

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Advocates for Human Potential, Inc.
490-B Boston Post Road
Sudbury, MA 01776-3365

Attention: Legal Department

NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Attachment H

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIONS

This Regulatory Agreement and Declaration of Restrictions (the “**Declaration**”), dated _____ for reference purposes, is by and between **San Bernardino County, a political subdivision of the State of California, acting through its Department of Behavioral Health** (the “**Owner**”), which acquired title as San Bernardino County, a public body, corporate and politic, and the State of California (the “**State**”), represented by the **DEPARTMENT OF HEALTH CARE SERVICES**, a public agency of the State of California (“**DHCS**”).

RECITALS

A. DHCS oversees the Behavioral Health Continuum Infrastructure Program (“**BHCIP**”), which was established by California Assembly Bill No. 133 (Chapter 143, Statutes of 2021), and which is governed by Welfare and Institutions Code section 5960-5960.45. Under BHCIP, DHCS awards competitive grants to qualified entities to construct, acquire, and rehabilitate real estate assets to build new capacity or expand existing capacity for facilities that will operate for a minimum of thirty (30) years to provide short-term crisis stabilization, acute and subacute care, crisis residential, community-based mental health residential, substance use disorder residential, peer respite, community and outpatient behavioral health services, and other clinically enriched longer term treatment and rehabilitation options for persons with behavioral health disorders in the least restrictive and least costly settings;

B. On October 20, 2022, DHCS issued a Request for Applications (“**RFA**”) for BHCIP grant awards and selected Owner’s Project (as defined below) as a recipient of a BHCIP grant award. Advocates for Human Potential, Inc., a Massachusetts corporation (“**AHP**”), acting as the initial program administrator for the initial five (5)-year building phase of BHCIP, entered into a Program Funding Agreement with an effective date of _____, 20__ (the “**Program Funding Agreement**”), with Owner for the distribution of BHCIP funds in an amount not to exceed Fifty-One Million Four Hundred Ten Thousand Eight Hundred Forty-Four Dollars (\$51,410,844.00) (the “**Program Funds**”) over the above-mentioned five (5)-year building phase for Owner to acquire, expand, or construct certain improvements more particularly described in the RFA (“**Owner’s Project**”) on that certain real property commonly known as 13333 Palmdale Road, located in the City of Victorville (“**City**”), County of San Bernardino (“**County**”), State of

California, and the improvements thereon (the “**Property**”), as more particularly described and shown on **Exhibit A**, attached hereto and incorporated herein by this reference;

C. As an award recipient, in consideration for the Program Funds, and in order to comply with the policies, programs, and applicable legislation, including the RFA, the Program Funding Agreement, the Facility Access Agreement between DHCS and the Owner, and the Behavioral Health Continuum Infrastructure Program, authorized under Welfare and Institutions Code section 5960-5960.45, established by California Assembly Bill No. 133 (Chapter 143, Statutes of 2021), the Property and the owner thereof are subject to certain requirements and restrictions, including, without limitation, the obligation to ensure that the Property shall be used for residential and outpatient services (the “**Permitted Use**”) for the Restriction Period (defined below), subject to change or modification to another use set forth in **Exhibit B**, attached hereto, and incorporated herein by this reference, with DHCS approval, which must accept and provide services to Medi-Cal beneficiaries as patients;

D. The Property shall be owned, held, used, maintained, and transferred pursuant to the covenants, conditions, restrictions, and limitations as further described herein; and

E. Owner and DHCS have agreed to enter into this Declaration to memorialize some of the aforementioned requirements and restrictions in the public record that will survive the expiration of the Program Funding Agreement to ensure compliance with the same.

