

*STAFF REPORT**CITY OF OCEANSIDE*

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DATE: January 4, 2012

TO: Honorable Mayor and Councilmembers

FROM: Neighborhood Services Department  
Housing and Code Enforcement Division

SUBJECT: **APPROVAL OF A LOAN AGREEMENT, REGULATORY AGREEMENT, AND ASSOCIATED DOCUMENTS WITH MENTAL HEALTH SYSTEMS INC., FOR THE ACQUISITION AND REHABILITATION OF 707 NORTH CLEMENTINE STREET; APPROPRIATION OF \$655,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM CONTINGENCY FUNDS FOR THE PROJECT; AND APPROVAL TO AMEND THE 2011-2012 ACTION PLAN**

**SYNOPSIS**

Staff recommends that the City Council approve a Loan Agreement, Regulatory Agreement, and associated documents with Mental Health Systems, Inc., for the acquisition and rehabilitation of 707 North Clementine Street; approve a budget appropriation in the amount of \$655,000 of CDBG Program Contingency Funds for the Project; approve an amendment to the 2011-2012 Action Plan accordingly; and authorize the City Manager to execute the agreements.

**BACKGROUND**

Mental Health Systems (MHS) manages the Family Recovery Center (FRC) to provide housing and supportive services for women in recovery from substance abuse, including pregnant and parenting women. The FRC program goal is to help the women become independent and self-sufficient, free of all addictions and self-destructive behaviors. Additional off-site housing provides an opportunity for women to take the "next step" on their path to independence while still receiving supportive services from FRC staff. Adding affordable units will also assist the City in meeting State-mandated housing requirements.

**ANALYSIS**

The City proposes to loan Community Development Block Grant Program Contingency Funds to MHS to acquire 707 North Clementine Street, an existing 4-unit residential complex, and to rehabilitate the property for use as transitional housing for graduates from the MHS Family Recovery Center. The property is currently vacant and is in close proximity to the FRC. These units had been previously rented by the FRC but were required to be vacated as a result of the foreclosure process by the prior owner.

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The project is estimated to be completed by June 2012. MHS will manage the project and remain responsible for tenant selection, property maintenance, and financial management. The property will remain affordable for 55 years per the terms of a Regulatory Agreement.

### **FISCAL IMPACT**

The City proposes to appropriate \$655,000 from the CDBG Program Contingency Fund (921790000237) to loan to Mental Health Systems (911124400237). The total Project cost is \$725,000. The proposed sources of financing for the Project include the City loan of \$655,000 and \$70,000 of funds from MHS. The City's loan will earn 4.75 percent interest and will be amortized over a 30-year period per the provisions of a Loan Agreement. The Loan will be secured by a Deed of Trust and Promissory Note which preserve the City's interest in the property in the event of default. There is no impact on the General Fund and the City is not obligated to appropriate any additional funds to MHS for the project.

### **COMMISSION OR COMMITTEE REPORT**

At a Special Meeting on December 12, 2011, the Housing Commission recommended that the City Council approve the agreements with MHS. The report of the Housing Commission is attached.

### **CITY ATTORNEY'S ANALYSIS**

The documents have been reviewed and approved as to form by the City Attorney.

**RECOMMENDATION**

Staff recommends that the City Council approve a Loan Agreement, Regulatory Agreement, and associated documents with Mental Health Systems, Inc., for the acquisition and rehabilitation of 707 North Clementine Street; approve a budget appropriation in the amount of \$655,000 of CDBG Program Contingency Funds for the Project; approve an amendment to the 2011-2012 Action Plan accordingly; and authorize the City Manager to execute the agreements.

PREPARED BY:

SUBMITTED BY:

  
\_\_\_\_\_  
David L. Manley  
Neighborhood Services Division Manager

\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Margery M. Pierce, Neighborhood Services Director

Teri Ferro, Financial Services Director

  
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Teri TF

- Attachments: 1. Housing Commission Recommendation  
2. Loan Agreement  
3. Regulatory Agreement  
4. Promissory Note  
5. Deed of Trust

## OCEANSIDE HOUSING COMMISSION REPORT

TO: OCEANSIDE CITY COUNCIL  
FROM: HOUSING COMMISSION  
RE: WORK PLAN 2011- 2013  
DATE: DECEMBER 12, 2011

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE A LOAN AGREEMENT, REGULATORY AGREEMENT, AND ASSOCIATED DOCUMENTS WITH MENTAL HEALTH SYSTEMS FOR THE ACQUISITION AND REHAB OF 707 N. CLEMENTINE STREET.

CAMP	ABSENT
COOPER	YES
FARMER	YES
HUSKEY	ABSENT
MIKULAY	ABSENT
MOORE	ABSENT
PARKER	YES
SAIZ	ABSENT
SORENSEN	YES

### ALTERNATES

WILLIAMS	YES
JAMES	YES

## LOAN AGREEMENT

This Loan Agreement ("**Loan Agreement**"), effective \_\_\_\_\_, 2012 ("**Effective Date**"), is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, ("**City**") and MENTAL HEALTH SYSTEMS, INC, a California non-profit corporation, and its successors and assigns, ("**Borrower**").

### RECITALS

- A. Borrower has proposed to acquire, rehabilitate and operate an affordable multi-family apartment complex ("**Project**") on real property located at 707 North Clementine Street, Oceanside, California ("**Property**"), which is more fully described in Attachment A.
- B. The Project will consist of: Four (4) units of multi-family housing including: (1) three-bedroom/one-bathroom unit, (2) two-bedroom/one-bathroom units, and (1) one-bedroom/one-bathroom unit.
- C. The Project shall be financed and regulated in accordance with the loan documents approved by the City and the rules and regulations governing the applicable funding program(s) (hereinafter, the "**Program**"). Borrower agrees to be bound and abide by all applicable local, state and federal rules and regulations; the terms of the financial assistance provided by the City; and the plans and specifications submitted by Borrower and approved by City as described in Attachment B, "**Rehabilitation Specifications/Scope of Work**" and Attachment C, "**Project Budget**".
- D. The Acquisition and Rehabilitation costs of the Project are to be financed in part by a loan of CDBG (Community Development Block Grant) Program funds from the City in a principal amount not to exceed \$655,000.00 (the "**Loan**"). The Project budget is described in Attachment C.
- E. In addition to the Loan from the City, the Borrower has received, or will receive, funds for the Acquisition and Rehabilitation of the Project from the sources identified in Attachment C. All such funds shall be used, and secured, in the manner specified in Attachment C.

NOW, THEREFORE, the parties hereto agree as follows:

## GENERAL

1. **Definitions.** The following definitions apply:
  - (a) **“Acquisition”** or **“Rehabilitation”** shall include any, acquisition of land and existing buildings, rehabilitation of existing buildings, mitigation of hazardous substances (as described in Attachment D), or other activities financed by the Loan.
  - (b) **“Loan Documents”**, as used herein, includes the Regulatory Agreement, the Loan Agreement, the Promissory Note, the Deed of Trust, the Security Agreement and the Financing Statement and any other instruments incorporated by reference or otherwise referred to in those agreements.
2. **Attachments.** The following attachments are hereby incorporated into this Agreement by reference:

Attachment A	Property Description
Attachment B	Rehabilitation Specifications/Scope of Work
Attachment C	Project Budget
Attachment D	Hazardous Substances
Attachment E	Non-Discrimination Clause
Attachment F	Income Guidelines
3. **Work Description.** Borrower shall cause the Acquisition and Rehabilitation of the Project to be performed in an expeditious and professional manner in accordance with Attachments B and C.
4. **Term.** Except as otherwise specifically provided, this Loan Agreement shall commence on the Effective Date and, except for the obligation contained in Paragraph B hereof, shall terminate upon the first anniversary of the issuance to the Borrower of a Certificate of Completion and Certificate of Occupancy for the Project by the State or Local building officials or State or Local jurisdiction, as may be applicable. This Agreement may be terminated sooner pursuant to Paragraph 20 hereof.

## REPRESENTATIONS AND WARRANTIES

5. **Representations and Warranties.** Borrower represents and warrants to the City as follows:
  - (a) **Organization.** Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own or lease the Property and carry on its business as now

being conducted. The copies of the documents evidencing the organization of Borrower delivered to the City are true, complete, and correct copies of the originals, as amended to the date of the Loan Agreement.

- (b) **Authority of Borrower.** Borrower has full power and authority to execute and deliver the Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Loan Agreement, and to perform and observe the terms and provisions of all of the above.
- (c) **Valid Binding Agreements.** The Loan Documents and all documents or instruments executed and delivered pursuant to or in connection with this Loan Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.
- (d) **No Breach of Law or Agreement.** None of the execution or delivery of the Loan Documents or of any document or instrument executed and delivered, or to be executed or delivered, pursuant to this Loan Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or City whatsoever binding on Borrower or any provision of the organizational documents of Borrower, will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens approved by the City.
- (e) **Compliance with Laws; Consents and Approvals.** The Project will comply with all applicable laws, ordinances, rules, regulations and directives of local, state and/or federal agencies having jurisdiction over either the Borrower, the Property, or the Project. In addition, Borrower shall comply with the requirements described in Attachments E and F. Except as specified in Attachment B, all permits, consents, permissions and licenses required by any local, state and/or federal agencies, government or City to which Borrower, the Property or the Project is subject, which may be necessary in relation to this Loan Agreement or the acquisition, Development, Construction or ownership operation of the Project, at or prior to the commencement of Construction will have been obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

- (f) **CEQA and NEPA Conditions.** The Project will comply with findings made pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for the Project.
  - (g) **Pending Proceedings.** To the best of Borrower's knowledge, Borrower is not in default under any law or regulation or under any order of any court, board, commission or City whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, the Property or the Project, at law or in equity before or by any court, board, commission or City whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to acquire, construct or develop the Project.
  - (h) **Title.** Upon disbursement of the Loan and recordation of the Deed of Trust, Borrower shall have title to the Property.
  - (i) **Adequacy of Loan.** As of the date hereof and to the best of Borrower's current actual knowledge, the amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other source, is adequate to pay all costs incurred in connection with the Acquisition and Rehabilitation of the Property. In addition, funds provided by Borrower and from other sources will be adequate to pay for the Construction and Development of the Project and to enable Borrower to satisfy the covenants contained in this Loan Agreement. The costs set forth in the sources and uses charts in Attachment C are the anticipated costs of constructing and developing the Project.
  - (j) **Payment of Taxes.** To the best of Borrower's actual current knowledge, all local, state and federal taxes required to be paid by the Borrower or on account of the Property due and payable as of the date of this Loan Agreement have been paid in full as of such date.
  - (k) **Conflict of Interest.** No person who is an employee, agent, consultant, officer, or elected official or appointed official of the Borrower and who exercises or has exercised any functions or responsibilities with respect to any activities assisted with any City funds, or who is in a position to participate in a decision-making process or gains inside information with regard to these activities, may obtain a financial interest or benefit from a City or Program assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or one year thereafter.
6. **Construction Contract.** Prior to the commencement of the Rehabilitation of the Project, Borrower shall enter into a written contract, as may be amended from

time to time, with the general contractor(s) for the performance of the construction work as set forth in Attachment B. The contract shall include any addendum required by the City that relates to the use of the City funds. Borrower shall monitor and enforce the terms and conditions of that contract.

7. **Responsibilities.** Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and the Project including, but not limited to, the quality and suitability of the plans and specifications and the equipment and materials used in the construction of the Project; the supervision of the work of Rehabilitation; the qualifications, financial condition and performance of all architects, engineers, contractors, and contractors of any tier; material suppliers; consultants; and property managers. In addition Borrower shall be solely responsible for the accuracy of all applications for payment and the proper application of all disbursements.
8. **Purchase of Materials Under Title Retention Agreement.** With respect to the Project, the Borrower shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Project under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Project, unless authorized in writing by the City.
9. **Material Warranties.** The Borrower shall procure from the general contractor all warranty documents, including warranties on appliances and on building components (such as the roof and siding), and all service manuals and operating instructions pertaining to the Project.
10. **Inspections.**
  - (a) Authorized representatives and agents of the City shall be permitted upon three (3) days prior written notice to the Borrower to inspect all work, materials, payrolls, personnel records, materials invoices and other relevant data pertaining to the Project, and shall have the right of entry and full access to the Property and the Project.
  - (b) City shall not have any affirmative duty to make any inspection, to make any investigation, or to supervise or inform Borrower or any third party as to any aspect of the construction of the Project and shall not incur any liability for failing to do so. Any inspection, investigation, or review undertaken by the City shall be solely to determine whether the Borrower is properly discharging its obligations to the City and may not be relied upon by Borrower or any third party to protect against or to inform Borrower or any third party of any negligent, faulty, inadequate, or defective design or construction of the Project.

- (c) The fact that inspection, investigation or review of the design or construction of the Project may or may not have been made by the City shall not relieve the Borrower or the general contractor of any obligation that they may otherwise have to inspect the Project or to otherwise comply with the terms of this Loan Agreement.
11. **Completion Certificate.** Borrower shall submit to the City a Notice of Completion in the form determined in the Borrower's sole discretion or Certificate of Occupancy, if applicable, for the Project upon the occurrence of all of the following:
- (a) Completion of the Acquisition and Rehabilitation of the Project in accordance with Attachment B as modified in accordance with the terms of this Loan Agreement and acceptance thereof by the City;
  - (b) Compliance by Borrower with all applicable laws, ordinances, rules and regulations of State and Local governments, and all the terms and provisions of this Loan Agreement; and,
  - (c) Satisfaction of the conditions precedent to payment to, or on behalf of Borrower of the final disbursement of funds due and payable pursuant to this Agreement.

