

## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between the NEW HAMPSHIRE HOUSING FINANCE AUTHORITY, a body corporate and politic, with a principal place of business at 32 Constitution Drive, Bedford, New Hampshire 03110 (“NHHFA”), THE NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, with a principal place of business at Hugh Gallen Office Park, Main Building, 105 Pleasant Street, Concord, New Hampshire 03301 (“DHHS”) and \_\_\_\_\_ DEVELOPER\_\_\_\_\_, a \_\_\_\_\_ TYPE OF ENTITY\_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (“Developer”).

### **W I T N E S S E T H**

WHEREAS, NHHFA is a state credit agency responsible for the award of Low Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code in the State of New Hampshire;

WHEREAS, DHHS seeks to promote respect, recovery, and full community inclusion for adults, including older adults, who experience a serious mental illness;

**CHOOSE ONE-CHOOSE FIRST OPTION IF DEVELOPER IS GOING TO PLEDGE EXISTING UNITS AND NEW UNITS, OR JUST EXISTING UNITS;**  
**CHOOSE SECOND OPTION IF DEVELOPER IS GOING TO PLEDGE JUST NEW UNITS.**

WHEREAS, the Developer is in the process of applying to NHHFA for low income housing tax credits to develop a \_\_\_\_\_ unit, low income, residential, apartment complex located in \_\_\_\_\_, New Hampshire (the “Project”), but in addition also is the owner of other, numerous low income, residential apartment units in New Hampshire;

***[OR]***

WHEREAS, Developer is in the process of applying to NHHFA for low income housing tax credits to develop a \_\_\_\_\_ unit, low income, residential, apartment complex, located in \_\_\_\_\_, New Hampshire (the “Project”).

WHEREAS, NHHFA, DHHS and the Developer recognize that access to safe and affordable housing is a significant challenge for individuals with a serious mental illness;

WHEREAS, NHHFA and DHHS entered into an Inter-Agency Partnership Agreement dated May 5, 2014 (the “Partnership Agreement”), a copy of which is attached hereto as Exhibit A, whereby NHHFA and DHHS established the Housing Bridge Program (the “Housing Bridge Program”) for persons with a serious mental disabilities who are transitioning from institutional settings into community based living;

WHEREAS, pursuant to Section HFA 109.07 A of the New Hampshire Qualified Allocation Plan for the Low Income Housing Tax Credit Program (the “QAP”), NHHFA is willing to award developers points in connection with their current application for Low Income Housing Tax Credits if they agree to make housing units available, by participation in NHHFA’s Section 811 Project Rental Assistance Program (the “Section 811 Program”), for persons with serious mental illness (“SMI”), as said term is used in the Settlement Agreement in the case of Amanda D., et. al., and others similarly situated vs. Margaret W. Hassan, Governor et., al., Civ. No. 1:12-cv-53-SM.

**CHOOSE ONE-CHOOSE FIRST OPTION IF DEVELOPER IS PLEDGING EXISTING UNITS AND NEW UNITS; CHOOSE SECOND OPTION IF DEVELOPER IS PLEDGING ONLY EXISTING UNITS; CHOOSE THIRD OPTION IF DEVELOPER IS PLEDGING ONLY NEW UNITS**

WHEREAS, the Developer is willing to make a number of its existing one bedroom units available to provide housing for individuals with SMI and is willing to construct at least ten percent (10%) of the total units or 2 units, whichever is greater, in the Project as one bedroom units, which will be available to provide housing for individuals with SMI.

***[OR]***

WHEREAS, the Developer is willing to make a number of its existing one bedroom units available to provide housing for individuals with SMI.

***[OR]***

WHEREAS, the Developer is willing to construct at least ten percent (10%) of the total units in the Project or 2 units, whichever is greater, as one bedroom units, which will be available to provide housing for individuals with SMI.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Dedication of Units.

**CHOOSE ONE-CHOOSE FIRST OPTION IF DEVELOPER IS PLEDGING EXISTING UNITS AND NEW UNITS; CHOOSE SECOND OPTION IF DEVELOPER IS PLEDGING ONLY EXISTING UNITS; CHOOSE THIRD OPTION IF DEVELOPER IS PLEDGING ONLY NEW UNITS**

1.1 In the event that Developer receives Low Income Housing Tax Credits from NHHFA for the Project , Developer hereby designates: (i) the number of

existing one bedroom units set forth on Exhibit B and at the locations/projects set forth on Exhibit B as available to provide housing for individuals with SMI; and (ii) agrees to designate ten percent (10%) of the units or 2 units, whichever is greater, in the Project as available to provide housing for individuals with SMI, and certifies that the said units will be one-bedroom units ((i) and (ii), collectively the “811 Units”).