NOW, THEREFORE, in consideration of the Program Funds paid to the Owner under the Program Funding Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby enters into this Declaration and hereby covenants, agrees, and declares the following:

AGREEMENT

1. **Use of Property.** Owner, for itself and for its successors and assigns, hereby declares and covenants that, for the Restriction Period, the use of the Property, or in the event only a portion thereof has been improved with the use of Program Funds, then only that portion that has been so improved shall be restricted to the Permitted Use. Any change to another use described in Exhibit B, attached hereto and incorporated herein by this reference, shall require the express prior written approval of DHCS in its sole and absolute discretion, which modification and consent may be recorded in the official records of the County.

2. **Use, Maintenance, Repair, and Improvement of the Property.** Owner agrees:

2.1 To use the Property, or that portion of the Property constructed or improved with Program Funds, continuously for the Permitted Use;

2.2 To maintain the Property in conformity with the habitability and fire codes of the City or County where the Property is located in decent, safe, and sanitary condition and repair, and to permit no waste thereof;

2.3 Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable, except in accordance with this Declaration;

2.4 Not to apply for any permits or construct any buildings or improvements on the Property, other than the permits, buildings, and improvements contemplated as part of this Declaration, that would detrimentally affect the Property, including, without limitation, the value of the Property, the structural integrity of the Property, or the contemplated uses of the Property set forth in Exhibit B, attached hereto and incorporated herein by this reference; or add to, remove, demolish, or structurally alter any buildings or improvements included as part of the Property purchased or improved with Program Funds, without DHCS's consent;

2.5 To comply with all applicable laws affecting the Property, including, but not limited to, Behavioral Health Continuum Infrastructure Program, authorized under Welfare and Institutions Code section 5960-5960.45, and not to suffer or permit any violations of any such applicable law, nor of any covenant, condition, or restriction affecting the Property. To the extent an amendment to the foregoing imposes requirements upon the ownership or operation of the Project more restrictive than those imposed by this Declaration, this Declaration shall be deemed automatically amended, without consent or approval of any other person, to impose such additional or more restrictive requirements; however, Owner hereby agrees to execute such amendment upon request by DHCS;

2.6 To construct and maintain the deliverables developed and produced pursuant to the Program Funding Agreement in compliance with the accessibility requirements of sections 7405 and 11135 of the California Government Code, section 508 of the Rehabilitation Act of 1973 as amended (29 U.S.C. § 794d), regulations implementing the Rehabilitation Act of 1973 as set forth in Part 1194 of Title 36 of the Code of Federal Regulations, and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*);

2.7 Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without DHCS's prior written consent, which may be granted or withheld at DHCS's sole discretion;

2.8 Not to alter the use of all or any part of the Property constructed or improved with Program Funds without DHCS's prior written consent;

2.9 To maintain all licenses, certifications, or designations required to continue operating for the use specified in the Program Funding Agreement, or other use approved in writing by DHCS;

2.10 To pay to DHCS its then-current fees in connection with any consent, approval, transfer, amendment, or waiver requested by Owner, together with any expenses incurred by DHCS in connection therewith;

2.11 To submit to DHCS such periodic reports, updates, and information deemed necessary by DHCS to monitor compliance and/or perform program evaluation. Any requested data or information shall be submitted in electronic format in a manner specified by DHCS;

2.12 To pay all taxes, assessments, and other charges, liens, fines, and impositions attributable to or encumbering the Property, by making payment, prior to delinquency, directly to the payee thereof. Owner shall, upon request by DHCS or its agent, promptly furnish to DHCS or its agent all notices of amounts due under this subsection and receipts evidencing such payments. Owner shall have the right to contest in good faith any claim or lien, or payment due thereunder, so long as Owner does so diligently, without prejudice to DHCS, and provided that Owner has established on Owner's books adequate reserves with respect to such contested assessment, tax, charge, lien, or claim; and

2.13 To defend (with counsel satisfactory to DHCS), indemnify, and hold harmless DHCS and its respective officers, members, supervisors, directors, officials, and employees, counsel, attorneys, and agents, past, present, and future of each of them (collectively, the "**Indemnified Parties**") against all loss, costs, damages, expenses, suits, judgments, actions, and liabilities of whatever nature (including, without limitation, reasonable attorneys' fees, litigation and court costs, and amounts paid in settlement) directly or indirectly resulting from or arising out of or related to (a) the operation, use, occupancy, maintenance, financing, or ownership of the Owner's Project, and (b) any breach of the foregoing obligations. Owner shall pay, upon demand, all of the reasonable fees and expenses paid or incurred by DHCS in enforcing the provisions hereof against Owner.