#### **DISBURSEMENT OF FUNDS**

12. **Conditions Precedent to Disbursements.** City shall not be obligated to make the disbursement of proceeds of the Loan to Borrower, which shall be a single disbursement for the full amount of the Loan made when the Borrower closes the Permanent Loan shown on Attachment C hereto, or take any other action under the Loan Documents unless all of the following conditions are satisfied prior to the time of such action:
- (a) There exists no event of default hereunder or any default under any of the other Loan Documents, or event, omission or failure of condition which would constitute such a default or event of default after notice or lapse of time, or both;
  - (b) The Loan proceeds, and all sums (if any) to be provided by or to Borrower, and all sums (if any) shown in Attachment C to be provided by other sources, shall at all times be not less than the amount which the City, in its reasonable judgment, determines necessary to: (i) pay all costs of acquisition and costs related thereto; (ii) pay all sums which may be payable under the Loan Documents during the term of this Loan

Agreement; and (iii) enable the Borrower to perform and satisfy all of the covenants of the Borrower contained in this Loan Agreement;

- (c) Borrower has executed and delivered to City all Loan Documents, other documents, instruments, policies, and forms of evidence or other materials required under the terms of this Loan Agreement or any of the other Loan Documents, all in form and substance satisfactory to City;
  - (d) The Regulatory Agreement has been recorded in the Office of the County Recorder for the County of San Diego;
  - (e) There shall be no unrelated mechanic's liens or stop notices in connection with the Project and Borrower shall have furnished to the City, if demanded by the City, full waivers of lien claims from the general contractor and all subcontractors and materials suppliers for all work performed and materials supplied to date;
  - (f) Borrower shall have obtained for the City such endorsements to the title policy as the City may require including but not limited to an endorsement that the Regulatory Agreement is prior to any liens, encumbrances, or matters of record affecting the Project except for those approved in writing by the City, and to any statutory lien for labor or material arising out of the Construction;
  - (g) Funds disbursed may only be for the amount needed for payment of actual eligible expenses, and the amount requested must be limited to the amount needed as evidenced by actual invoices and/or signed statements of cost; and
  - (j) Borrower shall furnish City with a copy of its current title insurance policy and certificates.
13. **Title Insurance.** Borrower shall procure from a title insurer acceptable to the City an ALTA Lender's Policy of Title Insurance, with any endorsement the City may require, insuring the City of the validity and the priority of the lien of the Regulatory Agreement upon the Property and Project, in the principal amount of the Loan, subject only to matters of record approved by the City in writing. The City acknowledges and agrees that the priority of the liens of its Regulatory Agreement and Deed of Trust shall be subordinate to Loan financing shown on Attachment C and such other financing as shall require such subordination. The City agrees to execute, deliver, and cause or permit to be recorded subordination agreements necessary to cause the subordination of its Regulatory Agreement and Deed of Trust. During the term of this Agreement, Borrower shall procure and deliver to the City, within ten (10) working days of the City's request, other endorsements to the Title Policy as the City may reasonably require.

14. **Methods and Conditions of Payment.** City agrees to provide to or on behalf of Borrower Loan funds in the amount and in accordance with the manner, timing, and terms, including retention, as specified in this Loan Agreement. All amounts paid to or on behalf of Borrower hereunder shall be considered payments subject to the Regulatory Agreement.
15. **Liens and Stop Notices.** If a claim of lien is recorded affecting the Property or Project, or a bonded stop notice is served upon the City which affects the Loan or the Borrower's funds, Borrower shall, within ninety (90) days of such recording or service or within thirty (30) days of the City's demand (whichever last occurs): (i) pay and fully discharge the same; or (ii) effect the release thereof by recordings, or delivering to the City, a surety bond in sufficient form and amount, or otherwise; or (iii) provide the City with other assurance which the City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the City from the effect of such lien or bonded stop notice. If Borrower has not received actual notice of the claim of lien or bonded stop notice prior to the City's demand, then the thirty (30) day period described above shall be extended to sixty (60) days. Borrower shall give the City prompt written notice of all lien claims affecting the Property or Project.
16. **Eligible Use of Funds.**
  - (a) Funds advanced to Borrower shall be used only for payment of amounts set forth in Attachment C.
  - (b) In addition, to be eligible, costs must be reasonable and necessary for the completion of the Project.

#### **DEFAULTS, REMEDIES AND ENFORCEMENT**

17. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder following notice to the Borrower by the City, specifying (1) the applicable event, (2) the action required to prevent such event becoming an Event of Default, and (3) a date, which shall be not less than ninety (90) days after the date the notice is mailed to Borrower, by which such action must be taken:
  - (a) **Monetary.** (i) Borrower's failure or inability to secure anticipated financing from parties other than the City as specified in Attachment C, regardless of fault of the Borrower, (ii) Borrower's failure to use or apply Loan funds or other party's funds in the manner specified by, or consistent with the purposes of this Loan Agreement and as specified in Attachment C; or (iii) the occurrence of an event of default under the terms of any of the grants or loans received from the financing sources specified in the sources and uses charts in Attachment C

- (b) **Construction; Use of Materials and Workmanship.** (i) Borrower's failure to remedy any material deviation in the work of Rehabilitation from the Plans and Specifications that occurred with the City's approval or defective workmanship or materials in, or use of defective workmanship or materials in Constructing the Project, within thirty (30) days of the City's written demand to do so; or (ii) Borrower's failure to complete Rehabilitation and obtain a Notice of Completion within six (6) months of the closing of the Loan
- (c) **Liens; Attachment; Condemnation; Encroachments.** (i) the filing of any claim of lien against the Property or the Project, or any part thereof, or service on the City of any bonded stop notice relating to the Loan and the continuance of the claim for lien or bonded stop notice for ninety (90) days after Borrower receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 16 thereof, (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property or the Project; (iii) the sequestration or attachment of, assignment by Borrower for the benefit of its creditors of, or any levy or execution upon, the Property, the Project, other contribution provided by Borrower under any of the Loan Documents, monies in accounts established for the deposit of operating income, or substantial portion of the other assets of Borrower, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby, or (iv) any survey provided to the City upon a request for a disbursement of Loan funds showing encroachments which adversely effects the Property and which the City requires to be removed or corrected, and the failure to remove or correct any such encroachments within ninety (90) days after receipt of the survey.
- (d) **Performance of Obligations.** Borrower's default under any of the other Loan Documents, or Borrower's failure to perform its obligations under this Loan Agreement and, in each case, the expiration of any time provided for the remedy of such failure after the notice thereof has been given.
- (e) **Representations and Warranties.** (i) Any of Borrower's representations or warranties in any of the Loan Documents or any statements, certificates or schedules furnished by Borrower to the City, shall prove to have been untrue in any material respect when made or the Borrower shall have concealed any material fact from the City, (ii) any of the Borrower's representations or warranties in any of the Loan Documents or any statement, certificates or schedules furnished by Borrower to the City, other than representations, warranties, statements and certificates as to the financial condition of Borrower or any other person, shall cease to be

true and shall remain untrue for thirty (30) days after notice of such change to Borrower by the City, or (iii) any material adverse change in the financial condition of Borrower or any other person or entity obligated in any manner to the City under the Loan Documents from the financial condition represented to the City as of the date of this Loan Agreement.

- (f) **Voluntary Bankruptcy; Insolvency; Dissolution.** Borrower's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors if not dismissed within ninety (90) days thereafter; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding their insolvency if not dismissed within ninety (90) days thereafter; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of any of the above; (v) inability or admission in writing of inability to pay debts as they are due; or (vi) death, if an individual, or the filing by or against Borrower of a petition seeking its liquidation or dissolution or the commencement of any other procedure to liquidate or dissolve it.
- (g) **Involuntary Bankruptcy.** Borrower's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator of it or all or a material part of its assets, or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against it or in any way restrains or limits it or the City regarding the Loan, the Property or the "Project" in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or ninety (90) days after the date of filing of the petition or beginning of the proceeding.
- (h) **General.** Borrower's material breach of any condition, covenant, warranty, promise or representation contained in this Loan Agreement not otherwise resulting in an event of default hereunder and the continuance of such breach for a period of ninety (90) days after written notice thereof to Borrower.

Neither the City nor the Borrower shall be deemed to be in default in the performance of the terms of this Agreement if either party is prevented from performing the terms of this Agreement by causes beyond its control, including without being limited to: acts of God or the public enemy; acts of terrorism; interference, rulings or decisions by Municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of

such Municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, the party delayed shall immediately give the other parties written notice of due diligence thereof and shall resume operations under this Agreement.

18. **Notice and Cure in the Event of Default.** In the event of any material breach of this Agreement, the City shall give written notice to the Borrower or Borrower's Agent of breach by specifying: (a) the nature of the event or deficiency giving rise to the breach; (b) the action required to cure the deficiency, if an action to cure is possible; (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice by which such action to cure must be accomplished (or if such breach is not reasonably susceptible to cure within such a ninety (90) day period, then within such additional time, as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues cure to completion). After expiration of all applicable notice and cure periods as specified, the City may without any prejudice to any of its other legal remedies terminate this Agreement upon fifteen (15) days' written notice to the Borrower.
19. **Remedies upon an Event of Default.** Upon the happening of any Event of Default, the City's obligation to disburse proceeds of the Loan shall terminate and the City shall have the right to terminate this Loan Agreement. In addition, the City or a receiver appointed at the City's request shall have the right to enter into possession of the Property and the Project, to take over and complete the Project in accordance with the Plans and Specifications, to discharge and replace the general contractor and to employ personnel to protect the Property and the Project and, for those purposes, to make disbursements of proceeds of the Loan including roll-over funds. All such disbursements shall be deemed to have been paid to the Borrower by the City.
20. **Rights Cumulative; No Waiver.** All the City's rights and remedies provided in the Loan Documents, or granted by law or otherwise, are cumulative and may be exercised by the City at any time. No waiver shall be implied from any failure of the City to take, or any delay by the City in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.

21. **Enforcement of the Construction Contract.** The parties hereto agree that the City shall have, and is hereby assigned, the right of the Borrower to enforce the provisions of the Architect's Contract and the Construction Contract(s) and all documents related thereto in the event of a default by Borrower which remains uncured after the expiration of all applicable notice and cure periods.
22. **Attorneys' Fees; Enforcement.** If any attorney, including the Oceanside City Attorney, is engaged by the City to enforce, construe or defend any provision of any of the Loan Documents, or as a consequence of any Event of Default hereunder or default under any other Loan Document, with or without the filing of any legal action or proceeding, Borrower shall pay to the City, immediately upon demand, the amount of all attorneys' fees and costs incurred by the City or the City in connection therewith, together with interest thereon from the date of such demand at the rate of eight (8%) percent per annum of interest.
23. **Indemnification and Waiver.**
- (a) **Indemnification.** Borrower agrees to indemnify the City and its agents, employees and officers against, and holds the City and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the City may incur as a direct or indirect consequence of: (i) the making of the Loan to the Borrower, except for violations of banking laws or regulations by the City; (ii) Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the Loan Documents; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or Project; or (v) the presence of Hazardous Substances at the Project or on the Property as described in Attachment I hereto. Borrower shall pay immediately upon the City's demand any amounts owing under this indemnity together with interest from the date of the demand until paid at the rate of eight percent (8%) per annum. The duty of the Borrower to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the City and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the City or the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the City. Borrower's duty to indemnify the City shall survive the term of this Loan Agreement.

- (b) **Waiver and Release.** The Borrower waives and releases any and all rights to any types of express or implied indemnity against the City or its agents, officers or employees.

#### MISCELLANEOUS

24. **Insurance and Bond Requirements.** Borrower shall comply with the insurance requirements set forth in the Regulatory Agreement.
25. **Non-Liability of City.** Use of Borrower's and its subcontractor's tools and equipment will be at the sole risk of Borrower and City will have no responsibility therefore.
26. **Further Assurances.** At the City's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the City) to carry out the purpose of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.
27. **Notices.** All written notices and demands under the Loan Documents shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Borrower or to the primary place of business or the mailing address of the City, as applicable, appearing below. Notice of change of address may be given in the same manner, provided Borrower's address shall be in the State of California or the state where Borrower's principal place of business is located, as represented to the City in the Loan Documents.

Borrower:

Mental Health Systems, Inc.  
9465 Farnham Street  
San Diego, CA 92123  
Attention: Kimberly Bond, President and CEO

City:

City of Oceanside Neighborhood Services Department  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Neighborhood Services Director

28. **Displacement and Relocation.** The Borrower and City have confirmed that the Project was vacant prior to entering negotiations for the acquisition of the property and therefore, a Relocation Plan is not applicable.

29. **Prevailing Wages.** Contractor is responsible for complying with all applicable Federal and State prevailing wage laws. It is the Borrower's obligation to determine whether payment of prevailing wages is required. Borrower agrees to defend indemnify and hold harmless the City and its officers and employees from and against any claim, lawsuit, administrative proceeding, damages, fines or penalties relating to the issue of non-payment of prevailing wages.
30. **Amendments and Additional Agreements.** This Agreement shall not be altered or amended except in writing executed by all parties. The Borrower agrees that any other agreements entered into by the Borrower relating to the performance of this Agreement shall be subject to the written approval of the City.
31. **Books and Records.** Borrower shall maintain complete books of accounts and other records for the Project and for the use of the Loan proceeds and other sources of funds during Project development. Such records shall include, but not be limited to property, personnel and financial records as deemed necessary by the City and the Loan Documents. Records shall include preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the general contractor and each subcontractor. Borrower shall maintain such records and accounts for at least three years after the final payment under this Agreement, or after expiration of the Regulatory Agreement, whichever is later. The City shall have access to and the right to examine and audit all reports, records, books, papers, and other documents related to the Borrower's performance under this Agreement.
32. **No Third Parties Benefited.** No person other than the City and Borrower, and their permitted successors and assigns or, in the case of the Regulatory Agreement, the tenants of the Project to the extent specified therein, shall have any right of action under any of the Loan Documents.
33. **RESERVED.**
34. **Actions.** The City may commence, appear in or defend any action or proceeding purporting to affect the Property, Project, Loan Documents or the rights, duties or liabilities of Borrower or the City under the Loan Documents. In exercising this right, the City may incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Borrower agrees to pay all such expenses so incurred and reimburse the City for any expense so paid.
35. **Relationship of Parties.** The relationship of Borrower and the City under the Loan Documents is, and shall at all times remain, solely that of Borrower and Lender. The City neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property for the Project, except as expressly provided in the Loan Documents.

