA Permanent Loan Closing Date**	N/A	N/A	CalHFA
Supplemental Capital Operating Subsidy Reserve (SCOSR)		MHSA Permanent Loan Closing Date	N/A	N/A	CalHFA

Insurance impounds held by CalHFA  
 Yes No

Tax impounds held by CalHFA  
 Yes No

\*30 day approval required by CalHFA prior to use.

\*\*Initial Disbursement of the COSR is subject to the Capitalized Operating Subsidy Reserve Agreement.

**Exhibit D**  
**Priority of Payments – MHSA Permanent Loan**  
**After Approved Operating Expenses**

**Part A - Agency-Approved Operating Expenses including Servicing Fee and Amortizing Debt (if applicable):**

Agency 0.42% Servicing Fee:	
Lender:	
Initial Principal Amount:	
Payment Amount:	
Term to Maturity:	
Lien Position:	
Interest Rate:	

**Part B – Non Standard Operating Expense (which are subject to change as approved by the Agency):**

	Total	Payable from COSR
0.42% due to HCD*:		
Annual Bond Issuance Fees:		
Estimated Deferred Developer Fees:		
Partner Asset Management Fees:		
Cash Flow Operating Reserves:	3% annual gross revenue	
On-Site Supportive Services Costs:		
Other Lender Required Reserves:		
Other:		

\* If an HCD MHP loan is made to Borrower.

**Part C - Borrower’s Allowable Distribution**

___ % of Surplus Cash
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**Part D – Residual Receipts (defined as the balance of Surplus Cash remaining after payment of Borrower’s allowable Distribution) to be Payable to Residual Receipts Lenders as follows:**

Lender:	CalHFA / MHSA
Initial Principal Amount:	
Percentage of Residual Receipts:	
Term to Maturity:	
Lien Position:	
Interest Rate:	% simple

Lender:	
Initial Principal Amount:	
Percentage of Residual Receipts:	
Term to Maturity:	
Lien Position:	
Interest Rate:	

Lender:	
Initial Principal Amount:	
Percentage of Residual Receipts:	
Term to Maturity:	
Lien Position:	
Interest Rate:	

Lender:	
Initial Principal Amount:	
Percentage of Residual Receipts:	
Term to Maturity:	
Lien Position:	
Interest Rate:	

Note: If an HCD MHP loan is made to Borrower, the Residual Receipts percentages shown above shall be adjusted in proportion to each Residual Receipts lender’s loan amount.

**Exhibit E**

**Annual Self-Certification Form**

Before completing this form, please visit <http://calhfa.ca.gov/multifamily/mhsa> to ensure you are using the most recent version

**CALIFORNIA HOUSING FINANCE AGENCY (CalHFA)  
Mental Health Services Act (MHSa) Housing Program  
Annual Self-Certification for Special Needs**

**County:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_  
**MHSa Loan #** \_\_\_\_\_  
**Cert. of Occupancy or Notice of Completion Date** \_\_\_\_\_

**Self Certification Report Period from:** \_\_\_\_\_ to \_\_\_\_\_

**Contact Information:**

Project Sponsor		Phone:
Primary Service Provider		Phone:

**1. Changes During Report Period:**

Please check applicable items. For each checked item, please attach all letters, notes, correspondence and/or written notices documenting the change.

- |  |   |
|--|---|
| <input type="checkbox"/> New sources of service funds                | <input type="checkbox"/> Service funding source cancellation                      |
| <input type="checkbox"/> Service funding increases or decreases      | <input type="checkbox"/> Non-renewal of service funding sources                   |
| <input type="checkbox"/> New service partners                        | <input type="checkbox"/> Non-compliance with other lenders' Regulatory Agreements |
| <input type="checkbox"/> Service partner cancellation                | <input type="checkbox"/> Non-compliance with rental subsidy contracts             |
| <input type="checkbox"/> Service program enhancements or reductions  | <input type="checkbox"/> Non-compliance with services contracts                   |
| <input type="checkbox"/> Other planned service program modifications | <input type="checkbox"/> Extension of rental subsidy contracts                    |
| <input type="checkbox"/> Primary service provider staffing changes   | <input type="checkbox"/> Termination of rental subsidy contracts                  |

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**2. Subsidy Sources:**

Total number of units with rental subsidy contracts: \_\_\_\_\_

Years remaining on current rental subsidy contracts (please list):

Type of Subsidy	Number of Units	Years Remaining

**3. Current Resident Information**

Total number of units in project	
Total number of MHSA Housing Program target units in project	
Total number of MHSA eligible residents in project	
Total number of persons residing in MHSA eligible units	
Total number of MHSA housing units receiving COSR	
Total number of MHSA units with an individual Section 8 voucher	
Total number of MHSA units with a project based Section 8 voucher	
Total Number of MHSA eligible residents receiving SSI	

**4. During this Report Period: MHSA Eligible Residents Who Have Left the Housing (Show the number of permanent (P) and temporary (T) departures)**

P	T	Reason for Leaving	P	T	Reason for Leaving
		Hospitalization			Jailed
		Moved to a licensed facility			Death
		Moved to more independent housing			Other
		Eviction			

Total number of temporary departures \_\_\_\_\_  
 Total number of permanent departures \_\_\_\_\_

Provide the following for each MHSA eligible resident who permanently departed from an MHSA unit: 1) Length of residency, 2) Income level at termination of tenancy.