3. Restrictions On Sale, Encumbrance, And Other Acts.

3.1 Owner shall not voluntarily (which term shall not be interpreted to include a foreclosure of any security for a loan or deed-in lieu) sell, encumber (including recordation of deeds of trust), hypothecate, assign, pledge, convey, or transfer the Property, or any portion thereof, or any of its interests therein, equity interest in Owner, or any general partner interest in the Owner without obtaining DHCS's prior written consent, which shall not be unreasonably withheld by DHCS if (a) the Owner is not in default hereunder or under the Program Funding Agreement and delivers a certificate to DHCS certifying to the same; (b) the purchaser or assignee is not in default under any obligations it may have to DHCS and is not the subject of any legal or enforcement actions by DHCS; (c) evidence reasonably satisfactory to DHCS is presented to establish that the purchaser or assignee has prior experience in the successful development, ownership, and/or operation of a facility described in Exhibit B, attached hereto and incorporated herein by this reference, for individuals who qualify as members of the target population, or has a partner with said relevant experience; (d) DHCS shall have received reasonable evidence satisfactory to DHCS that the Owner's purchaser or transferee has assumed, in writing, the restrictions on the Property and Owner's duties and obligations under this Declaration and the Program Funding Agreement; (e) evidence satisfactory to DHCS that the purchaser or assignee does not have pending against it, nor does it have a history of, building or fire code violations as identified by any department of DHCS; and (f) such other conditions as the State may reasonably impose to ensure compliance by the assignee or purchaser and Property with the requirements of this Declaration and Program Funding Agreement. It is expressly stipulated and agreed that, except for any such sale, transfer or disposition agreed to by DHCS in a separate writing, any sale, transfer, or other disposition of the Property in violation of this Section 3 shall be null and void and shall not relieve the Owner of its obligations under this Declaration. Upon any sale or transfer which complies with this Declaration, the Owner shall be fully released from any obligations arising after said sale or transfer, but only to the extent such obligations have been assumed by the

transferee of the Property. Any transfer of the Property to any entity, whether or not affiliated with the Owner, shall be subject to the provisions of this Section 3.

3.2 If DHCS determines, in its reasonable discretion, to grant its prior written consent for a sale, transfer, or conveyance of the Property, such consent may impose additional terms and conditions, as necessary, to preserve or establish the fiscal integrity of the Property or to ensure compliance with this Declaration.

3.3 If a trustee under a loan acquires title to the Property by foreclosure or deed in lieu of foreclosure, no consent of the State shall be required to such transfer under this Declaration; however, the consent of DHCS and delivery of items (a) through (f) above shall be required for any transfer of the Property subsequent to the trustee's acquisition of the Property by foreclosure or deed in lieu of foreclosure.

4. Insurance, Casualty, and Condemnation.

4.1 During the Restriction Period, Owner shall obtain and maintain (i) property insurance insuring against, among other things, loss of the Property, or any portion thereof, and Owner's personal property and fixtures by fire and such other hazards and casualties; (ii) commercial liability insurance insuring against liabilities arising out of the ownership, use, occupancy, condition, or maintenance of or the operations, use, and activities in, on, or about the Property; and (iii) other such insurance required by DHCS, and in such amounts as required by DHCS, which policies shall include DHCS as an additional insured upon request by DHCS. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to DHCS. Owner may choose to self-insure to comply with these requirements and agrees to provide written evidence of such insurance coverage within three (3) days of such request by DHCS or AHP.