36. **Assignment of Loan Documents.** Borrower may assign Borrower's interest, or any portion thereof, under any of the Loan Documents, or in any monies due or to become due thereunder, with notice to the City, so long as the assignment is to a limited partnership in which the Borrower, or an affiliate of the Borrower, is a general partner. Except as expressly permitted herein, Borrower shall not make an assignment under any of the Loan Documents without the prior written approval of the City.
37. **Restrictions on Transfer of Property, Project and Interest in Borrower.** Borrower shall not assign, sell, transfer or convey any interest in the Borrower, the Property, or the Project, including, without limitation, any interest in the Borrower, without written notice to City. The foregoing notwithstanding, the Borrower may, without notice to the City: (1) assign its general partner interest as collateral for an loan obtained in connection with the Acquisition and Rehabilitation of the Project; (2) transfer its limited partner interests to a third party equity investor in exchange for equity capital to be used in connection with the Acquisition and Rehabilitation of the Project; and (3) transfer the Property as security to any lender providing a loan for the Development and Construction of the Project, and the refinancing of any of any such loan.
38. **City's Agents.** The City may designate an agent or independent contractor to exercise any of the City's rights under the Loan Documents. Any reference to the City in any of the Loan Documents shall include the City's agents, employees or independent contractors.
39. **Severability.** If any provision of the Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of the Loan Documents. However, if the City in its sole discretion, determines that the invalid portion of the Agreement was a material effect on the interests of the State and the City, the City may thereafter declare the entire Agreement invalid.
40. **Heirs, Successors and Assigns.** The terms of the Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.
41. **Time.** Time is of the essence of each term of the Loan Documents.
42. **Headings.** All headings appearing in any of the Loan Documents are for convenience only and shall be disregarded in construing the Loan Documents.
43. **Governing Law.** The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent

preempted by Federal laws. Borrower and all persons and entities in any manner obligated to the City under the Loan Documents consent to the jurisdiction of any Federal or State Court within the State of California having proper venue and also consent to service of process by any means authorized by California or Federal law.

44. **Integration; Interpretation.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. The Loan Documents shall not be modified except by written instrument executed by all the parties thereto. Any reference in any of the Loan Documents to the Property or Project shall include all or any parts of the Property or Project. Any reference to the Loan Documents in any of the Loan Documents includes any amendments, renewals or extensions approved by the City. Any reference in this Loan Agreement to the Loan Documents shall include all or any of the provisions of this Loan Agreement and the Loan Documents unless otherwise specified.
45. **Joint and Several Liability.** The liability of all persons and entities who are in any manner obligated under any of the Loan Documents shall be joint and several.
46. **Signs.** During the rehabilitation period the Borrower will place on the Property signs indicating the project is a development which involves funding from the City and other applicable local government entities.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, Borrower and City have executed this Loan Agreement on the day and year set forth above.

**BORROWER:**

Mental Health Systems, Inc.,  
a California non-profit corporation

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

Name: Kimberly Bond

Its: President and CEO

**CITY:**

City of Oceanside,  
a municipal corporation

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

Name: Peter A. Weiss

Its: City Manager

APPROVED AS TO FORM  
OCEANSIDE CITY ATTORNEY  
*Barbara L. Hamilton*  
BARBARA L. HAMILTON  
Assistant City Attorney

## ACKNOWLEDGMENT

State of California  
County of San Diego )

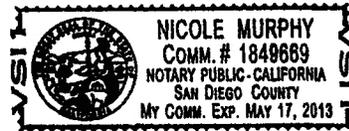
On December 28, 2011 before me, Nicole Murphy, Notary Public  
(insert name and title of the officer)

personally appeared Kimberly Bond  
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 Nicole Murphy (Seal)



## **Attachment A**

### **Property Description**

The land referred to herein as 707 North Clementine Street, Assessor's Parcel Number 147-054-05-00, is situated in the City of Oceanside, County of San Diego, State of California, and is described as follows:

Lot 5 in Block 54 of Tract 332 of Myers and McComber's Subdivision, in the City of Oceanside, County of San Diego, State of California as per map thereof no. 332, filed in the Office of the County Recorder of said County.

**Attachment B**  
**Rehabilitation Specifications / Scope of Work**

**Project MHS**

**Project Address: 707 N. Clementine**

**City: Oceanside**

**Timeline:**

Close escrow-January 31, 2012

Rehab Complete-March 31, 2012

Lease-up Completed-June 30, 2012

For all Units:

**\*Demolition:**

- \*Remove all existing flooring material, and base throughout units
- \*Remove all window coverings
- \*Remove & donate all functioning appliances to DAV
- \*Remove all interior doors & hardware
- \*Remove all kitchen counters & sub-tops
- \*Remove all kitchen fixtures, sinks, GDs, waste & water lines
- \*Remove all bathroom fixtures, sinks, vanities, toilets, & tub tiles
- \*Remove all moisture affected drywall throughout units & garages
- \*Remove all existing exhaust fans
- \*Remove all non-functioning lighting fixtures

**\*Drywall, tape, texture (Orange-peel):**

- \*Patch all affected areas of drywall, tape, & retexture to match (E)
- \*Furnish & install new drywall at all moisture affected areas, tape, & text with "orange-peel" finish
- \*Furnish & install new drywall in bathrooms of units B, C, & studio. Tape texture with "orange-peel" finish.
- \*Remove all "popcorn" ceiling texture throughout units, putty-coat comp & retexture with hand trowel type finish
- \*Furnish & install new drywall in garage areas where needed (fire tape c
- \*Replace drywall at all window openings due to new window install

**\*Plumbing:**

- \*Furnish & install new A.D.A. toilets in bathrooms (valve stop & fill line)
- \*Furnish & install new bathroom vanities (includes vanity surface/sink or faucets, drains, valvestops, & waste lines
- \*Furnish & install new mixing valves at showers & raise head stubout
- \*Furnish & install new shower heads & control fixture
- \*Furnish & install new kitchen fixtures (includes SS dual compartment s faucets, drains, valvestops, waste lines, & garbage disposals)
- \*Inspect overhead plumbing in garage area for units B & C, correct all w water lines as needed
- \*Furnish & install new fill valves in laundry room

- \*Bring all water heaters up to seismic and plumbing codes
- \*Scope (E) main waste lines & jet for proper flow to sewer

**\*Electrical:**

- \*Furnish & install new smoke detectors per fire code
- \*Furnish & install new carbon monoxide detectors
- \*Furnish & install new exhaust fans throughout
- \*Furnish & install new interior light fixtures throughout units
- \*Upgrade all (E) exterior security & egress lighting
- \*Furnish & install new power & switch devices (includes wall plates)
- \*Correct (E) garbage disposal power boxes (surface mt outlets)

**\*Carpentry, framing, & doors:**

- \*Assess condition of (E) sub-floors. Replace as needed
- \*Furnish & install (13) new "Masonite" interior doors
- \*Provide new lockset or passage hardware for new interior doors
- \*Furnish & install new sub-tops at kitchen countertop locations
- \*Furnish & install new 2 1/2" composite floor base throughout units

**\*Flooring & tile:**

- \*Refinish (E) wood floors in front unit to natural state (sand & seal)
- \*Furnish & install new 18- 24 ounce loop carpet at all bedroom locations
- \*Furnish & install new 12" ceramic tile in kitchens, baths, & hallways
- \*Furnish & install new 4" bathroom tile at tub/shower surrounds
- \*All tile to be sealed

**\*Windows:**

- \*Furnish & install (24) new low E3 argon gas dual pane windows (includes screens & exterior casing)

**\*Stucco:**

- \*Patch and blend new 20-30 sand type stucco finish at new window locations where affected due to window install

**\*Concrete:**

- \*Remove (E) primer/ sealer from studio CMU wall on east side of unit,
- \*Assess moisture intrusion & correct all waterproofing issues and resea

**Painting:**

- \*Repaint exterior stucco of complex (exterior grade water based paint color TBD)
- \*Repaint all interior ceilings and walls (interior grade water based latex paint, sheen & colors TBD)
- \*Repaint all kitchen cabinet doors and faces
- \*All paint to be "Frazee" product
- \*All garage areas to be primed only

**\*Appliances:**

- \*Furnish & install new energy efficient refrigerators, oven/range combc units, microwaves, & (2) laundry room equipment sets

**\*ADA compliance:**

- \*Comply & correct all city mandated ADA conformance issues

**ATTACHMENT C  
PROJECT BUDGET**

This Attachment includes the following information:

**Project Budget/Sources and Uses**

**Operating Budget**

**City Loan Amortization Schedule**

Project Name	707 Clementine	Total Units	4	Residential Square Footage	13,468	Tax Credit Sales Price	
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Select "Yes" or "No"		Sources of Financing (Enter additional sources below)								
New Construction?	Rehab?	Uses of Funds	FHA/VA Requested	Owner Equity	LIHTC Proceeds	Oceanside	MHS			
No	Yes									
<b>OTHER PROJECT COSTS (continued)</b>										
Appraisal										
Market Study										
Relocation Expenses										
Soft Cost Contingency										
Other	Closing Costs	10,000				10,000				
<b>Total Other Costs</b>		10,000				10,000				
<b>DEVELOPER COSTS:</b>										
Developer Fee (includes Project Administration)										
Consultant/Processing Agent										
Broker Fees Paid with Project Funds to a Related Party										
Construction Management Oversight										
Other	Lender Inspection Fee									
<b>Total Developer Costs</b>										
<b>SYNDICATION (Investor &amp; General Partner)</b>										
Organizational Fee										
Bridge Loan Fees/Expenses										
Legal Fees										
Consultant Fees										
Accountant Fees										
Tax Opinion										
Other	Predevelopment Loan									
<b>Total Syndication Costs</b>										
<b>Total Residential Development Costs</b>		725,000				655,000	70,000			
<b>Total Commercial Development Costs</b>										
<b>Grand Totals Sources and Uses</b>		725,000				655,000	70,000			

Loan, grant, or equity?	Equity	Equity	Loan			
If loan, soft or hard debt?			Hard			

Loan Term	30	0			
Loan Amortization Period (years)	30	0			
Initial Loan Rate Assumption	4.75%	0.00%			
Loan Pricing Index and Basis Point Spread	0				
Annual Debt Service (year 1) (calculate for hard debt only)	\$ 41,001	\$	\$	\$	\$



Project Name	707 Clementine		Project Based Rental Subsidy (Indicate "Yes" or "No")										Yes	
	Total Units		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10		
<b>Income Assumptions</b>		Rate of Increase												
Gross Residential Rents-Restricted Income Units	60,000	2.0%	61,200	62,424	63,672	64,946	66,245	67,570	68,921	70,300	71,706			
Gross Residential Rents-Restricted Income Units Subsidy														
Gross Residential Rents-Non-restricted Income Units														
Less Vacancy		% of Gross Rents =												
Scheduled Commercial Rents														
Less Vacancy		% of Gross Rents =												
Laundry, Parking														
Other														
<b>Total Effective Gross Income</b>	60,000		61,200	62,424	63,672	64,946	66,245	67,570	68,921	70,300	71,706			
<b>Expense Assumptions</b>		Rate of Increase												
Management Fee		Dollars per Unit/Mo. = \$												
Legal & Audit														
Advertising														
Gas & Electric														
Water, Sewer, Waste Removal														
Supplies														
Payroll														
Insurance														
Pest Control														
Maintenance / Repair														
Operating Reserves		Dollars per Unit = \$												
Replacement Reserves		Dollars per Unit = \$												
Real Estate Taxes (exempt if in CA)														
Local & State Assessments														
Partnership Management Fee (tax credits only)														
Other	12,000	Estimated Expenses (20% of Income)	12,360	12,731	13,113	13,506	13,911	14,329	14,758	15,201	15,657			
Other														
Other														
Other														
<b>Total Expenses</b>	12,000	Operating Cost/Unit = \$	12,360	12,731	13,113	13,506	13,911	14,329	14,758	15,201	15,657			
<b>Net Operating Income</b>	48,000		48,840	49,693	50,560	51,440	52,334	53,241	54,163	55,098	56,048			
Debt Service (Hard Debt Only from S&U Statement)	41,001		41,001	41,001	41,001	41,001	41,001	41,001	41,001	41,001	41,001			
Debt Service Coverage Ratio	1.171		1.19	1.21	1.23	1.25	1.28	1.30	1.32	1.34	1.37			
Cash Flow	6,999		7,839	8,692	9,558	10,438	11,332	12,240	13,161	14,097	15,047			
Operating Grant														
Operating Grant														
Residual Receipts Payment to														
Residual Receipts Payment to														
Net Cash Flow	6,999		7,839	8,692	9,558	10,438	11,332	12,240	13,161	14,097	15,047			

