

ATTACHMENT N 10

MENTAL HEALTH SERVICES ACT
CAPITALIZED OPERATING SUBSIDY RESERVE AGREEMENT

This **MENTAL HEALTH SERVICES ACT (MHSA) CAPITALIZED OPERATING SUBSIDY RESERVE (COSR) AGREEMENT** (this “**Agreement**”) is made and entered into as of the _____, 2025, by and between [] (“**Borrower**”), and COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”). The Borrower and County may be referred collectively as the “**Parties**.”

RECITALS:

A. The Borrower applied to the County, for a loan from the County’s Mental Health Services Act (MHSA) funds (the “**MHSA Loan**”) for the acquisition, construction, rehabilitation, development, equipping and/or operation of a []-unit multifamily residential project located in [], Orange County, California, known or to be known as [] (the “**Mortgaged Property**” or “**Project**”).

B. The County Board of Supervisor approved this MHSA Loan on [].

C. The Loan is/was evidenced by a promissory note (“**MHSA Note**”) in the maximum principal amount of \$[] made by Borrower payable to the order of County.

D. The Loan is secured by, among other things, that certain Deed of Trust, Assignment of Rents, and Security Agreement, dated as of the date hereof, executed by Borrower for the benefit of County (the “**MHSA Deed of Trust**”), Deed of Trust encumbers the Mortgaged Property.

E. The Loan will be/has been advanced to Borrower pursuant to that certain Construction Loan Agreement, dated as of the date hereof, by and between Borrower and County (the “**Borrower Loan Agreement**”); Borrower Loan Agreement, together with the Note, the COSR Deed of Trust and all other documents executed in connection with the Loan, including Agreement, the “**Loan Documents**”).

F. The Borrower has submitted to County an application, for additional support in funding the Capitalized Operating Subsidy Reserve (“**COSR Loan**”) required by the Borrower Loan Agreement to support the Project under the County’s 2023/5 Supportive Housing Notice of Funding Availability, as amended (“2023/5 NOFA”) which will be evidence by a promissory note (“**COSR Note**”) and secured by Deed of Trust, Assignment of Rents, and Security Agreement (“**COSR Deed of Trust**”), dated as of the date hereof.

G. The Orange County Board of Supervisors approved a COSR Loan to the Borrower from [] on [] in the amount of [\$XXXX].

NOW, THEREFORE, for and in consideration of the making of the MHSA Loan and the COSR Loan, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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1. **Definitions.** The following terms used in this Agreement shall have the meanings set forth below in this Section 1. Any term used in this Agreement and not defined herein shall have the meaning given to that term in the Borrower Loan Agreement.

(a) **“Annual Bifurcated Independent Audit”** means an audit, conducted by an independent auditor, that is bifurcated and distinguishes both the MHSA Assisted Units and, as applicable, the MHSA Operating Expense Deficits. The Annual Bifurcated Independent Audit shall include the following:

(i) Financial Statements for the Project, preferably with a classified Balance Sheet identifying Current Assets and Current Liabilities

(ii) Bifurcated Schedules

(iii) Independent Auditor’s report

(iv) Summary schedule and prior audit findings, if applicable

(v) Corrective action plan, if applicable;

(vi) Management Letter

(b) **“Annual Operating Expense(s)”** means County approved operating expenses solely attributable to MHSA Assisted Units in excess of the income attributable to it, including, but not limited to administration expenses, salaries and benefits, utility charges, maintenance expenses, Project property taxes, Project insurance premiums and annual monitoring fee when applicable. Except as provided in this Agreement under Section 2(b), asset management, partnership management, and deferred development fees attributable to the MHSA Assisted Units are not eligible Annual Operating Expenses.

(c) **“Capitalized Transition Reserve”** shall at a minimum, cover expenses for one year, preventing rent increases following the loss of rental assistance or exhaustion of COSR funds. A transition plan must be submitted to the County for approval two years before the estimated COSR exhaustion date. If rental assistance is no longer available or the project experiences a loss of rental subsidy, the Borrower may request approval to allow households with 50% AMI to occupy MHSA Assisted Units and increase rent on MHSA Assisted Units affordable to households with 50% AMI, if allowable under the MHSA Regulatory Agreement.

(d) **“COSR Disbursement(s)”** means, for each year from the First Disbursement Date until, unless exhausted, or up to 240 days after the twentieth (20th) Fiscal Year following the First Disbursement Date, the amount of COSR funding necessary upon review of the Annual Bifurcated Independent Audit delivered pursuant to Section 3(a), and the County’s determination of the MHSA Operating Expense Deficits as defined below or otherwise in its sole discretion as contemplated in this Agreement.