4.2 In the event of any fire or other casualty to the Property or any part thereof, Owner shall immediately notify DHCS and seek direction from DHCS on how to proceed. DHCS, in its sole and absolute discretion, shall determine whether to instruct the Owner to apply the insurance proceeds to the repair and restoration of the Property to a condition equal to or better than the Property was in immediately prior to such casualty. DHCS has the right but not the obligation to approve the plans and specifications for any repair and restoration, as well as the right but not the obligation to approve disbursements of insurance proceeds for repair and restoration under a construction escrow or similar arrangement.

5. Covenants Run with the Land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to this Declaration. Notwithstanding section 1460, *et seq.*, of the California Civil Code, the provisions hereof shall run with the land and may be enforced either in law or in equity by any State agency. DHCS and Owner hereby declare their express intent that the covenants, reservations, and restrictions contained herein shall be deemed both equitable servitudes and covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Property; provided, however, that upon the expiration of the Restriction Period said covenants, reservations and restrictions shall expire. Owner expressly acknowledges and agrees that the Declaration is a reasonable restraint on Owner's right to own, use, maintain, and transfer the Property and any

estate or interest therein and is not and shall not be construed to be an unreasonable restraint on alienation. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered, and accepted subject to this Declaration, regardless of whether this Declaration is set forth in such contract, deed, or other instrument.

6. Term of Declaration. The covenants in this Declaration shall be binding, effective, and enforceable commencing upon the recordation of this Declaration on the fee estate in land in the official records of the County, and they shall continue in full force and effect for a period of at least thirty (30) years after the date of either of the following: (i) the date of issuance of a Certificate of Occupancy, if the Owner's Project is for construction of a new facility, or (ii) the date of recordation of a Notice of Completion, in the official records of the County, if the Project is for the rehabilitation or expansion of an existing facility on the Property (the "**Restriction Period**"), regardless of any sale, assignment, transfer, or conveyance (including, without limitation, by foreclosure sale) of the Property or any portion thereof to any other person or entity.

7. Default, Remedies. If Owner defaults in the performance or observance of any covenant, agreement, restriction, or obligation of Owner set forth in this Declaration, and if such default remains uncured for a period of thirty (30) days after notice therefore shall have been given by DHCS to the Owner, then DHCS shall declare an "**Event of Default**" to have occurred hereunder. An Event of Default under this Declaration shall entitle DHCS to any rights, remedies, or damages available at law or in equity, including, but not limited to, those that are specified in Section 7.1-7.4 below. DHCS's failure to exercise any specific right or remedy shall not be construed as a waiver of that or any other right or remedy. An Event of Default under this Declaration shall also constitute a default under the Program Funding Agreement, in the event the same has not expired by its terms.

7.1 Specific Performance. The use, repair, and maintenance of the Property is of a special and unique kind and character, so that a breach of any material provision of this Declaration by Owner would not have an adequate remedy at law. Therefore, DHCS's rights may be enforced by an action for specific performance and such other equitable relief as is provided by the laws of the State of California.

7.2 Injunctive Relief. In pursuing specific performance of the Declaration, DHCS shall be entitled to petition the court for injunctive relief to enjoin any acts or things which may be in violation of this Declaration or the Program Funding Agreement. Such injunctive relief may include a court order restraining any development of the Property that is inconsistent with the foregoing Declaration.

7.3 Appointment of Receiver. In addition to or in conjunction with any other remedy available at law or in equity, DHCS may apply to a court of competent jurisdiction for the appointment of a receiver to take over and operate the Property in accordance with the requirements of the Program Funding Agreement and this Declaration. The receiver shall have all powers which shall be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Property.

7.4 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, the State may, but without any obligation to do so and without notice to or demand on Owner and without releasing Owner from any obligation hereunder, take such actions to cure the event of default in such manner and to such extent as the State may deem necessary to protect the security hereof. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law) shall be due and payable to the State upon demand, plus an administration fee of ten percent (10%).