Project Name: 707 Clementine

Income Assumptions:	Rate of Increase	Year 11	Year 12	Year 13	Year 14	Year 15
Gross Residential Rents-Restricted Income Units	2.0%	73,140	74,602	76,095	77,616	79,169
Gross Residential Rents-Restricted Income Units Subsidy		-	-	-	-	-
Gross Residential Rents-Non-restricted Income Units		-	-	-	-	-
Less Vacancy	% of Gross Rents = 0.0%	-	-	-	-	-
Scheduled Commercial Rents		-	-	-	-	-
Less Vacancy	% of Gross Rents =	-	-	-	-	-
Laundry, Parking		-	-	-	-	-
Other		-	-	-	-	-
<b>Total Effective Gross Income</b>		<b>73,140</b>	<b>74,602</b>	<b>76,095</b>	<b>77,616</b>	<b>79,169</b>
<b>Expense Assumptions:</b>	<b>Rate of Increase</b>					
Management Fee	Dollars per Unit/Mo. = \$ 3.0%	-	-	-	-	-
Legal & Audit		-	-	-	-	-
Advertising		-	-	-	-	-
Gas & Electric		-	-	-	-	-
Water, Sewer, Waste Removal		-	-	-	-	-
Supplies		-	-	-	-	-
Payroll		-	-	-	-	-
Insurance		-	-	-	-	-
Pest Control		-	-	-	-	-
Maintenance / Repair		-	-	-	-	-
Operating Reserves	Dollars per Unit = \$	-	-	-	-	-
Replacement Reserves	Dollars per Unit = \$	-	-	-	-	-
Real Estate Taxes (exempt if in CA)		-	-	-	-	-
Local & State Assessments		-	-	-	-	-
Partnership Management Fee (tax credits only)		-	-	-	-	-
Other	Estimated Expenses (20% of income)	16,127	16,611	17,109	17,622	18,151
Other		-	-	-	-	-
Other		-	-	-	-	-
Other		-	-	-	-	-
<b>Total Expenses</b>	Operating Cost/Unit \$ 3,000	<b>16,127</b>	<b>16,611</b>	<b>17,109</b>	<b>17,622</b>	<b>18,151</b>
<b>Net Operating Income</b>		<b>57,013</b>	<b>57,992</b>	<b>58,985</b>	<b>59,994</b>	<b>61,018</b>
<b>Debt Service (Hard Debt Only from S&amp;U Statement)</b>		<b>41,001</b>	<b>41,001</b>	<b>41,001</b>	<b>41,001</b>	<b>41,001</b>
<b>Debt Service Coverage Ratio</b>		<b>1.39</b>	<b>1.41</b>	<b>1.44</b>	<b>1.46</b>	<b>1.49</b>
<b>Cash Flow</b>		<b>16,011</b>	<b>16,990</b>	<b>17,984</b>	<b>18,993</b>	<b>20,016</b>
<b>Operating Grant</b>						
<b>Operating Grant</b>						
<b>Residual Receipts Payment to</b>						
<b>Residual Receipts Payment to</b>						
<b>Net Cash Flow</b>		<b>16,011</b>	<b>16,990</b>	<b>17,984</b>	<b>18,993</b>	<b>20,016</b>

# Amortization Table

A simple amortization table covering 360 payment periods of a loan.

1) To use the table, simply change any of the values in the "initial data" area of the worksheet.

2) To print the table, just choose "Print" from the "File" menu. The print area is already defined.

## Initial Data

### LOAN DATA

Loan amount: \$655,000.00  
 Annual interest rate: 4.750%  
 Term in years: 30  
 Payments per year: 12  
 First payment due: 7/1/2012

### TABLE DATA

Table starts at date:  
 or at payment number: 1

### PERIODIC PAYMENT

Entered payment:  The table uses the calculated periodic payment amount  
 Calculated payment: \$3,416.79 unless you enter a value for "Entered payment".

### CALCULATIONS

Use payment of: \$3,416.79 Beginning balance at payment 1: 655,000.00  
 1st payment in table: 1 Cumulative interest prior to payment 1: 0.00

### Table

No.	Payment Date	Beginning Balance	Interest	Principal	Ending Balance	Cumulative Interest
344	2/1/2041	56,067.00	221.93	3,194.86	52,872.15	573,247.92
345	3/1/2041	52,872.15	209.29	3,207.50	49,664.64	573,457.21
346	4/1/2041	49,664.64	196.59	3,220.20	46,444.44	573,653.80
347	5/1/2041	46,444.44	183.84	3,232.95	43,211.49	573,837.64
348	6/1/2041	43,211.49	171.05	3,245.74	39,965.75	574,008.69
349	7/1/2041	39,965.75	158.20	3,258.59	36,707.16	574,166.88
350	8/1/2041	36,707.16	145.30	3,271.49	33,435.66	574,312.18
351	9/1/2041	33,435.66	132.35	3,284.44	30,151.22	574,444.53
352	10/1/2041	30,151.22	119.35	3,297.44	26,853.78	574,563.88
353	11/1/2041	26,853.78	106.30	3,310.49	23,543.29	574,670.18
354	12/1/2041	23,543.29	93.19	3,323.60	20,219.69	574,763.37
355	1/1/2042	20,219.69	80.04	3,336.75	16,882.94	574,843.41
356	2/1/2042	16,882.94	66.83	3,349.96	13,532.98	574,910.23
357	3/1/2042	13,532.98	53.57	3,363.22	10,169.75	574,963.80
358	4/1/2042	10,169.75	40.26	3,376.53	6,793.22	575,004.06
359	5/1/2042	6,793.22	26.89	3,389.90	3,403.32	575,030.95
360	6/1/2042	3,403.32	13.47	3,403.32	0.00	575,044.42

## **ATTACHMENT D HAZARDOUS SUBSTANCES**

In implementing this Agreement, Borrower shall be responsible for performing those obligations required by the Agency related to hazardous substances as follows:

- a. For the purpose of this Agreement, a "Hazardous Substance":

is any hazardous or toxic material, substance or waste which is or may become regulated in any manner, including but not limited to, statute, law, ordinance, resolution, code, rule, regulation, order, or decree, by the federal government of the United States, the State of California, or any local or regional government body with regulatory authority and jurisdiction;

includes, but is not limited to those materials or wastes that are defined or which come to be defined by the federal government of the United States, the State of California, or any local or regional government body with regulatory authority and jurisdiction as "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," or "hazardous substance;"

includes, but is not limited to, any substance, product, waste or other material which may give rise to liability under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict liability, or any reported decisions of a state or federal court;

includes, but is not limited to, petroleum and or petroleum products not contained in regularly operated motor vehicle for the purpose of fuel and/or lubrication;

includes, but is not limited to, asbestos, lead-based paint, radon gas, landfill gas, natural gas, formaldehyde, fuel or chemical storage tanks; and

includes, but is not limited to, any soil or water contaminated by a material noted above.

- b. For the purpose of this Agreement, "Hazardous Substance Laws" are all Local, State, and Federal environmental laws, ordinances, and regulations relating to any Hazardous Substance.
- c. Prior to the draw down of funds for acquisition of the Property or for the construction of improvements, or for the rehabilitation of existing property, the Borrower shall perform, or cause to be performed, a "Phase I" environmental audit to determine the possible presence of Hazardous

Substances on the Property and in any improvements thereon. For the completion of any environmental audits, Hazardous Substance removal plans, Hazardous Substance operations and maintenance plans, or other Hazardous Substance work done pursuant to this paragraph, the Borrower shall employ personnel with the training, experience, references, and insurance coverage that evidence an ability to competently complete the relevant task. It is fully understood that the Agency may, in its sole discretion, decline to release any funds for acquisition, construction, or rehabilitation work until all possible violations of Hazardous Substance have been resolved. The Borrower, or the consultant preparing the environmental audit shall provide a copy of the environmental audit for the Agency and shall provide a certification as to the accuracy of the environmental audit and the methodology employed in its preparation. The "Phase I" environmental audit shall include at a minimum:

- (1) A historical review of the uses and improvements made to the Property. This historical review shall include an appropriately designed chain-of-title search using the complete records of the appropriate county recorder in order to discover relevant deeds, property descriptions, covenants, restrictions, and other recorded documents;
- (2) An analysis of old aerial photographs to determine the construction or destruction of buildings and the existence of ponds and disposal areas on the Property over time;
- (3) An investigation of the Property and sites within 2,000 feet of the Property with regard to the Environmental Protection Agency's National Priority List, Comprehensive Environmental Response Compensation and Liability Information System (CERCI-IS) list, and any similar state or county lists;
- (4) A description of sites within 2,000 feet of the Property which may contain Hazardous Substances that could impact the Property;
- (5) A review of building, zoning, planning, sewer, water, fire, environmental, and other records that would have information on the Property and the sites described in subparagraph b-4 above;
- (6) A review of the files and records of the Department of Health Services, Solid Waste Management Board, Regional Water Quality Control Board, Air Quality Management District, and other relevant boards or agencies whose actions may affect, or may have affected, the Property or the sites described in subparagraph b-4 above;

- (7) An inspection of the Property and all existing improvements with particular attention to the use of Hazardous Substances on the land, within structures, as building components, or in operating equipment;
  - (8) Findings from interviews with neighbors to determine prior uses of the Property (when appropriate and acceptable to the parties involved);
  - (9) An indication as to whether present or past owners or tenants have stored, created, or discharged hazardous materials or wastes, and a review of whether appropriate procedures, safeguards, permits and notices are in place;
  - (10) An asbestos report based on comprehensive inspection for asbestos-containing building materials. The inspection must be performed by an inspector certified by the Environmental Protection Agency. The report must provide enough information to enable any building demolition or removal that may occur to comply with applicable local, state, and federal laws and regulations regarding the demolition of buildings containing asbestos;
  - (11) A discussion of the hazards, if any, posed by the presence of radon gas, underground storage tanks, contaminated soil, contaminated group water, landfill gas, or other dangerous soil gases;
  - (12) A clear, concise, and prominent summary of the reports' findings, conclusions, and recommendations; and
  - (13) An indication of the qualifications of the environmental auditor and the subcontractors used in preparing the report.
- d. In the event the "Phase 1" environmental audit indicates the possible presence of Hazardous Substances, and the Borrower desires to proceed with the project, the Borrower shall determine if Hazardous Substances are actually present, and to what extent they are present. This "Phase 2" environmental audit may include: (1) testing underground storage tanks for content and integrity, (2) analyzing soil gas, (3) bulk soil sampling, (4) groundwater and surface water sampling, (5) analyzing local geology for potential chemical spill pathways and, (6) listing individual groundwater wells and subsurface water bodies that may be affected by a Hazardous Substance release. In the event that the Agency determines, based on the Phase II audit, that Hazardous Substances are actually present, the Borrower shall prepare and submit to the Agency a detailed plan it would be willing to follow to remove or mitigate these hazards in a manner which will result in full compliance with all applicable Hazardous Substance

Laws. This plan shall include time frames, costs, sources of funds, necessary governmental approvals and any other relevant information related to the scope of the work needed to remove or mitigate the presence of Hazardous Substances.

- e. The Agency may waive or reduce any of the requirements in subparagraphs c and d if it determines that equivalent studies or plans have been completed or that other evidence satisfactory to the Agency exist which eliminates the necessity of undertaking any of the activities required by subparagraphs c and d herein.
- f. Upon the completion of an environmental audit, Hazardous Substance removal or any related work required under this paragraph, the Borrower shall certify that the work has been appropriately completed.
- g. At all times the Borrower shall comply and cause all subcontractors, agents, or employees to comply with all Hazardous Substance Laws. The Borrower shall immediately notify the Agency in writing of:
  - (1) the discovery by the Borrower, or any of its subcontractors, agents or employees working with the Property, of any concentration or amount of Hazardous Substance on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Substance Laws. In the event of such a discovery, work shall be halted on any portion of the project that may result in violation of occupational health and safety regulations, in violations of public health regulations, in waste or increased costs of hazard removal or mitigation, or in exposing project residents to an unreasonable risk of harm. Work may be resumed when the Agency determines that appropriate precautions are taken to avoid these results;
  - (2) any knowledge by the Borrower or its subcontractors, agents or employees that the project does not comply with any Hazardous Substance Laws;
  - (3) the receipt by the Borrower or its subcontractors, agents or employees of written notice of any legal actions or claims regarding Hazardous Substances affecting the project; and
  - (4) the discovery by Borrower or its subcontractors, agents or employees, of any occurrence or condition on any real property located within 2,000 feet of the Property that could cause the Property or any part thereof to be designated as "border zone property" under the provisions of Health and Safety Code Section 25220, et seq.

- h. In the event the Borrower or its subcontractors, agents or employees is not in compliance with all Hazardous Substance Laws, the Borrower shall attain compliance, or ensure compliance not more than ninety (90) days after Borrower's receipt of written notice by the Agency to do so.
- i. The Borrower hereby agrees to indemnify and hold the Agency harmless for any and all liability arising out of the presence of Hazardous Substances at the project during the longer of the term of this Agreement or the term of the Regulatory Agreement. Liability may be established by, among other forms of demands, a demand in the form of a judgement, a settlement, or an administrative order, and may include costs, fees, penalties, interest, and other costs related thereto. Whereas the purpose of this indemnity is to protect the Agency from harm, the Agency's rights to recover accrue as soon as the liability is incurred. "Any and all liability" includes, but is not limited to, liability for: (1) the clean-up of Hazardous Substances; (2) claims for contribution or apportionment of remedies and; (3) claims for physical or other damages to persons, property, or natural resources. The duty of the Borrower to indemnify and hold harmless includes the duty to defend. The Borrower's duties herein arise regardless of the existence or degree of fault or negligence, whether active or passive, on the part of the Agency.
- j. This subparagraph is in addition to any other indemnity provision of this Agreement and is not to be considered in any manner to supersede any other indemnity provision of this Agreement.

The Borrower releases the Agency from any and all claims that the Borrower may currently or subsequently have against the Agency, arising out of the presence of hazardous substances at the Development. The Borrower expressly waives the protection of Civil Code Section 1542.

- k. Notwithstanding the foregoing, Hazardous Substances shall not include substances or materials of a type and in quantities used in the reasonable Development, Construction, occupation, operation and maintenance of the Property and the Project.