**[OR]**

1.1 In the event that Developer receives Low Income Housing Tax Credits from NHHFA for the Project, Developer hereby designates the number of existing one bedroom, units set forth on Exhibit B and at the locations/projects set forth on Exhibit B as available to provide housing for individuals with SMI (the “811 Units”).

**[OR]**

1.1 In the event that Developer receives Low Income Housing Tax Credits from NHHFA for the Project, Developer hereby agrees to designate ten percent (10%) of the units or 2 units, whichever is greater, as available to provide housing for individuals with SMI (the “811 Units”), and certifies that the 811 Units will be one-bedroom units.

1.2 The 811 Units must be qualifying units under the Section 811 Program, therefore, the units must have funding through any of the following: Federal Low-Income Housing Tax Credits; Federal HOME Funds; other State, Federal or Local funding sources designated by NHHFA, in its sole discretion, as qualifying for the Section 811 Program; also, the project must include 5 or more units under a single ownership entity, and it must be non-age restricted.

1.3 In exchange for the Developer dedicating the 811 Units to use for individuals with SMI, NHHFA will award Developer the points set forth on Exhibit B.

1.4 Designation of the 811 Units shall be subject to final approval by NHHFA and compliance with applicable, laws, rules, agreements and regulations, including, but not limited to compliance with the Partnership Agreement and the Section 811 Program; said compliance and designation of units to be in NHHFA’s sole and absolute discretion.

1.5 The Developer shall not be able to re-commit the 811 Units to receive points for any project other than the Project until this MOU is no longer in effect.

2. Procedure.

2.1 When DHHS receives a referral to place an individual with SMI in community based housing, DHHS (or its subcontractor(s)) shall conduct an initial

screening of the individual to ascertain whether the individual meets the criteria of the Housing Bridge Program, and is eligible to participate in the Housing Bridge Program.

2.2 When DHHS determines that it has an individual who is a candidate to take part in the Housing Bridge Program, it will ascertain, in conjunction with the individual, the geographic region or municipality where the individual would prefer to reside.

2.3 If the Developer has 811 Units in the geographic area or municipality which is preferable to the individual, DHHS (or its subcontractor) will contact the Developer to determine if an 811 Unit is available to house the individual with SMI.

2.4 If an 811 Unit is available DHHS and the Developer will determine if:

.1 renting the unit to the individual would violate the particular project's Tenant Selection Plan as previously approved by NHHFA;

.2 the individual satisfies the remainder of the Developer's tenant screening criteria, including, income limits, earnings and other previously articulated and NHHFA approved criteria.

.3 renting to the individual will not cause the project or the 811 Unit to be in non-compliance with Section 42 of the Internal Revenue Code.

.4 the individual has the resources to pay the rent on the 811 Unit. Said resources to pay the rent on the 811 Unit may come from a variety of sources, including, but not limited to, vouchers issued pursuant to the Housing Bridge Program Agreement, vouchers issued pursuant to the Section 811 Program, or other forms of rental support or the individual's earnings.

2.5 If the individual cannot satisfy the criteria set forth in Section 2.4, above, the Developer will not be required to rent the 811 Unit to the individual.

2.6 If the individual satisfies the criteria set forth in Section 2.4, above, the Developer will make the 811 Unit available to the individual, who will be required to: (i) execute the Developer's form lease, previously approved by NHHFA; and (ii) comply with the rules and regulations for the project in which the 811 Unit is located.

2.7 While residing in the 811 Unit, the individual may avail himself/herself of the supportive services offered pursuant to the Housing Bridge Program, or any other similar program, but participation in any program shall be voluntary on the part of the individual and shall not be mandatory as a condition to participation in the Housing Bridge Program, or the Section 811 Program.

2.8 DHHS shall prepare for NHHFA, on an annual basis, a report as to: (i) how many times the Developer was contacted by DHHS as to the availability of 811

Units; (ii) how many individuals were placed in Developer's 811 Units; (iii) the reasons (if any) why individuals with SMI were not able to be placed in any available 811 Units owned by Developer; and (iv) such other information as reasonably requested by NHHFA, so as to allow NHHFA to ascertain whether the Developer is in compliance with the terms of this MOU.