7.5 Intentionally omitted.

8. DHCS Review and Inspection.

8.1 At any time during the term of this Declaration and upon reasonable notice, DHCS or its designee may, but is not obligated to, enter and inspect the Property and inspect all records pertaining to the operation, repair, and maintenance of the Property. Upon request by DHCS, Owner shall notify occupants of upcoming inspections in accordance with state law.

8.2 DHCS or its designee may, but is not obligated to, request any other information that it deems necessary to confirm compliance with this Declaration. Owner shall provide such requested information within fourteen (14) calendar days of DHCS's or its designee's written request for the information.

8.3 DHCS or its designee shall not, by the fact of making or not making any entries or inspections, or by taking or failing to take any action in response thereto: (i) incur or undertake, or be deemed to incur or undertake, any obligation, duty, or liability whatsoever, whether to Owner or to any other person or entity; (ii) be deemed as approving or disapproving any matter, action, incident, or condition related to the Property; or (iii) be deemed as approving or disapproving any matter related to the compliance of the Property with this Declaration or other applicable laws. In no event or circumstance shall DHCS's or its designee's exercise or non-exercise of its discretion under this subsection constitute, or be deemed or interpreted as constituting, any termination, limitation, alteration, or waiver by DHCS or its designee of any right, benefit, or remedies under or with respect to this Declaration.

9. Owner Representations. Owner represents and warrants to DHCS that: (1) Owner has sufficient interest in the Property to support the operation of the Property in accordance with this Declaration; (2) to Owner's actual knowledge and belief, there are no agreements, contracts, covenants, conditions, or exclusions to which Owner (or its predecessor in interest) is a party which would, if enforced, prohibit or restrict the use of the Property in accordance with the terms of this Declaration; (3) Owner has the full right and authority to enter into this Declaration; (4) this Declaration constitutes a valid and legally binding obligation on Owner, enforceable in accordance with its terms; and (5) Owner is duly organized and authorized to do business in the State of California.

10. Amendment, Modification. This Declaration shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the official records of the County.

11. Severability. Every provision of this Declaration is intended to be severable. If any provision of this Declaration is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

12. Governing Law. This Declaration shall be governed by and interpreted under the laws of the State of California and applicable federal laws.

13. Recordation of Agreement. This Declaration shall be recorded on the fee estate in land in the official records of the County no later than June 30, 2024. The Declaration shall be recorded, and shall remain, as a lien against the Property.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Owner and State have caused this Declaration to be signed by their duly authorized representatives, as of the day and year first written above.

OWNER:

SAN BERNARDINO COUNTY,
a political subdivision of the State of California,
acting through its Department of Behavioral Health

By: _____
Dawn Rowe,
Chair, Board of Supervisors

Date: _____

DHCS:

DEPARTMENT OF HEALTH CARE SERVICES,
a public agency of the State of California

By: _____
Ilana Rub, Section Chief
Community Services Division /
Behavioral Health Bridge Housing Section

Date: _____

SIGNATURES MUST BE ACKNOWLEDGED

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, 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.

Printed Name: _____
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, 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.

Printed Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Legal description to be provided by June 30, 2024.

EXHIBIT B

PROPERTY AND OPERATIONS

A facility that provides one or more of the following behavioral health (mental health and substance use disorder) services to address significant crisis care and behavioral health gaps in California's infrastructure, including: outpatient clinical support services, including urgent care, short-term crisis, crisis stabilization, substance use disorder, partial hospitalization; or residential clinical services that provide shelter and support, including psychiatric acute care, psychiatric health, psychiatric treatment, substance use disorder, community treatment, general acute care, acute care, mental health rehabilitation, peer respite, short-term therapeutic, skilled nursing with special treatment, or social rehabilitation. The facility shall accept and provide services to Medi-Cal beneficiaries as patients.