**ATTACHMENT E  
NON-DISCRIMINATION CLAUSE**

All activities carried out by the Borrower and/or agents of the Borrower shall be in accordance with the requirements of the Federal Fair Housing Act. The Fair Housing Amendments Act of 1988 became effective on March 12, 1989. The Fair Housing Amendments Act of 1988 and Title VIII of the Civil Rights Act of 1968, taken together, constitute THE FAIR HOUSING ACT. The Act provides protection against the following discriminatory housing practices if they are based on race, sex, religion, color, handicap, familial status, or national origin: denying or refusing to rent housing, denying or refusing to sell housing, treating differently applicants for housing, treating residents differently in connection with terms and conditions, advertising a discriminatory housing preference or limitation, providing false information about the availability of housing, harassing, coercing or intimidating people from enjoying or exercising their rights under the Act, blockbusting for profit, persuading owner to sell or rent housing by telling them that people of a particular race, religion, etc. are moving into the neighborhood, imposing different terms for loans for purchasing, constructing, improving, repairing, or maintaining a home, or loans secured by housing; denying use of or participation in real estate services, e.g. brokers' organizations, multiple listing services, etc.

The Fair Housing Act gives HUD the authority to hold administrative hearings unless one of the parties elects to have the case heard in U.S. District Court and to issue subpoenas. Both civil and criminal penalties are provided.

The Act also provides protection for people with disabilities and proscribes those conditions under which senior citizen housing is exempt from the prohibitions based on familial status.

The following State of California Laws also govern housing discrimination: Fair Employment and Housing Act, Unruh Civil Rights Act of 1959, and Civil Code Section 54.1.

# ATTACHMENT F INCOME GUIDELINES

State CDBG's and HOME's Table of 2011 Income Limits  
Effective July 13, 2011

County	INCOME * CATEGORY	NUMBER OF PERSONS IN HOUSEHOLD							
		1	2	3	4	5	6	7	8
Placer County	"30%" Limit	15,800	18,050	20,300	22,550	24,400	26,200	28,000	29,800
	"50%" Limit	26,300	30,050	33,800	37,550	40,600	43,600	46,600	49,600
	"60%" Limit	31,560	36,060	40,560	45,060	48,720	52,320	55,920	59,520
	"80%" Limit	42,100	48,100	54,100	60,100	64,950	69,750	74,550	79,350
Plumas County	"30%" Limit	12,400	14,150	15,900	17,650	19,100	20,500	21,900	23,300
	"50%" Limit	20,650	23,600	26,550	29,450	31,850	34,200	36,550	38,900
	"60%" Limit	24,760	28,320	31,880	35,340	38,220	41,040	43,860	46,680
	"80%" Limit	33,050	37,750	42,450	47,150	50,950	54,700	58,500	62,250
Riverside County	"30%" Limit	14,000	16,000	18,000	20,000	21,600	23,200	24,800	26,400
	"50%" Limit	23,350	26,700	30,050	33,350	36,050	38,700	41,400	44,050
	"60%" Limit	28,020	32,040	36,060	40,020	43,260	46,440	49,660	52,860
	"80%" Limit	37,350	42,700	48,050	53,350	57,650	61,900	66,200	70,450
Sacramento County	"30%" Limit	15,800	18,050	20,300	22,550	24,400	26,200	28,000	29,800
	"50%" Limit	26,300	30,050	33,800	37,550	40,600	43,600	46,600	49,600
	"60%" Limit	31,560	36,060	40,560	45,060	48,720	52,320	55,920	59,520
	"80%" Limit	42,100	48,100	54,100	60,100	64,950	69,750	74,550	79,350
San Benito County	"30%" Limit	16,450	18,800	21,150	23,500	25,400	27,300	29,150	31,050
	"50%" Limit	27,450	31,350	35,250	39,150	42,300	45,450	48,550	51,700
	"60%" Limit	32,940	37,620	42,300	46,980	50,760	54,540	58,260	62,040
	"80%" Limit	43,900	50,150	56,400	62,650	67,700	72,700	77,700	82,700
San Bernardino County	"30%" Limit	14,000	16,000	18,000	20,000	21,600	23,200	24,800	26,400
	"50%" Limit	23,350	26,700	30,050	33,350	36,050	38,700	41,400	44,050
	"60%" Limit	28,020	32,040	36,060	40,020	43,260	46,440	49,660	52,860
	"80%" Limit	37,350	42,700	48,050	53,350	57,650	61,900	66,200	70,450
San Diego County	"30%" Limit	17,200	19,650	22,100	24,550	26,550	28,500	30,450	32,450
	"50%" Limit	28,700	32,800	36,900	40,950	44,250	47,550	50,800	54,100
	"60%" Limit	34,440	39,360	44,280	49,140	53,100	57,060	60,960	64,920
	"80%" Limit	45,860	52,400	58,950	65,500	70,750	76,000	81,250	86,500
San Francisco County	"30%" Limit	22,450	25,650	28,850	32,050	34,650	37,200	39,750	42,350
	"50%" Limit	37,400	42,750	48,100	53,400	57,700	61,950	66,250	70,500
	"60%" Limit	44,880	51,300	57,720	64,080	69,240	74,340	79,500	84,600
	"80%" Limit	59,850	68,400	76,950	85,450	92,300	98,150	106,000	112,800
San Joaquin County	"30%" Limit	13,750	15,700	17,650	19,600	21,200	22,750	24,350	25,900
	"50%" Limit	22,900	26,200	29,450	32,700	35,350	37,950	40,550	43,200
	"60%" Limit	27,480	31,440	35,340	39,240	42,420	45,540	48,660	51,840
	"80%" Limit	36,950	41,850	47,100	52,300	56,500	60,700	64,900	69,050
San Luis Obispo County	"30%" Limit	15,650	17,850	20,100	22,300	24,100	25,900	27,700	29,450
	"50%" Limit	26,050	29,800	33,500	37,200	40,200	43,200	46,150	49,150
	"60%" Limit	31,280	35,760	40,200	44,640	48,240	51,840	55,380	58,980
	"80%" Limit	41,650	47,600	53,550	59,500	64,300	69,050	73,800	78,550

RECORDING REQUESTED BY AND  
WHEN RECORDED PLEASE MAIL TO:

City of Oceanside  
ATTN: City Clerk  
300 North Coast Highway  
Oceanside, CA 92054

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Space above this line for Recorder's use  
City Document No.

*This instrument is recorded at the request and for the benefit of the City of Oceanside and is exempt from recording fee pursuant to Government Code § 27383*

## REGULATORY AGREEMENT

This Regulatory Agreement, dated \_\_\_\_\_, 2012, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation ("**City**"), and MENTAL HEALTH SYSTEMS, INC., a California non-profit corporation, and its successors and assigns ("**Borrower**").

### RECITALS

- A. Borrower is or is about to become the owner of real property ("**Property**") described in Attachment A, which is attached hereto and made a part hereof. Borrower has applied to the City for financial assistance in order to develop and operate a multi-family housing project more particularly described herein ("**Project**"). City has loaned to Borrower funds under the Community Development Block Program (hereinafter the "**Program**") which such funds are to be used for the acquisition and rehabilitation of the Project. Borrower agrees to be bound by all applicable Program statutes, rules, and regulations and all agreements concerning the financial assistance provided by the City.
- B. As an inducement to the City to provide the financial assistance made available under the Program, the Borrower has agreed to enter into this Regulatory Agreement and has consented to be regulated and restricted as provided herein. Borrower's application package, as approved by the City, the Loan Documents which consist of this Regulatory Agreement, Loan Agreement, the Promissory Note, the Deed of Trust, and all attachments and exhibits referred to therein, are incorporated herein by reference.
- C. All references to the Project in this Regulatory Agreement that apply to rents, reporting, and operating procedures shall apply only to units with rents restricted under this Regulatory Agreement.

**NOW, THEREFORE, the parties hereto agree as follows:**

**1. AFFORDABILITY REQUIREMENTS:**

Borrower agrees to comply with all income targeting and affordability requirements described in the Program regulations and as follows:

All (4) four units shall be income and rent restricted for 55 years. All of the units shall be restricted to households earning at or below 60% ("Very Low Income") of the Area Median Income ("AMI").

**2. COMPLIANCE WITH LAW:**

The Borrower agrees that at all times its acts regarding the Project shall be in conformity with all applicable Program statutes, rules and regulations; board policies and procedures; and local, state and federal laws and regulations.

**3. TERM OF AGREEMENT:**

The term of this Agreement shall commence on date of close of escrow and shall continue for 55 years from the date of Completion Certificate

**4. RENT SCHEDULE:**

CDBG rents shall be used to establish the maximum rents for the Subject Property. The CDBG rent limits are recalculated on a periodic basis by HUD after HUD determines Fair Market Rents and median incomes for the area. The City shall provide to Borrower information on updated CDBG rent limits so that rents may be adjusted in accordance with this Agreement. Any increase in rents is subject to the provisions of outstanding leases, and in any event, Borrower shall provide tenants not less than thirty (30) days prior written notice before implementing any increase in rents. Borrower shall annually provide to City information on rents and occupancy of the Units.

**5. ELIGIBILITY FOR ADMISSION:**

An applicant is eligible for admission to a Project if he or she meets the requirements described in paragraphs 1, 6 and 7 of this Regulatory Agreement. Borrower may determine that an applicant is not eligible for admission if, on the basis of substantial, factual evidence of that person's prior actions there is good cause to believe that the applicant will repeatedly fail to pay rent, will create a substantial threat to the health and safety of other residents, or will repeatedly breach material requirements of the lease.

**6. OCCUPANCY STANDARDS:**

An applicant is eligible for admission to a Project if he or she meets all of the occupancy requirements of the Program regulations.

**7. RESIDENT SELECTION PROCEDURES:**

Borrower shall rent a housing unit in the Project to eligible residents in accordance with the Program regulations pursuant to Section 17 of this Regulatory Agreement.

**8. LEASE AND OCCUPANCY PROCEDURES:**

(a) Each eligible applicant selected to occupy a unit shall enter into a written occupancy agreement ("lease") with the Borrower and which shall contain those provisions as are required by the Program regulations and this Regulatory Agreement. The lease shall provide for good cause eviction and appeal and grievance procedures, all of which shall be in accordance with the Program regulations.

(b) The Borrower shall establish reasonable rules of conduct and occupancy that shall be consistent with local, state and federal laws and the Program regulations. The rules shall be in writing and shall be given to each resident. Any amendment shall be effective no less than 30 days after giving written notice thereof to each resident.

(c) Leases and the landlord-tenant relationship shall be subject to California law, Program statutes and regulations, and the provisions of this Regulatory Agreement.

**9. REPLACEMENT CHARGES:**

The charges to residents covering damages to the Project property attributable to the resident shall be made in accordance with a schedule of replacement costs which shall be adopted by the Borrower, posted in the management office of each Project, and shown to applicant at the time the lease is signed.

**10. TERMINATION OF LEASE:**

(a) Rent is only paid for the period the resident actually occupied the housing unit. Any unused rent shall be returned to the resident. Rent and security deposits will be held, used, and disposed of in accordance with applicable California law.

- (b) The Borrower may require the resident to move out if the resident has seriously or repeatedly violated important terms of the lease agreement such as not paying rent, causing serious interference with the rights of other residents, knowingly giving false statements of important facts to the Borrower concerning eligibility for the Project, or for other good cause.
- (c) In order for the Borrower to begin termination of the lease, it must give the resident a written notice as required by applicable California law.
- (d) If the resident has not paid rent, the Borrower shall give the resident a three (3) day notice to either pay the rent or move out. If the resident's actions cause an immediate threat to the health and safety of the other residents, the Borrower shall give the resident a reasonable time to move out, but not less than three (3) days.
- (e) In all other cases, the resident shall be given at least 30 days' notice to either comply with the terms of the lease or move out.

**11. BORROWER RESPONSIBILITIES:**

Borrower shall provide administrative, fiscal, and management services, employ staff and purchase, rent, and use supplies and materials as needed to operate, maintain and protect each Project in accordance with this Regulatory Agreement and the Program statutes and regulations. This shall include, but not be limited to, compliance with the grounds and procedures governing grievance hearings as set forth in the Program regulations. In addition, grievance hearings, conferences, notices, and summaries pursuant to this Regulatory Agreement shall be in English or in the language of the majority of residents.

**12. ANNUAL OPERATING BUDGET:**

- (a) The fiscal year for the Project shall be the same as the calendar year and commence on January 1 of each year after the initial period of occupancy, and conclude on December 31 of each year.
- (b) The Borrower will submit to the City a proposed operating budget for the Project ninety (90) days after the conversion of the Bond Loan to its permanent phase and at the beginning of each fiscal (calendar) year of the Project thereafter. The proposed operating budget shall set forth the anticipated Project income, including such payments as may be provided from the Program and other public and private sources, and a detailed estimate of all operating costs, capital improvements, and all other. "Operating costs" are defined as all expenses associated with providing decent, safe, and sanitary housing at the Project.

**13. USE OF INCOME FROM OPERATIONS:**

- (a) The Borrower or Borrower's management agent shall promptly deposit all Operating Income, or all income generated by the Project, into a separate account established for the Project in the Borrower's accounting system.
- (b) Withdrawals from the account shall be made only in accordance with the provisions of the annual operating budget, and shall be disbursed, applied or reserved and set aside for payment when due, in the following priority, to the extent available: (1) salaries, wages and other compensation due and payable to the employees or agents of the Borrower employed on site in connection with the maintenance, administration or operation of the Project, along with all withholding taxes, insurance premiums, Social Security payments, and other payroll taxes or payments required in connection with such employee; (2) all charges incurred in the operation of the Project in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance; (3) payments of required interest, principal, impounds, fees and charges, if any on loans which are secured by the Property; (4) all other expenses incurred to cover operating costs, including the fee of the managing agent and any extraordinary expenses in accordance with the annual operating budget of the Project; (5) deposits to reserve accounts if applicable; and (6) distributions to the Borrower or other person or entity as permitted in the Promissory Note definition of Residual Receipts.
- (b) If other funding entities have differing requirements, such differing requirements shall control.