(e) **“COSR Disbursement Request Form”** means the form attached as Exhibit “A”, which may be amended from time to time.

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(f) **“COSR Fund”** means the funds encumbered pursuant to this Agreement to defray the deficits solely attributable of operating MHSA Assisted Units.

(g) **“COSR Loan Amount”** means the total amount of the COSR Loan that shall be distributed over a 20 year term.

(h) **“Disbursement Period”** means the interval between disbursements from the COSR Fund, which interval shall be no shorter than once a year.

(i) **“First Disbursement Date”** means the date on which the Initial Disbursement COSR Disbursement due under the COSR Note on or after the Conversion Date.

(j) **“Fiscal Year”** means a 12-month accounting period that the Borrower uses for financial and tax reporting purposes. For purposes of this Agreement, the Project’s Fiscal Year runs from [DATE] to [DATE].

(k) **“Ineligible Annual Operating Expense(s)”** means operating expenses that are not an eligible use for the COSR Disbursement, included but not limited to the following: (i) amortized debt service payments; (ii) costs and/or expenses associated with non-MHSA Assisted Units; (iii) any loan payments; (iv) ground lease payments; (v) sponsor distributions; (vi) any deposit to reserves beyond those required by the State of California Housing & Community Development Department under the Uniform Multi-Family Regulations, including reserves required by other Project financing sources; (vii) MHSA Assisted Unit tenant permanent vacancy loss payments beyond 60 days; (viii) supportive services costs not authorized or included as part of the Project’s operating budget; (iv) loan balloon payments; (x) costs associated with limited partner buyout, substitution, or assignment of ownership interest, at any time, including at any potential recapitalization (restructure of debt or re-syndication) transaction; (xi) accrued residual receipt payments, monitoring, or servicing fees owed to other lenders from prior years (xii) any other costs not approved by the County in writing.

(l) **“Initial COSR Disbursement”** means the COSR Disbursement funded on the First Disbursement Date subject to the requirements found in Section 2(a) below.

(m) **“MHSA Assisted Units”** means units within the Project that have been funded with MHSA funds. In this Project, the MHSA Assisted Units are comprised of [#NUMBER OF UNITS] [TYPE OF UNIT].

(n) **“MHSA Operating Expense Deficits”** is the amount by which operating costs and the anticipated vacancies of the MHSA Assisted Units as defined herein exceed the anticipated revenue of qualifying households of the MHSA Assisted Units for the Fiscal Year in which the COSR Disbursement is to be allocated.

(o) **“Disbursement Request Amount”** the amount of COSR funding being requested on the COSR Disbursement Request Form and necessary based on the Annual Bifurcated Independent Audit annual bifurcated audit delivered pursuant to Section 3

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below. In no event shall the COSR Disbursement Request Amount exceed seven percent (7%) of the total COSR Loan Amount.

(p) **“Operating Budget”** means the Annual Operating Expenses (as defined in the COSR Note) associated with operating the Project for the applicable Fiscal Year and shall be submitted in a form provided by the County. The Operating Budget shall be bifurcated and distinguish the operating expenses for both the MHSA Assisted Units and those units whose operating expenses are not eligible for assistance from the COSR Fund.

(q) **“Term”** means the First Disbursement Date and ends on the date the awarded funds in the COSR Fund is either exhausted or on the fifteenth/twentieth (15/20th) Fiscal Year following the First Disbursement Date.

2. **COSR Fund.**

(a) ***Establishment.*** Prior to the Conversion Date, the County shall encumber the COSR Fund for the Project with the total amount of COSR Loan. The County shall be required to monitor the COSR Fund balance in order to ensure long-term sustainability of the COSR Fund.

(b) ***Use.*** Subject to the security interest of the County and other rights of County set forth in this Agreement, the COSR Fund shall be maintained for the payment of the MHSA Operating Expense Deficits specifically attributed to the Annual Operating Expenses of the MHSA Assisted Units as defined in the COSR Note. County shall not be obligated to make disbursements from the COSR Fund for the operating costs of non-MHSA Assisted Units. Notwithstanding the foregoing, asset management fees and partnership management fees attributable to the MHSA Assisted Units that cannot be paid for out of cash flow from the non- MHSA Assisted Units may only be paid as part of the COSR Disbursement if all other eligible Annual Operating Expenses have been paid and the total amount of the COSR Disbursement for the requested Fiscal Year does not exceed 5% of the total COSR Loan.

