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California Government Code
Sections 6103 and 27383

Recording requested by:
and when recorded mail to:

Department of Housing and
Community Development
ATTN: EHAPCD Manager
P.O. Box 952054
Sacramento, CA 94252-2054

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
EMERGENCY HOUSING AND ASSISTANCE PROGRAM CAPITAL DEVELOPMENT**

NOFA «NOFA_DATE»

REGULATORY AGREEMENT

LOAN NUMBER «Loan_No»

Date of this Agreement: **INSERT DATE**

Parties to this Agreement:

DEPARTMENT:

The DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,
a public agency of the State of California
Emergency Housing and Assistance Program Capital Development (EHAPCD)
P.O. Box 952054, Sacramento, CA 94252-2054
Or
2020 W. El Camino Ave. Sacramento, CA 95833

BORROWER:

«Applicant_Name», «Organization_Status»
«Auth_Rep_Address»
«Auth_Rep_City», CA «Auth_Rep_Zip»

LOAN AMOUNT: «Loan_Amount»

MATURITY DATE: «Loan_Term» years from the date of recordation by the County Recorder of the **Notice of Completion or issuance of the Certificate of Occupancy, whichever occurs last.**

The **PROPERTY ADDRESS** is: «Project_Shelter»
«Shelter_Address»
«Shelter_City», California «Shelter_Zip_Code»
APN:

This Regulatory Agreement (the "Agreement") is made and entered into as of the above date, by and between the parties hereto, and pursuant to the Standard Agreement.

In consideration of a Emergency Housing and Assistance Program Capital Development loan (the "Loan"), in an amount not to exceed the Loan Amount indicated above, which was awarded to Borrower under the Emergency Housing and Assistance Program Capital Development (the "Program"), and the covenants and promises contained in the documents evidencing the Loan, the parties hereto agree as follows:

1. Compliance with Program Requirements

This Agreement shall be subject to the Program requirements as contained in Health and Safety Code sections 50800-50806, the Notice of Funding Availability (NOFA) issued by the Department as of the date indicated on Page 1, the Standard Agreement, the Promissory Note, Deed of Trust and the Development Agreement when applicable securing the Loan, all of which are incorporated herein and made a part hereof as though set forth in full. The Borrower agrees that at all times its actions regarding the Development and the use of funds provided under the Standard Agreement shall be in conformity with all Program requirements, including the requirements of this Agreement and the other Loan documents. The Borrower acknowledges that it is familiar with the above referenced Program requirements and has access to professional advice to the extent necessary to enable the Borrower to fully comply with the Program requirements.

2. Emergency Shelter/Transitional Housing

Borrower is or will be at the time Loan funds are disbursed, the owner or lessee of the Property identified above and more particularly described in Exhibit A, which is attached and incorporated herein.

The Property, together with all improvements now or hereafter erected thereon, shall be deemed to be and remain a part of the Property covered by this Agreement and is referred to herein as the Development.

3. Term

This Agreement shall be binding on Borrower, its successors, transferees, or assigns, from «Loan_Term» years from the date of recordation by the County Recorder of the **Notice of Completion or issuance of the Certificate of Occupancy, whichever occurs last.**

4. Required Use

- a) During the term of this Agreement, Borrower agrees to use the Development as **Transitional Housing, Emergency Shelter, Safe Haven** *(delete what does not apply)* for otherwise homeless persons. Development to contain a total of «Total_Beds» beds; ____ **preserved (TH or ES) beds / ____ new (TH or ES) beds.** *(Fill in number or preserved and/or new beds and state either TH or ES).*
- b) No individual or household may be denied emergency shelter because of an inability to pay. When a transitional housing project charges rent to persons and families occupying the Property, the following conditions must be met:
- 1) A minimum of 10 percent of all monies collected for each client is reserved, and the reserve of each client is accounted for separately.
 - 2) The monies reserved for a client shall be used to assist that client in moving to permanent housing. If the monies reserved for a client remain unused due to the absence of the client for a year or more, the monies shall be used to assist another client in moving to permanent housing.
 - 3) The limitation on rent charged may not exceed the highest of: 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly gross income.
- c) Borrower shall not conduct any activity at the Development that is incompatible with or interferes with either the approved use or the intent of the Program to provide emergency shelter/transitional housing.

5. Sale and Transfer

Borrower shall not sell or transfer or enter into any contract for sale or transfer of the Development, or any interest therein, unless it has notified the Department in accordance with Paragraph 15 hereof of its intended action at least thirty (30) days prior to the date of sale or transfer. No sale or transfer of the Development shall be consummated unless the Department has previously approved such sale or transfer in writing. Department approval shall be given only under the following conditions:

- a) If Borrower intends to sell or transfer the Development to an organization or public entity eligible for assistance under the Program and said organization or public entity intends to use the property for Program purposes, the Department will authorize the sale or transfer provided that all of the following conditions are satisfied:
- 1) The successor in interest to Borrower must agree to assume the obligations of Borrower including the assumption of the conditions

and obligations specified in the Standard Agreement and this Agreement.

- 2) The successor in interest must agree to take title to or an interest in the Property and Development subject to this Agreement and the Deed of Trust securing the Loan.
 - 3) The successor in interest must demonstrate to the satisfaction of the Department that it can successfully maintain and operate the Development in accordance with the Standard Agreement and this Agreement.
- b) If Borrower intends to sell or transfer all or a portion of the Development to an ineligible person or entity or to a person or entity intending to use the Development for a use other than Program purposes, the Department will authorize such sale or transfer if the Department finds that the Development is no longer needed or suitable for use as an emergency shelter/transitional housing and Borrower repays the Department all outstanding principal and accrued interest pursuant to the Standard Agreement and Department's Promissory Note evidencing the Loan. The Department shall terminate this Agreement only after full repayment is made in compliance with the provisions of this Subparagraph.