**14. FINANCIAL ASSISTANCE:**

Borrower acknowledges that the City will not provide additional financial assistance to the Borrower in the form of operational or capital subsidies for the Project. If Project Income, including those rents charged pursuant to Paragraph 4 of this Regulatory Agreement, is insufficient to cover operating, maintenance, and capital costs, Borrower agrees to assume full financial responsibility for the operating and maintenance of the Project throughout the term of this Agreement.

**15. ACCOUNTING RECORDS:**

Borrower shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Project. All records and books relating to this system shall be retained for not less than seven years and in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to City inspection and audit.

**16. MANAGEMENT AND MAINTENANCE:**

- (a) Borrower is specifically responsible for all maintenance, repair, and management functions including, without limitation, the following: selection of residents, occupancy standards, complaint and grievance proceedings, evictions, collection of rents and security deposits, routine and extraordinary repairs, and replacement of capital items. Borrower shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, and in accordance with applicable Housing Quality Standards described in 24 CFR 982.401.
- (b) Borrower may contract with a management agent for the performance of the services or duties required in subparagraphs (a) and (b). However, such an arrangement does not relieve the Borrower of responsibility for proper performance of these duties. Such a contract shall contain a provision allowing the Borrower to terminate the contract without penalty upon 30 days' written notice. Upon a determination by the City and written notice to the Borrower that the management agent performing the functions required in subparagraphs (a) and (b) has failed to operate the Project in accordance with this Regulatory Agreement and the approved Management Plan, the Borrower shall exercise such right to termination forthwith and shall make immediate arrangements for continuing performance of the functions required in subparagraphs (a) and (b).
- (c) Upon a determination by the City and a sixty (60) day written notice to the Borrower that the Borrower has failed to operate the Project in accordance with this Regulatory Agreement, the City may require the Borrower to contract with a qualified management agent to operate the Project to ensure performance of the functions required in subparagraph (a).
- (c) Borrower agrees to assume full financial and management responsibility for all operating and maintenance costs, including all repairs, corrections and replacements necessary to maintain and preserve the Project in a safe and sanitary condition in accordance with all obligations of this Regulatory Agreement, and all applicable local, state and federal laws and regulations.

**17. REPORTING REQUIREMENTS:**

The Borrower shall file with the City an annual report no later than 90 days after the end of each fiscal year established for the Project. The report shall contain such information as the City may then require, including, but not limited to, the following:

- (a)** An audit of the fiscal condition of the Project is required whenever the City provides financial assistance. This includes a financial statement indicating surplus or deficits in operating accounts, a summary listing of income and expenses, and the amounts of any fiscal reserves, if any. Such audit shall be certified by an independent certified public accountant licensed in California or other accountant acceptable to the City;
- (b)** In accordance with Office of Management and Budget OMB Circular A-133, any non-federal entity, including States, Local Governments, and Non-Profit Organizations, that expend \$500,000 or more in a year in Federal awards shall have an A-133 single audit conducted for that year.
  - (i)** Borrower will provide written notification to the City of the results of the OMB Circular A-133 audit no more than thirty days after the audit is completed.
  - (ii)** In compliance with all Federal requirements, Borrower shall correct any deficiencies identified in OMB Circular A-133 audits.
- (c)** Any substantial physical defects in the Project, including a description of any major repair or maintenance work undertaken in the reporting year;
- (d)** The occupancy of the Project indicating:
  - (i)** Each tenant's gross annual household income, family size and composition, race, length of tenancy, actual monthly rent paid;
  - (ii)** Records demonstrating the Borrower's efforts to comply with its Fair Housing Marketing and Equal Opportunity Plan;
  - (iii)** The number of residents actually occupying the project;
  - (iv)** The number of assisted households earning at or below 60 percent of median income; and
  - (v)** General management performance, including tenant relations and other relevant information.
- (e)** A description of any fiscal or program difficulties related to the operation of the Project consistent with the Program requirements;
- (f)** At any time during the term of this Regulatory Agreement, the City or its designee may enter and inspect the physical premises and inspect all accounting and resident records pertaining to the construction, development, or operation of the Project. Upon a minimum 48-hour request by the City, Borrower shall notify residents of upcoming

inspections of their units or records in accordance with California State law.

- (g) The City may perform or cause to be performed audits of any and all phases of the Borrower's activities related to the Project. At the City's request, Borrower shall provide, at its own expense, an audit of the Project certified by an independent certified public accountant.
- (h) The City may request any other information that it deems necessary to monitor compliance with requirements set forth in the Loan Documents. Borrower shall promptly provide such information.
- (i) Prior to the commitment of funds, the Borrower will submit to the City certified copies of: (i) its Equal Opportunity and Fair Housing marketing plan; (ii) records demonstrating that the units meet or will meet all applicable property standards; (iii) certification that no layering of federal funds has or will occur; (iv) records showing compliance with relocation requirements; (v) conflict of interest statements; (vi) evidence of flood insurance if applicable; and (vii) evidence that the Borrower, any subcontractor, agent, representative, or consultant working on the Project is not debarred or suspended from participation in federal programs.

**18. PROJECT RECORDS:**

The Borrower shall maintain the following records for a period consistent with the Program regulations:

- (a) Records that demonstrate that the Project meets the property standards in Program regulations;
- (b) Records that demonstrate that the Project meets the requirements of Program regulations for the required period of affordability for each family assisted;
- (c) Records that demonstrate compliance with the requirements of Program regulations for tenant and participant protections;
- (d) Records that demonstrate compliance with the requirements in Program regulations for affordable housing including, but not limited to, rental housing production including the initial purchase price and appraised value (after rehabilitation, if required) of the Project for each family assisted;
- (e) Records that indicate whether the Project is mixed-income, mixed-use, or both in accordance with Program regulations;
- (f) Equal opportunity and fair housing records containing:

- (1)** Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with City funds;
- (2)** Documentation of actions undertaken to meet the requirements of section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).
- (3)** Documentation and data on the steps taken to implement the City's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with City funds; the amount of the contract or subcontract, and documentation of Borrower's affirmative steps to assure that minority-business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services;
- (4)** Documentation of the actions the Borrower has taken to affirmatively further fair housing;
- (5)** Records indicating the affirmative marketing procedures and requirements under 24 CFR part 92.351;
- (6)** Records that demonstrate compliance with environmental review requirements in 24 CFR part 92.352 (and part 58 of this title);
- (g)** Records that demonstrate compliance with the requirements regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property, moving into the property, and occupying the property upon completion of the Project;
- (h)** Records demonstrating compliance with federal and state labor requirements including contract provisions and payroll records;
- (i)** Records concerning lead-based paint;
- (j)** Records supporting requests for waivers of the conflict of interest prohibition;
- (k)** Records of certifications concerning debarment and suspension in 24 CFR part 24;

- (l) Records demonstrating compliance with flood insurance requirements as applicable; and
- (m) Records concerning intergovernmental review.

**19. INSURANCE AND BOND REQUIREMENTS:**

**1. BORROWER'S INSURANCE**

Borrower's insurance requirements under this provision are attached hereto as Attachment B, which terms are incorporated herein.

**2. CONTRACTOR'S INSURANCE**

(a) All building contractors utilized to carry out the City funded contract for property improvement shall have a valid contractor's license and within 10 working days prior to the inception of their contract with Borrower shall submit to City certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the contractor has obtained for the period of the Contract insurance in the following forms of coverage and minimum amounts specified from insurance carriers with an A. M. Best rating of A VII and above.

(b) All certificates of insurance provided by contractor must evidence that the insurer providing the policy will give the City thirty (30) days' written notice, at the address shown below in advance of any cancellation, lapse, reduction or other adverse change respecting such insurance.

(1) An occurrence policy of Commercial General Liability insurance insuring contractor against liability for bodily injury, including death, personal injury or property damage arising out of all operations of the contractor during the execution of the said contract of not less than One Million Dollars (\$1,000,000) per occurrence with Excess/Umbrella coverage of not less than Two Million dollars (\$2,000,000). The Borrower and City, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy.

(2) Unless contractor is a sole proprietorship, Statutory Workers' Compensation insurance along with Employer's Liability of not less than One Million Dollars (\$1,000,000).

(3) A Comprehensive Automobile Liability Insurance policy for bodily injury, including death, and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence and is applicable to all owned, non-owned and hired vehicles.

Notwithstanding the foregoing, Borrower compliance with the Loan Lender's insurance requirements shall constitute compliance with this Agreement, so long as Borrower names the City as an additional insured in all of its insurance policies.

**20. CERTAIN ACTS PROHIBITED:**

Borrower shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, the Property or Project or any part thereof or of any of its interest therein other than in accordance with the terms of this Regulatory Agreement and the loan documents and shall not, without prior written notice to the City:

- (a) Make any distribution not permitted by the terms of this Regulatory Agreement;
- (b) Assign or transfer any right to operate or manage the Project;
- (c) Remodel, remove, add to, reconstruct or demolish any part of the Project or impair any real or personal property of the Project without prior written approval by the City;
- (d) Require, as a condition of the occupancy or leasing of any dwelling unit in the Project, any consideration or deposit in excess of that permitted by the Program regulations to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be tracked in the separate account for the Project established in the Borrower's accounting system . All accounts shall be with a depository insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and shall be held and disbursed in accordance with applicable law. The balance of such account shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon;
- (e) Permit the use of the units in the Project for any purpose except that which was approved by the City;
- (f) Incur any liability or obligation in connection with the Project, contingent or otherwise;
- (g) Enter into any contract or contracts for supervisory or managerial services except as permitted by this Regulatory Agreement; or
- (h) Invest any funds from the Project in any property, real or personal, except as authorized by this Regulatory Agreement or by the City or deposit any such funds in a depository not authorized by this Regulatory Agreement or approved by the City.

**21. VIOLATION OF REGULATORY AGREEMENT BY THE BORROWER:**

In the event of the material violation of any of the provisions of this Regulatory Agreement by the Borrower, the City shall give written notice thereof to the Borrower of violation by specifying (a) the nature of the event or deficiency giving rise to the violation (b) the action required to cure the deficiency, if any action to cure is possible and (c) a date, which shall not be less than ninety (90) days from the mailing of the notice by which such action to cure must be accomplished or if such breach is not reasonably susceptible of cure within such ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues such cure to completion. After the expiration of all applicable notice and cure periods as specified here, the City may, without further notice, declare in writing a default under this Regulatory Agreement effective on the date of such declaration of default and upon any such declaration of default the City may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the City arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the City which afford adequate relief in light of the purposes and policies of the Program.

**22. AMENDMENTS:**

This Regulatory Agreement shall not be altered or amended except by writing executed between the parties.

**23. PARTIAL INVALIDITY:**

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, except to the extent that the City determines, at its discretion, that the remaining provisions will not adequately protect the interests of the City or fulfill the purposes of this Regulatory Agreement.

**24. BINDING ON SUCCESSORS:**

This Regulatory Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office or interest, and assigns; provided, however, that the Borrower may not assign this Regulatory Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior approval of the City.

**25. GENDER:**

The use of the plural in this Regulatory Agreement shall include the singular and the singular shall include the plural and the use of one gender shall be deemed to include all genders.

**26. RECORDING AGREEMENT:**

This Regulatory Agreement, and any amendments thereof, shall, at the expense of the Borrower, be acknowledged by each of the parties and recorded or referenced in the official records of the county in which the Project is situated.

**27. ELECTION OF REMEDIES:**

The remedies of the City hereunder or under any other instrument providing for or evidencing the financial assistance provided herein 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 City of any one or more of its other remedies.

**28. WAIVER:**

No waiver by the City of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

**29. CAPTIONS:**

The captions used in this Regulatory Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Regulatory Agreement.

**30. GOVERNING LAW:**

This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of California.

**31. OTHER FEDERAL REGULATIONS:**

Borrower agrees to carry out all activities in compliance with 24 CFR Parts 42, 58, 92, 570 and 574; the Housing and Community Development Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11246 (as amended), 11063 and 11593; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; OMB Circular A-122

and Attachments A, B, C, F, H, N and O; OMB Circular A-133; the Archaeological and Historical Preservation Act of 1974; the Architectural Barriers Act of 1968; the Hatch Act (5 U.S.C. § 7321, *et seq.*); the Flood Disaster Protection Act of 1974; the Clean Air Act (42 U.S.C. Section 7401, *et seq.*) and the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251, *et seq.*); the Drug-Free Workplace Act of 1988; and Section 42 (h)(6)(E)(ii) of the Internal Revenue Code of 1989.

**32. NOTICES:**

Written notices and other written communications 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.

Borrower:

Mental Health Systems, Inc.  
9465 Farnham Street  
San Diego, CA 92123  
Attention: Kimberly Bond, President and CEO

City:

City of Oceanside Neighborhood Services Department  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Neighborhood Services Director

**33. INDEMNIFICATION AND WAIVER:**

- (a) Borrower agrees to indemnify the City and to hold the City harmless from any losses, damages, liabilities, claims, actions, judgments, court costs, and legal or other expenses (including attorneys' fees) of every name, kind and description, which the City may incur as a direct or indirect consequences of (i) the making of the Program Loan to Borrower, (ii) Borrower's failure to perform any obligations as and when required by this Regulatory Agreement; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any borrower, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Project; or (v) the presence of Hazardous Substances at the Project or on the Property. Borrower shall pay immediately upon the City's demand any amounts owing under this indemnity together with interest thereon from the date the indebtedness arises until paid, at the rate of eight percent (8%) per annum. The duty of Borrower to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the City regardless of

the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the City or the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the City. Borrower shall reimburse the City for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Borrower is obligated to indemnify, defend and hold harmless the City under this Agreement.