(c) ***MHSA Assisted Unit Vacancy; Temporary and Permanent.*** The Borrower may use funds from the COSR Disbursement toward the operating costs of an MHSA Assisted Unit for temporary vacancies due to MHSA eligible tenant placement in a medical and/or institutional facility so long as (a) the temporary vacancy does not extend beyond 60 days; (b) the MHSA eligible tenant is expected to return to the MHSA Assisted Unit; and (c) the MHSA eligible tenant’s portion of the rent is paid. The Borrower may use funds from the COSR Disbursement toward 80% of the County approved tenant portion of the rent for an MHSA Assisted Unit permanently vacated for a maximum of 60 days to allow the Coordinated Entry System to complete its process for referral of an MHSA Eligible tenant.

(d) ***Early Disbursements.*** County reserves the right to begin making COSR Disbursements earlier than the Disbursement Period if County determines, in its sole and unappealable discretion, there is an extraordinary and documented circumstance, through no fault of the Borrower.

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3. **Disbursements.**

(a) ***Requests for Disbursement.*** County shall disburse funds from the COSR Fund, as follows:

(i) ***Initial COSR Disbursement.*** Sixty days prior to the Conversion Date, Borrower shall submit both the Operating Budget for the first Fiscal Year of the Project, in a form acceptable to the County, and a completed COSR Disbursement Request Form, indicating a Disbursement Request Amount for the Initial COSR Disbursement. Commencing on the First Disbursement Date, County shall disburse to Borrower the Initial COSR Disbursement so long as the Operating Budget and COSR Disbursement Request Form have been submitted within the time frame established herein.

(ii) ***Subsequent COSR Disbursements.*** Subsequent COSR Disbursements shall require the Borrower to submit an Annual Bifurcated Independent Audit and a completed COSR Disbursement Request Form, indicating a Disbursement Request Amount shall be performed on the Project by and at the expense of Borrower no later than the one hundred and eightieth (180) day of the end of Project's Fiscal Year. If determined necessary or appropriate by County, after review of the most recently obtained Annual Bifurcated Independent Audit, Borrower's requested COSR Disbursement set forth herein shall be adjusted, so that the COSR Disbursement for that Fiscal Year is sufficient to meet required MHSA Operating Expense Deficit. The Parties agree that any adjustment to the COSR Disbursement above the 7% of the total COSR Loan Amount shall reduce the total amount of funds in the COSR Fund such that the COSR Fund may be exhausted before the end of the Term.

(b) ***Conditions Precedent.*** Except as provided above, disbursement from the COSR Fund shall be made pursuant to Section 3 and no more frequently than once every Disbursement Period. Disbursements shall be approved only if the following conditions precedent have been satisfied, as determined by County:

(i) ***Exhaustion of Other Sources of COSR.*** The Borrower has exhausted all other sources of COSR available to it for the Project.

(ii) ***Maintenance of required Capitalized Transition Reserve.*** The Borrower shall maintain reserves during the Term of the COSR.

(iii) ***Continuous Pursuit of MHSA Operating and Rental Subsidies for MHSA Assisted Units.*** The Borrower identified, on an annual basis, what rental and/or operation subsidies for the MHSA Assisted Units it has pursued during the previous Fiscal Year when submitting a request for COSR Disbursement pursuant to Section 3.

(iv) ***No Default.*** There shall exist no condition, event or act that would constitute a default (with or without notice and/or lapse of time) under this Agreement or any other Borrower Loan Document.

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(v) *Representations and Warranties.* All representations and warranties of Borrower set forth in this Agreement and in the Borrower Loan Documents are true and correct in all material respects.

(vi) *Continuing Compliance.* Borrower shall be in full compliance with the provisions of this Agreement, the other Borrower Loan Documents and any request or demand by County permitted hereby.

(vii) *Approvals.* All required for the operating costs of the Project have been obtained.

(viii) *Contracts.* County shall have the right to approve all contracts or work with subcontractors, contractors or other parties providing labor or services in connection with the use of the COSR Distribution on the MHSA Assisted Units (“**COSR Contract**”). Upon the County’s request, Borrower shall provide the contract or subcontract to the County.

(ix) *Legal Compliance.* The use of the COSR Distribution does not violate any laws, ordinance, rules or regulations, or restrictions applicable to the Mortgaged Property and/or the MHSA eligible tenants residing in the MHSA Assisted Units.