This Agreement may be terminated upon request by Borrower provided that Borrower repays the Department the full amount required by Paragraph 5 and the Department has determined that one or more of the circumstances set forth in Paragraph 5 hereof has occurred which makes the continued operation of the Development infeasible.

6. Maintenance and Repair

- a) Borrower shall operate and maintain the Development in accordance with the specific standards and requirements set forth in the Standard Agreement. Borrower is responsible for all maintenance, repair, and management functions, including without limitation, the following: selection of tenants; evictions; routine and extraordinary repairs; and replacement of capital items. Borrower shall maintain the Development in a safe and sanitary manner in accordance with local health, building, and housing codes.
- b) Borrower may, with the prior written approval of the Department, contract with a management agent for the performance of the services or duties required in Subparagraph a. of this Paragraph 6. However, such an arrangement does not relieve the Borrower of responsibility for proper performance of these duties. Such contract shall be subject to prior written approval by the Department and shall contain a provision allowing the Borrower to terminate the contract without penalty upon no more than thirty (30) days notice. Upon a determination by the Department, and

notice to the Borrower thereof, that the contractor performing the functions required in Subparagraph a. has failed to operate the Development in accordance with this Agreement, the Borrower shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Department approval, for continuing performance of the functions required in Subparagraph a.

- c) Upon a determination by the Department, and notice to the Borrower thereof, that the Borrower has failed to operate the Development in accordance with this Agreement, the Department may require the Borrower to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Department deems necessary to ensure performance of the functions required in Subparagraph a.

7. Hazard and Liability Insurance

- a) The Borrower shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Department. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Department.
- b) Insurance proceeds and condemnation awards for any loss to or taking of the Development or the Property, or any portion thereof, shall be applied or utilized as provided in the Deed of Trust.

8. Encumbrances

Except for liens approved by the Department, no other superior or subordinate encumbrances will be allowed to attach to the Property or the Development after the recordation of this Agreement without prior written approval of the Department.

9. Nonprofit

If Borrower is qualified for participation in the Program because of its status as a nonprofit corporation, the status must be maintained for the term of this Agreement.

10. Administration

The Borrower shall follow sound and accepted management policies and procedures consistent with the requirements of this Agreement in the administration of the Development.

11. Inspection

The Department may, through its agents or employees, at any reasonable time, enter upon and inspect the Development and records of Borrower for compliance with this Agreement, and any applicable local, state and federal laws.

12. Reports

Borrower shall submit reports to the Department consistent with the provisions of the Standard Agreement. Notwithstanding the previous termination of the Standard Agreement, the Borrower agrees to continue furnishing the Department the reports provided for in the Standard Agreement, where appropriate, for the full life of this Agreement.

13. Violation of Agreement by Borrower

- a) In the event of the Borrower's breach, violation or default in the performance of any covenant, agreement or obligation of the Borrower set forth in this Agreement including, but not limited to, Borrower's covenant to perform its obligations under the Loan documents, the Department shall give the Borrower written notice in the manner specified in Paragraph 15 of this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than fifteen (15) days, the Department may declare a default hereunder and may take any one or more of the following actions:
- 1) Take possession of the Development and 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 Department, 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.
 - 2) Apply to any court, state or federal, for specific performance of this Agreement or 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 is agreed by the Borrower that the injury to the Department arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Department, in light of the purposes and requirements of the Program, would be impossible to ascertain.
 - 3) Accelerate all amounts, including outstanding principal and interest, due under the terms of the Loan documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note provides that the Department

may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

4) Seek such other appropriate remedies as may be available under the law.

b) The remedies of the Department hereunder and under the other 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 Department of any one or more of its other remedies.

14. No Waiver

Waiver by the Department of a breach of a covenant or condition in one instance shall not be regarded as a waiver in any other instance.

15. Notice

Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated above, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

16. Severability

The conditions or covenants of this Security Agreement are severable so that invalidation of any said condition or covenant or any part thereof by law, judgment, or court order shall not affect any other condition or covenant except at the sole discretion of the Department.

17. Recordation

This Agreement shall be recorded and shall operate as a lien against the Property to secure performance by the Borrower of its obligations hereunder and under the Standard Agreement.

18. Priority

The Deed of Trust of even date executed by the Borrower to secure the Loan, recorded concurrently herewith, shall be an encumbrance on the Property junior in priority and subject to this Agreement.

DEPARTMENT:

Department of Housing and Community
a public agency of the State of California

DEPARTMENT ADDRESS:

P. O. Box 952054, Sacramento, CA 94252-2054
OR
2020 W. El Camino Ave., Sacramento, CA 95833

By: _____
Rebecca Matt, Section Chief
Homeless and Housing Assistance Programs Section

BORROWER'S NAME:

«Applicant_Name»,
«Organization_Status»

BORROWER'S ADDRESS:

«Auth_Rep_Address»
«Auth_Rep_City», «Auth_Rep_Zip»

By: _____
«Auth_Rep_First_Name» «Auth_Rep_Last_Name»

Title: «Job_Title»

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS REGULATORY AGREEMENT

The Department of Housing and Community Development, an agency of the State of California

STATE OF CALIFORNIA

County of Sacramento

On _____, before me, _____, 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)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS REGULATORY AGREEMENT

«Applicant_Name»

STATE OF CALIFORNIA

County of «Shelter_County»

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Property

SAMPLE