- (b) The Borrower waives and releases any and all rights to any types of express or implied indemnity against the City.
- (c) Borrower expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, this Regulatory Agreement constitutes the terms and conditions for the use of the Property and the parties hereto have caused this Regulatory Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

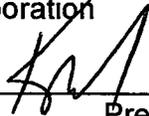
CITY:

City of Oceanside, a municipal corporation

By: \_\_\_\_\_  
City Manager

DEVELOPER:

Mental Health Systems, Inc., a non-profit corporation

By:  \_\_\_\_\_  
President and CEO

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

By:  \_\_\_\_\_  
City Attorney

**[NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED]**

**ACKNOWLEDGMENT**

State of California  
County of San Diego )

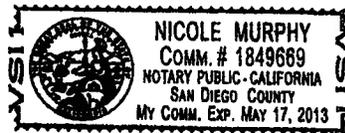
On December 28, 2011 before me, Nicole Murphy, Notary Public  
(insert name and title of the officer)

personally appeared Kimberly Bond  
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 *Nicole Murphy* (Seal)



## **Attachment A**

### **Property Description**

The land referred to herein as 707 North Clementine Street Garfield, Assessor's Parcel Number 147-054-05-00, is situated in the City of Oceanside, County of San Diego, State of California, and is described as follows:

Lot 5 in Block 54 of Tract 332 of Myers and McComber's Subdivision, in the City of Oceanside, County of San Diego, State of California as per map thereof no. 332, filed in the Office of the County Recorder of said County.

## Attachment B

### **Insurance Requirements**

The Borrower shall keep the Property and all improvements thereon insured by carriers at all times satisfactory to the City against direct physical loss, and such other hazards, casualties, liabilities and contingencies as the City may require and in such amounts and for such periods as the shall require. Borrower shall submit to City Certificates of Insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the Borrower, and all contractors utilized to carry out the City funded Project, has obtained for the period of the contract insurance in the following forms of coverage and minimum amounts specified from insurance carriers with an A.M. Best rating of A- VII and above. Notwithstanding this Attachment B, Borrower shall be deemed to be in compliance with this Attachment B if it complies with the insurance requirements of the Loan Lender and names the City as an additional insured in all of its insurance.

a. An occurrence policy of Commercial General Liability insurance insuring Borrower against liability for bodily injury, including death, personal injury or property damage arising out of all operations of the Borrower during the execution of the said contract of not less than One Million Dollars (\$1,000,000) per occurrence with Excess/Umbrella coverage of not less than Two Million dollars (\$2,000,000). The City, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy.

b. Statutory Workers' Compensation insurance along with Employer's Liability of not less than One Million Dollars (\$1,000,000).

c. A standard fire policy including all-risk or special form perils, in an amount of ninety percent 90% of the full replacement cost of the Building and Improvements, without deduction for depreciation, including costs of demolition and debris removal. Such policy or policies of insurance shall include coverage for (i) fixtures owned by Borrower, (ii) any items identified as improvements to the Premises constructed or owned by Borrower, and (iii) the personal property of Borrower, its agents and employees.

d. Rental income insurance which shall assure Borrower of receiving the minimum monthly rent from the time the Project is damaged or destroyed by a risk insured against by the standard fire policy including all-risk or special form perils, until such time as they are returned to a tenantable condition, with a minimum period of coverage of one (1) year.

Insurance proceeds and condemnation awards for any loss to or taking of the Project shall be applied or utilized in a manner which ensures that City's and Program interests are reasonably fulfilled. City will be included as loss payable on Borrower's property insurance covering building.

**THE CITY OF OCEANSIDE**

**PROMISSORY NOTE**

**NOTICE TO BORROWER**

**THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING ASSUMPTIONS AND IS SECURED BY A DEED OF TRUST**

\$655,000.00

\_\_\_\_\_, 2012

FOR VALUE RECEIVED, the undersigned, MENTAL HEALTH SYSTEMS, INC., a California non-profit corporation, and its successors and assigns ("**Borrower**"), hereby promises to pay to the order of the THE CITY OF OCEANSIDE, a municipal corporation ("**City**"), a principal amount equal to \$655,000.00 or so much thereof as may be advanced by the City to the Borrower pursuant to a loan provided to Borrower through the Community Development Block Grant (CDBG) Program funds (hereinafter referred to as the "**Loan**"), which is secured by a Deed of Trust between the Borrower and City. The obligation of the Borrower and City is subject to the terms of the Loan Documents, which are incorporated by reference herein. The term "**Loan Documents**" means the Regulatory Agreement, Loan Agreement, this Promissory Note ("**Note**"), and the Deed of Trust.

1. **Borrower's Obligation.** This Note evidences the obligation of the Borrower to the City for the repayment of funds loaned to the Borrower by City to partially finance the construction and development costs of real property, appurtenances, improvements and fixtures thereon (hereinafter, the "**Property**"), as described in the Loan Documents.

2. **Payment of Indebtedness.** The principal amount of the Loan shall bear interest at the rate of four and three-quarter percent (4.75%) annually for a term of thirty (30) years, commencing on the date the amounts are disbursed pursuant to the Loan Documents. This Note may be prepaid in whole or in part at any time, and from time to time, without notice or penalty. Any year-end positive cash flow will be retained in the Project as Operating Reserve or applied to the principal balance of the City loan.

3. **Place and Manner of Payment.** All amounts due and payable under this Note and the Loan Documents are payable at the principal office of the City set forth below, or at such other place or places as the City may designate to the Borrower in writing from time to time, in any coin or currency of the United States of America, which on the respective dates of payment thereof shall be legal tender for the payment of public and private debts.

**4. Borrower's Waiver.** Except as otherwise provided in this Note and the Loan Agreement of which it is a part and only to the extent permitted by law, Borrower hereby waives (a) notice of default or delinquency, if any; (b) notice of acceleration; (c) notice of nonpayment; (d) notice of costs, expenses, losses and interest therein; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under the Note or in proceeding against any of the rights and presentment for payment, demand, protest, and notices of dishonor and/or protest; (g) the benefits of all waivable exemptions; and (h) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice provided that Borrower does not waive, and the City shall deliver, all notices to Borrower to which Borrower is entitled under this Note or under any of the other Loan Documents, as applicable.

**5. Attorneys' Fees.** Borrower hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, including any such fees paid to the Counsel of the City, which may be incurred by the City in the enforcement of this Note, the Loan Documents or any term or provision of any thereof. This provision shall be construed in accordance with California Civil Code Section 1717.

**6. Default under other Loan Documents and Acceleration.** All covenants, conditions, and agreements contained in the Loan Documents are hereby made a part of this Note. Borrower agrees that the unpaid balance of the principal amount of this Note, shall, at the option of the City, if so provided in the Loan Agreement executed by the Borrower, become immediately due and payable, and thereafter bear interest at the rate of eight percent (8%) per annum until paid if any of the following events occur: (a) Borrower fails to make any payment hereunder as and when due; (b) Borrower fails to perform or observe any other term or provision of this Note; or (c) any event occurs (whether termed default, event of default or similar term) which, under the terms of the Loan Documents, shall entitle the City to exercise rights or remedies thereunder.

If Borrower materially violates any of the provisions of the Loan Documents, the City shall give written notice thereof to Borrower of the violation(s) by specifying (a) the nature of the event or deficiency giving rise to the violation; (b) the action required to cure the deficiency, if any action to cure is possible; and (c) a date, which shall not be less than ninety (90) days from the mailing of the notice, by which such action to cure must be accomplished or if such breach is not reasonably susceptible of cure within such ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided Borrower has commenced cure within the initial ninety (90) day period and diligently pursues such cure to completion.

After the expiration of all applicable notice and cure periods as specified here, the City may, without further notice, declare in writing a default effective on the date of such declaration of default. Upon any such declaration of default, the City may apply to any court, state or federal, for specific performance of this Note, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the City arising from a default under any of the terms of the Loan Documents would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the City which afford adequate relief in light of the purposes and policies of the Project.

**7. Nonrecourse Obligation.** Neither the Borrower nor any partner, officer, director, or stockholder of the Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on, this Note. City's sole recourse with respect to the principal of, or interest on, this Note shall be to the property, real and/or personal, securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on this Note or the Deed of Trust securing this Note shall be enforced personally against the Borrower, or any partner, officer, director or stockholder of the Borrower, but shall be enforced only against the property described in the Loan Documents and such other or further security as, from time to time, may be hypothecated for this Note provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the endorsement against all such security for this Note of all the rights and remedies of the City, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of this Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of and payment of interest on this Note. Nothing contained herein is intended to relieve the Borrower or any successors thereto of liability for (a) fraud or willful misrepresentation; (b) the amount of unpaid taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (c) the retention of any rental income or other income arising with respect to the Development actually collected by Borrower after the City has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (d) the fair market value as of the time of the giving of any notice referred to in subparagraph (c) above of any personal property removed or disposed of by Borrower other than in accordance with the Loan Documents after the giving of any notice referred to in subparagraph (c) above; or (e) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent

domain or by reason of damage, loss or destruction of any portion to the Development.

8. **Governing Law.** This Note shall be construed in accordance with and be governed by laws of the State of California.

9. **Time.** Time is of the essence in this Note.

10. **No Waiver by the City.** No waiver of any breach, default or failure of conditions under the terms of the Note or the Loan Documents or the obligations secured thereby shall be implied from any failure of the City to take, or any delay by the City in taking, action with respect to such breach, default, or failure from any previous waiver of any similar or unrelated breach, default or failure. A waiver of any term of the Note or the Loan Documents or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

11. **Notices.** Except as may be otherwise specifically provided herein, any approval, notice, direction, consent, request or other action by the City or Borrower shall be in writing and may be communicated to the addressee designated herein, or at such other place or places as the Borrower or City shall designate in writing. Notices required or permitted under the terms of this Note shall be given:

**Borrower:**

Mental Health Systems, Inc.  
9465 Farnham Street  
San Diego, CA 92123  
Attention: Kimberly Bond, President/CEO

**City:**

City of Oceanside Neighborhood Services Department  
300 North Coast Highway  
Oceanside, California 92054  
Attn: Margery M. Pierce, Neighborhood Services Director

**[SIGNATURE ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the undersigned Borrower has caused this Note to be executed on the day, month and year first written above.

**BORROWER:**

Mental Health Systems, Inc.,  
a California non-profit corporation

By: 

Name: Kimberly Bond

Its: President and CEO

**[NOTARY ACKNOWLEDGEMENT OF SIGNATORY MUST BE ATTACHED]**

## ACKNOWLEDGMENT

State of California  
County of San Diego )

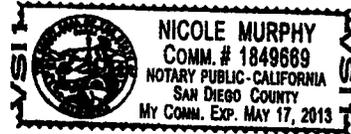
On December 28, 2011 before me, Nicole Murphy, Notary Public  
(insert name and title of the officer)

personally appeared Kimberly Bond,  
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 Nicole Murphy (Seal)



RECORDING REQUESTED BY AND  
WHEN RECORDED PLEASE MAIL TO:

City of Oceanside  
ATTN: City Clerk  
300 North Coast Highway  
Oceanside, CA 92054

Space above this line for Recorder's use  
City Document No.

*This Instrument is recorded at the request and for the benefit of the City of Oceanside and is exempt from recording fee pursuant to Government Code § 27383*

## DEED OF TRUST WITH ASSIGNMENT OF RENTS

This Deed of Trust is made this \_\_\_ day of \_\_\_\_\_, 2012, by MENTAL HEALTH SYSTEMS, INC., a California non-profit corporation, and its successors and assigns ("**Borrower**"), to THE CITY OF OCEANSIDE ("**Trustee**"), in favor of the THE CITY OF OCEANSIDE, a municipal corporation ("**City**").

1. BORROWER HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's rights, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property located in the City of Oceanside, County of San Diego, State of California, described in Attachment A, which is hereby incorporated by reference; and (b) all buildings and improvements now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the property and owned by Borrower or in which Borrower has an interest, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property. All of such real and personal property are sometimes referred to as the "**Property**" and are hereby pledged and assigned, transferred, and set over unto Trustee, and for purposes of this Deed of Trust declared to be part of the realty.

2. BORROWER HEREBY ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY ASSIGNS to the City all rents, royalties, issues, accounts and profits of or relating to the Property and all of Borrower's interest under all leases, subleases, rental agreements and other contracts and occupancy agreements relating to the use and possession of the Property, for the purposes and upon the terms and conditions hereinafter set forth. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of City to perfect this assignment. Notwithstanding the foregoing, the City confers upon the Borrower a license to collect

and retain the rents, issues and profits of the Property as they become due and payable unless an event of default occurs, upon the occurrence of which said license shall be automatically revoked. This assignment shall not impose upon City any duty to cause the Property to produce rents nor shall the City be deemed to be a mortgagee in possession by reason thereof for any purpose.

**3. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENT IS FOR THE PURPOSE OF SECURING:**

(a) Payment of Borrower's indebtedness evidenced by a promissory note ("**Note**") of even date herewith in the principal amount of \$655,000.00 ("**Loan**"), together with interest on such indebtedness according to the terms of such Note, and any and all amendments, modifications, extensions or renewals of the Note and the indebtedness and all other sums becoming due and payable to the City, or Trustee, pursuant to the terms of this Deed of Trust;

(b) Payment of such additional indebtedness, when evidenced by a promissory note or notes reciting the same to be secured by this Deed of Trust, together with interest, as the City may advance to Borrower, or its successor in interest, from time to time and payment or performance of such other obligations as the then record owner of the Property may agree to pay or perform when evidenced by a promissory note or other instrument or agreement reciting that it is secured hereby; and

(c) Performance and observance of all of the terms, covenants and conditions to be performed or observed by Borrower under the Regulatory Agreement, the Loan Agreement, the Promissory Note, the Deed of Trust, and other instruments required and/or referenced by those agreements (collectively referred to as the "**Loan Documents**"), which are incorporated herein and made part of this Deed of Trust.