4. **Inspection.** County or any of its agents may periodically inspect any COSR Contracts in progress and upon completion during normal business hours or at any other reasonable time upon reasonable prior written notice to Borrower (except in an emergency, as determined by the County in its sole discretion, or after an Event of Default, in which event no such prior notice shall be required); provided, however that not more than one inspection shall be required for each COSR Disbursement request.

5. **Insufficient Account.** The insufficiency of any balance in the COSR Fund shall not abrogate the Borrower’s agreement to fulfill all preservation and operation covenants in the Borrower Loan Documents. In the event that the balance of the COSR Fund is less than the current estimated cost to make the COSR Distribution required under this Agreement, County shall inform the Borrower of the shortage within 15 days of a completed COSR Disbursement Request Form submission to the County.

6. **Security Agreement.** Borrower hereby conveys, pledges, transfers and grants to County a security interest pursuant to the law in and to all money in the COSR Fund, as the same may increase or decrease from time to time, for the purpose of securing Borrower’s obligations under this Agreement and to further secure Borrower’s obligations under the Note, the COSR Deed of Trust, and the other Borrower Loan Documents.

7. **Events of Default.** The following constitutes an “Event of Default:”

(a) *Non-Monetary Failure to Perform.* Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given

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by the County to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default.

(b) *Ineligible Use of COSR Disbursement.* The Borrower's use of COSR Disbursement funds toward Ineligible Annual Operating Expenses, except as authorized under this Agreement.

(c) *Breach of Representation or Warranty.* Any breach of any representation and warranty set forth in this agreement or in the Loan Documents.

8. **Post Default.** If Borrower defaults in the performance of its obligations under this Agreement or under the Note, COSR Deed of Trust or any other Borrower Loan Document (beyond any applicable notice and cure period), the County and its successors and assigns shall have all remedies available to them under Article 9 of the Uniform Commercial Code of the Property Jurisdiction and under any other applicable law and, in addition, may retain all money in the COSR Fund and in the County's discretion, may apply such amounts, without restriction and without any specific order of priority, to the payment of any and all indebtedness or obligations of Borrower set forth in the Note, COSR Deed of Trust or any other Borrower Loan Document, including, but not limited to, principal, interest, taxes, insurance, reasonable attorneys' fees and costs (including those of in-house counsel) and disbursements actually incurred and/or operating costs to the Mortgaged Property.

9. **Additional Remedies.** In addition to the remedies found in Section 8, above, the County shall specifically either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the COSR Disbursement required under this Agreement and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) *Acceleration of Note.* The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the COSR Note to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the COSR Loan.

(b) *Specific Performance.* The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement and the Loan Documents or to enjoin

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acts on things that may be unlawful or in violation of the provisions of this Agreement the Loan Documents.

(c) *Right to Cure at Borrower's Expense.* The County shall have the right to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

10. **Remedies Cumulative.** No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

11. **Compliance with Laws; Insurance Requirements.**

(a) *Compliance with Laws.* All operating costs incurred shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and applicable insurance requirements including, without limitation, applicable fair housing laws, environmental regulations, and requirements of insurance underwriters.

(b) *Insurance Requirements.* Borrower must maintain insurance required under the Borrower Loan Documents.

12. **COSR Distribution Use.** County's disbursement of moneys from the COSR Fund shall not be deemed a certification or endorsement by the County that the manner by which the COSR Disbursement has been use is in accordance with applicable, ordinances, statutes, laws, regulations or requirements of any governmental authority or agency. Borrower shall at all times have the sole responsibility for ensuring that all uses of the COSR Distribution is in accordance with all such governmental requirements or state and/or federal law.

13. **Termination.** If not sooner terminated by the written concurrence of the Parties, this Agreement shall terminate upon the payment in full of the awarded COSR Fund amount. Notwithstanding the foregoing, any and all provisions herein relating to the indemnification of the County shall survive such termination. Two years prior to the termination of the awarded COSR Funds, Borrower shall submit to the County a transition plan, in a form acceptable to the County.