Explanation(s):

**5. During this Report Period: MHSA Resident Demographics**  
**Enter the number of MHSA eligible residents in each category (may be duplicated)**

<input type="checkbox"/>	Living alone	<input type="checkbox"/>	Chronic health condition
<input type="checkbox"/>	Living with other(s)	<input type="checkbox"/>	HIV/AIDS
	<input type="checkbox"/> Children	<input type="checkbox"/>	Substance Abuse
	<input type="checkbox"/> Spouse		Other serious medical condition
	<input type="checkbox"/> Unrelated persons	<input type="checkbox"/>	

**6. During this Report Period: Housing status at rent-up**

Total Homeless: \_\_\_\_\_  
 Total At risk: \_\_\_\_\_

**7. Total MHSA Priority Populations in project:**

Older Adults: \_\_\_\_\_  
 Adults: \_\_\_\_\_  
 Transition age youth: \_\_\_\_\_  
 Children: \_\_\_\_\_

Total MHSA eligible residents enrolled in Full Service Partnership (FSP) services: \_\_\_\_\_  
 Total number of MHSA eligible residents who are veterans \_\_\_\_\_  
 Total number of tenants who are veterans \_\_\_\_\_

**8. Service Providers (please attach additional pages if needed)**

Please list requested information for all service providers, whether individuals or organizations/institutions, and whether the service provider provides services on site or off site:

Provider Name	Address	Phone Number	Contact Person	On-Site	Off-Site
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

**9. Supportive Services---Resources and Utilization**

Indicate the services that have been offered to the MHSA eligible residents in this project during the reporting period. Also, indicate if these services are offered on-site or off-site, and the frequency of the service (times per week, per month, as needed, etc.):

Service Type	On-site	Off-site	Frequency
Service coordination	<input type="checkbox"/>	<input type="checkbox"/>	
Case management/crisis intervention	<input type="checkbox"/>	<input type="checkbox"/>	
Mental health services	<input type="checkbox"/>	<input type="checkbox"/>	
Substance abuse services	<input type="checkbox"/>	<input type="checkbox"/>	
Peer facilitated groups/activities	<input type="checkbox"/>	<input type="checkbox"/>	
Medication education/support	<input type="checkbox"/>	<input type="checkbox"/>	
Life skills	<input type="checkbox"/>	<input type="checkbox"/>	
Employment/vocational services	<input type="checkbox"/>	<input type="checkbox"/>	
Tenant association/council	<input type="checkbox"/>	<input type="checkbox"/>	
Benefits counseling	<input type="checkbox"/>	<input type="checkbox"/>	
Social/recreational activities	<input type="checkbox"/>	<input type="checkbox"/>	
AA/NA groups	<input type="checkbox"/>	<input type="checkbox"/>	
Primary care: Health screening, assessment, education	<input type="checkbox"/>	<input type="checkbox"/>	
Other:	<input type="checkbox"/>	<input type="checkbox"/>	

Provide a narrative description of the strengths and challenges in the supportive services program during this reporting period:

**10. Supportive\_Service Budget Information**

Please provide budget information for your previous and current fiscal years, including costs of staff and services combined:

Previous year budgeted funding level (FY: )	\$
Previous year actual funding level (FY: )	\$
Current year budgeted funding level (FY: )	\$

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**Certification of Accuracy of Information Provided**

I hereby certify that the information provided in this “Annual Self-Certification for Special Needs” is true and correct, and reflects the status of the \_\_\_\_\_ project as of the date of this report.

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

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

Organization: \_\_\_\_\_

**Certification that a copy of this report has been sent to CalHFA, the State Department of Mental Health and the County Mental Health Department at the addresses listed below.**

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_

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

Organization: \_\_\_\_\_

**Mailing Addresses:**

California Housing Finance Agency  
Asset Management Division  
Attn: Abe Tsadik  
100 Corporate Pointe, Suite 100  
Culver City, CA 90230

California Department of Mental Health  
Attn: Jane Laciste  
MHSA Plan Review and Community Program Support Section  
1600 9<sup>th</sup> Street, Suite 150  
Sacramento, CA 95814

**County Mental Health Department**

**Contact Name:** \_\_\_\_\_

**Street:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

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**Exhibit F**

**COMMITTED SUBSIDIES**

**ACKNOWLEDGEMENTS**

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert the name and title of the officer), personally appeared \_\_\_\_\_  
(insert name of signer), 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 is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature) (Seal)

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert the name and title of the officer), personally appeared \_\_\_\_\_  
(insert name of signer), 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 is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature) (Seal)