**4. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER AGREES:**

**4.1 Maintenance of the Property.** (a) To keep the Property in a decent, safe, sanitary, and tenantable condition and repair and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable; and (c) to comply with all applicable laws or governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such laws, ordinances or governmental regulations, nor of any covenant, condition or restriction affecting the Property.

**4.2 Insurance.** Borrower shall comply with the insurance requirements set forth in the Regulatory Agreement, which is incorporated herein by reference.

**4.3 Payment of Taxes and Utility Charges.** Borrower shall pay, at least five (5) days prior to delinquency, all taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property or upon Trustee's or the City's interest in the Property, subject to rights to challenge such charges in good faith.

**4.4 Payment and Discharge of Liens.** Borrower will pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof of any kind or nature other than this Deed of Trust except for the following: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings.

**4.5 Rights of City to Remedy Defaults.** If Borrower defaults in payment of any tax, assessment, lien, claim, insurance premium, or any other proper charge in whole or in part, or defaults in the performance of any of the Loan Documents, City at any time, with or without notice or demand upon Borrower, may make such payments or perform any such acts required of Borrower, to such extent and in any form or manner deemed expedient by City and pay any other sums, expenses and charges, including attorneys' fees, necessary to protect the Property and the lien of this Deed of Trust, without incurring any obligation to do so or releasing Borrower from any obligations and without waiving or curing any default. City, at its option, shall be subrogated to any tax, assessment, lien, premium, claim or charge which it has paid under these provisions and any such subrogation rights shall be additional and cumulative security to those set forth in the Loan Documents.

**4.6 Repayment to City.** Upon City's payment of any tax, assessment, lien, claim, insurance premium or other charge which Borrower fails to pay or upon City's performance of any obligation which Borrower fails to perform, all as set forth in paragraph 4.5 above, the amount so paid or the cost of performing any such obligation, together with other sums paid or incurred by City, including charges, expenses and attorneys' fees thereon from date of payment at the rate of eight percent (8%) per annum, shall be paid by Borrower to City upon written demand. The aggregate of all such amounts, including interest, shall be secured by the lien of this Deed of Trust.

**4.7 Defense of Actions.** Borrower will appear in and defend all actions and proceedings purporting to affect the Property or any right or power of City or Trustee hereunder, provided that City and Trustee, or either of them, may appear in and defend any such action or proceeding, however, City is not authorized to pay, purchase or compromise on behalf of Borrower any lien or claim. Borrower shall give City prompt written notice in writing of (a) the assertion of any claim, (b) the filing of an action or proceeding, (c) the occurrence of any damage to any of the Property, or (d) any condemnation.

**5. IT IS MUTUALLY AGREED THAT:**

**5.1 Awards and Damages.** All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any other injury or damage to all or any part of the Property, are hereby assigned to, and, at the request of the City, but subject to the prior rights any senior loan, shall be paid to City. City is authorized and empowered (but not required) to collect and receive any such sums and to apply them in whole or in part upon any indebtedness or obligation secured hereby, and entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by City may be released to Borrower upon such conditions as City may impose for its disposition.

**5.2 Sale or Forbearance.** No sale of the Property, forbearance on the part of City or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

**5.3 Late Payment.** City's acceptance of late payment of any sum shall not constitute a waiver of its rights to require prompt payment when due of all other indebtedness, or to declare a default for any failure so to pay, or to proceed with foreclosure or sale for any other default then existing. City's acceptance of partial payment of any sum after default shall not cure such default or affect any notice of default unless such notice of default is expressly revoked in writing by City.

**5.4 City's Right to Release.** Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation, any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice:

(a) City may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and

(b) Trustee, acting pursuant to the written request of City, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

**5.5 Reconveyance.** Upon written request of City stating that all sums and obligations secured hereby have been discharged, or otherwise as requested in writing by City, and upon surrender of this Deed of Trust and the Note and any additional loan notes to Trustee for cancellation, and upon payment to Trustee of its fees and expense, Trustee shall reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals in any reconveyance shall be conclusive proof of their truthfulness and the grantee in any such reconveyance may be described "as the person or persons legally entitled thereto." When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary.

**5.6 Events of Default.**

(a) **Event Defined.** After the giving of the written notice specified by Section 5.6(b) and the expiration of the applicable cure periods therein set forth, any one or more of the following events shall constitute a default (each an "Event of Default") under this Deed of Trust: (1) failure of the Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal or interest, payable, whether at maturity or by acceleration or otherwise; or (2) failure of Borrower to observe or to perform any covenant and/or condition to be observed or performed by Borrower pursuant to the Loan Documents.

(b) **Notice of Default.** In the event of any material breach under the Loan Documents, City shall give written notice to Borrower or Borrower's Agent of breach by specifying: (a) the nature of the event or deficiency giving rise to the breach; (b) the action required to cure the deficiency, if an action to cure is possible; (c) a date, which shall not be less than ninety (90) calendar days from the mailing of the notice, by which such action to cure must be accomplished (or if such breach is not reasonably susceptible to cure within such a ninety (90) day period, then within such additional time as is reasonably necessary to cure such failure, provided that Borrower has commenced cure within the initial ninety (90) day period and diligently pursues cure to completion).

(c) **Remedies.** After the expiration of all applicable notice and cure periods, the City may, without further notice, declare in writing a default effective on the date of such declaration of default. City's obligation to disburse Loan proceeds to Borrower shall terminate. Upon any such declaration of default, the City may apply to any court, state or federal, for specific performance, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the City arising from a default under any of the terms of the Loan Documents would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the City which afford adequate relief in light of the purposes and policies of the Project.

**5.7 Acceleration and Sale.**

(a) **Acceleration.** In the event of any default as set forth in paragraph 5.6, City, without demand on Borrower, may declare all sums hereby secured immediately due and payable by notice thereof to the Borrower or by executing and recording or by causing the Trustee to execute and record a notice of default and election to cause the Property to be sold to satisfy the obligations secured hereby, or by the commencement of an appropriate action to foreclose this Deed of Trust or by any other appropriate manner.

(b) **Foreclosure Procedure.** Whenever a notice of default and intent to sell is issued pursuant to Civil Code Section 2924, the City will follow the notice and hearing procedures established in 25 C.C.R. § 7938 in addition to other applicable provisions of law. City agrees to comply with the provisions in Section 42 (h) (6) (E) (ii) of the Internal Revenue Code of 1989.

**5.8 Entry Possession and Receivership.** In the event of any default hereunder and irrespective of whether City accelerates the maturity of all indebtedness secured hereby or files a notice of default hereunder, City at any time, without notice of demand or regard to the adequacy of any security for the indebtedness and obligations hereby secured, in person, or by any agent or employee, or by receiver appointed by court, may enter upon and take the possession of the Property or any part thereof and including the right to rent, lease, operate and maintain any part or all of the Property, and may sue for or otherwise collect and receive all rents, royalties, issues, accounts and profits thereof, including these past due as well as those accruing thereafter. Borrower hereby presently assigns to City, absolutely and regardless of possession of the Property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use of occupation of all or any part of the Property, now existing or hereafter made, reserving to Borrower such rents as they become due, but not otherwise. Borrower shall on demand execute such further assignments to City of any or all such leases, agreements, rents or monies as the City may require, and deliver to City a fully executed original of any or all such leases or agreements. City by any agent, employee or receiver, may also take possession of, and for these purposes use, any and all of Borrower's personal property contained in or on the Property and used by Borrower in the operation, rental or leasing thereof or any part thereof. The expense (including, but not limited to, receivers' fees, attorneys' fees and agents' compensation) incurred by City pursuant to the power herein contained shall be secured hereby. City may bring or defend any legal action in connection with the Property, as it may deem proper, and may, from time to time, make all necessary or proper repairs, replacements and alterations to the Property, as it may seem judicious, and may insure and reinsure the same, and may lease the property or any part or parts thereof in such parcels and for such periods and on such terms as it may seem fit, including leases for terms and for terms expiring after the maturity of the indebtedness hereby secured, and may terminate any lease for any case which would entitle Borrower to terminate it. After deducting the expenses of managing and operating the same and all maintenance, repairs, replacements and alterations and all payments

which may be made for taxes, assessments, liens, claims, insurance premiums, or other proper charges of the Property or any part and for agents employed by City to manage and operate the Property, City may apply any and all remaining funds to the payments of the indebtedness hereby secured in such order and proportion as City may determine.

Neither application of said amounts to such indebtedness nor any other action taken by City under this paragraph shall cure or waive any default hereunder or nullify the affect of any such notice of default or invalidate any act done pursuant to such notice or any cause of action to foreclose this Deed of Trust. The right to enter and take possession of the Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be in addition to any other right to remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. City shall be liable to account only for such rents, royalties, issues, accounts and profits actually received by it.

**5.9 Attorneys' Fees.** If Trustee or City shall be made parties to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or City under this Deed of Trust, or if City employs an attorney (including the Attorney General of the State of California) to collect any or all of the indebtedness hereby secured or to foreclose this Deed of Trust, or authorizes Trustee to act on its behalf, City shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by them or either of them in any such case whether or not a suit be commenced, and the same, together with interest thereon from the date of payment at the rate of eight percent (8%) per annum, shall be secured hereby as provided in paragraph 4.7.

**5.10 Exercise of Remedies; Delay.** No exercise of any right or remedy herein contained or provided by law, and no delay by City or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

**5.11 Trustee Substitution.** The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to City to be exercised at any time hereafter, without specifying any reason therefore by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever City deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

**5.12 Remedies Cumulative.** No remedy herein contained or conferred upon City or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the City or Trustee but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

**5.13 Successors, Assigns, Gender, Number.** The covenants and agreements herein contained shall bind, and the benefit and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

**5.14 Headings.** The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

**5.15 Actions on Behalf of City.** Except as is otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by City is required or permitted under this Deed of Trust, such action shall be in writing.

**5.16 Obligations of Borrower.** If more than one person has executed this Deed of Trust as Borrower, the obligations of all such persons hereunder shall be joint and several.

**5.17 Miscellaneous Provisions.**

(a) **Beneficiary Statement.** City may require reimbursement for actual costs incurred in preparing and furnishing any statement required by California Civil Code Section 2943.

(b) **Severability.** If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

(c) **Indemnification.** Borrower will indemnify and hold the City harmless against any and all losses, claims, demands, penalties and liabilities which City may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed or Trust and not assert any claim against City by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust and Borrower shall pay City upon demand all claims, judgments, damages, losses or expenses (including reasonable legal expense) incurred by City as a result of any legal action arising out of this Deed of Trust. Borrower shall indemnify and hold harmless City as set forth herein regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of the City or the Borrower or their respective agents,

officers, employees, contractors or subcontractors provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from sole negligence or willful misconduct of the City.

(d) **Offset.** Borrower shall not under any circumstances fail or delay to perform (or resist the enforcement of) any of its obligations to City in connection with this Deed of Trust or any other contract, note or instrument executed by Borrower in favor of City because of any indebtedness or obligation of City which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against City, and Borrower hereby waives any such rights of set-off (or offset) which it might otherwise have with respect to any such claims or causes of action against City or any such obligations or indebtedness of City, unless and until such right of set-off (or offset) is confirmed and liquidated by such final judgment. Borrower further waives any right which it might otherwise have (if any) to require a marshaling of any security of the City or to direct the order in which City pursues its rights or remedies with respect to any of its security.

(e) **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by commercial courier service, charges prepaid. Notices so sent shall be deemed given when actually received at the addresses set forth below. For purposes of notice, the addresses of the parties are:

Borrower:

Mental Health Systems, Inc.  
9465 Farnham Street  
San Diego, CA 92123  
Attention: Kimberly Bond, President and CEO

City:

City of Oceanside Neighborhood Services Department  
300 North Coast Highway  
Oceanside, California 92054  
Attention: Margery M. Pierce, Neighborhood Services Director

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, Borrower has executed this Deed of Trust on the day and year set forth above.

**BORROWER**

Mental Health Systems Inc.,  
a non-profit corporation

By:   
\_\_\_\_\_  
President and CEO

**[NOTARY ACKNOWLEDGEMENT OF SIGNATORIES MUST BE ATTACHED]**

**ACKNOWLEDGMENT**

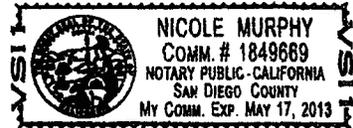
State of California  
County of San Diego )

On December 28, 2011 before me, Nicole Murphy, Notary Public  
(insert name and title of the officer)

personally appeared Kimberly Bond  
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 *Nicole Murphy* (Seal)

**Attachment A**

**Property Description**

The land referred to herein as 707 North Clementine Street, Assessor's Parcel Number 147-054-05-00, is situated in the City of Oceanside, County of San Diego, State of California, and is described as follows:

Lot 5 in Block 54 of Tract 332 of Myers and McComber's Subdivision, in the City of Oceanside, County of San Diego, State of California as per map thereof no. 332, filed in the Office of the County Recorder of said County.

**REQUEST FOR RECONVEYANCE**  
To be used only when note has been paid

TO: \_\_\_\_\_, Trustee:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. When all sums secured by said Deed of Trust have been fully paid and satisfied, you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

By: \_\_\_\_\_, DIRECTOR

Mail Reconveyance to:

City of Oceanside  
300 North Coast Highway  
Oceanside, CA. 92054

Attention: City Manager

Date: \_\_\_\_\_