14. **Determinations by County.** Except to the extent expressly set forth in this Agreement to the contrary, in any instance where the consent or approval of the County may be

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given or is required, or where any determination, judgment or decision is to be rendered by the County under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the County, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

15. **Release; Indemnity.**

(a) ***Release.*** Borrower covenants and agrees that, in performing any of their rights or duties under this Agreement, the County and its elected officials, officers, governing members, employees, attorneys and agents, shall not be liable for any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) ***Indemnity.*** Borrower hereby agrees to indemnify and hold harmless the County and their respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Agreement, except that the County will not be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

16. **Governing Law; Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

17. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Borrower and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities. The County acknowledges and agrees that the Borrower, at its option, may assign its respective rights and interests under this Agreement and the other Borrower Loan Documents in whole or in part and upon such assignment all the terms and provisions of this Agreement or the other Borrower Loan Documents shall inure to the benefit of such assignee to the extent so assigned. Borrower may not assign or delegate its rights, interests or obligations under this Agreement without first obtaining the County's prior written consent.

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18. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

19. **Expenses.** Borrower shall pay to the County, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys' fees (including reasonable time charges of attorneys who may be employees of the County), which the County may incur in connection with (a) the exercise or enforcement of any of their rights hereunder, (b) the failure by Borrower to perform or observe any of the provisions hereof, or (c) the breach by Borrower of any representation or warranty of Borrower set forth herein. Such expenses, together with interest thereon computed at the Default Rate set forth in the Note from the date on which such expenses are incurred to the date of payment thereof, shall constitute indebtedness secured by the COSR Deed of Trust.

20. **Remedies Cumulative.** In the event of Borrower's default under this Agreement, the County may exercise all or any one or more of their rights and remedies available under this Agreement, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the County from exercising any other right or remedy available to the County. The County may exercise any such remedies from time to time as often as may be deemed necessary by the County.

21. **No Agency or Partnership.** Nothing contained in this Agreement shall constitute the County as a joint venturer, partner or agent of Borrower, or render the County liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

22. **Transfer of Mortgaged Property or Ownership Interests in Borrower.** If a Transfer (as defined in the COSR Deed of Trust) of all or part of the Mortgaged Property or of an ownership interest in Borrower shall occur, which Transfer requires the prior written consent of the County, the transferee(s) shall be required to assume the transferor's duties and obligations under this Agreement and the other Borrower Loan Documents and shall be required to execute and deliver to the County such documents as the County requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of any of its duties or obligations under this Agreement or any of the other Borrower Loan Documents, unless the Borrower has obtained the prior written consent of the County to the release of such duties and obligations.

23. **Entire Agreement; Amendment.** This Agreement contains the complete and entire understanding of the parties with respect to the matters covered herein. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument.

24. **No Waiver by the County.** No waiver of any breach, default, or failure of condition under the terms of this Agreement, the COSR Note, the COSR Deed of Trust or any other Loan Document or the obligations secured thereby shall be implied from any failure of the

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County to take, or any delay by the County in taking, action with respect to such breach, default or failure, or any form of previous waiver of any similar or unrelated breach, default or failure; and waiver of any term of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust or any other COSR Loan Document or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver

25. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the County may reasonably request, in order to protect any right or interest granted by this Agreement or to enable the County to exercise and enforce its rights and remedies under this Agreement.

26. **No Amendment; Conflicts.** Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement; and, if there is a conflict between the terms and provisions of this Agreement and those of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement, then the terms and provisions of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement shall control.

27. **Limitation of Liability.** The personal liability of Borrower for performance of the obligations hereunder is limited in the manner and to the extent provided in the Note.

28. **Notices.** All notices given under this Agreement shall be in writing and shall be sent to the respective addresses of the parties, in the manner set forth in the COSR Deed of Trust.

29. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

30. **Captions.** The captions of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.

31. **County as Third Party Beneficiary.** Each of the County shall be a third party beneficiary of this Agreement for all purposes.

32. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE COUNTY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DEEMED TO BE UNENFORCEABLE, ALL SUCH DISPUTES SHALL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF SECTION 8.7 OF THE COSR DEED OF TRUST.

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33. **Time of the Essence.** Time is of the essence with respect to this Agreement.
34. **Attached Exhibit.** The following Exhibit is attached to this Agreement and is incorporated by reference herein as if more fully set forth in the text hereof:

Exhibit A – COSR Disbursement Request Form

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Mental Health Services Act Capitalized Operating Subsidy Reserve Agreement or caused this Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above.

BORROWER:

SAMPLE

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of
California

By: _____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By _____
Deputy

Dated _____

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EXHIBIT A

COSR DISBURSEMENT REQUEST FORM

Modifications may be made to the text of this Exhibit from time to time.

SAMPLE