3. Consents; Certification.

3.1 By executing this MOU the Developer warrants and represents that it has received any and all consents and approvals necessary for the Developer to enter into this MOU and carry out the provisions of this MOU, including, but not limited to, any consent required by any of Developer's equity investors, general partners, limited partners, members, investment members, lenders or other financing sources.

3.2 On an annual basis, or more often, if reasonably requested by NHHFA, the Developer will certify to NHHFA and DHHS, on the form set forth as Exhibit C, hereto, that it is in compliance with the terms and conditions of this MOU.

4. Breach and Remedies for Breach.

4.1 The Developer shall not be in breach of this MOU in the event that it does not have an 811 Unit available at the time DHHS contacts the Developer and informs them that they have an individual in need of a unit.

4.2 In the event that the Developer breaches or is in default of any term or condition of this MOU or knowingly misrepresents the status of the availability of an 811 Unit, the Developer will be considered to be involved in or have tax credit or authority financed projects which have non-compliance issues as contemplated by Section 109.07, A, 14 of the QAP, subjecting the Developer to the loss of up to twenty (20) points on its next application for Low Income Housing Tax Credits.

4.3 In addition to the rights and remedies set forth in Section 4.2, in the event that Developer breaches or is in default of any term or condition of the this MOU or knowingly misrepresents the status of the availability of an 811 Unit, NHHFA and/or DHHS shall have any and all remedies available to them at law, equity or otherwise.

5. Term.

The term of this MOU shall be five (5) years, commencing on the Effective Date and terminating on the fifth (5<sup>th</sup>) anniversary thereof.

6. Inter-Agency Partnership Agreement; Rental Assistance Component.

6.1 The terms and conditions of the Inter-Agency Partnership Agreement are hereby incorporated herein by reference, and to the extent applicable, the Developer agrees to be bound by the terms and conditions thereof.

6.2 In addition, a component of the Section 811 Program provides additional rental assistance for individuals with SMI. This rental assistance component provides subsidized rental assistance to the tenant in the form of assistance attached to the unit through a Rental Assistance Contract (RAC) between the Developer and NHHFA, the administrator of the Program. The Developer agrees to participate in the Section 811 Program by entering into a RAC with NHHFA for the committed units set forth in Exhibit B.

7. Notices.

All notices, reports, consents and receipts shall be in writing and shall be deemed duly given on (a) the date of personal or overnight courier delivery; (b) the date of transmission by facsimile or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by postage paid, return receipt requested first-class mail; or (c) three (3) business days after the date of deposit in the United States mail, by postage paid, return receipt requested first-class mail, addressed as follows:

To NHHFA:

New Hampshire Housing Finance Authority  
32 Constitution Drive  
Bedford, New Hampshire 03110  
Attn: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

To DHHS:

New Hampshire Department Of Health And Human Services  
Hugh Gallen Office Park, Main Building  
105 Pleasant Street  
Concord, New Hampshire 03301  
Attn: Michele A. Harlan, Community Mental Health Program Administrator  
Email Address: michele.a.harlan@dhhs.state.nh.us  
Facsimile: 603-271-5058

To Developer:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

8. Miscellaneous.

8.1 This MOU may not be assigned, in whole or in part, by any party hereto.

8.2 This MOU shall be governed by and interpreted pursuant to the laws of the State of New Hampshire, notwithstanding conflicts of law principles. Any action or proceeding arising from this MOU shall be maintained in a State or Federal court located in the State of New Hampshire and the parties hereto consent to such venue and jurisdiction for all purposes.

8.3 This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.4 Paragraph and section headings are inserted herein for convenience of reference only and in no way are to be construed to define, limit or affect the construction or interpretation of the terms of this MOU.

8.5 No amendment, modification or supplement to this MOU shall be binding unless executed in writing and signed by all the parties thereto.

8.6 All parties hereto, warrant and represent that they have taken any and all corporate or other action necessary to enter into this MOU, and further warrant and represent that the persons executing this MOU are duly authorized to execute this MOU and once executed by said persons shall be valid, binding and enforceable obligations of the party.

8.7 No waiver of any provision of this MOU shall be binding unless set forth expressly in writing and signed by an authorized representative of the waiving party. The waiver by any party hereto of a breach of any provision of this MOU shall not operate or be construed as a waiver of any preceding or succeeding breach of the same or any other term or provision of this MOU which shall remain in full force and effect.

8.8 In the event that the Developer employs a management agent to provide management services to any 811 Unit covered by this MOU, the Developer shall provide the management agent a copy of this MOU and ensure that the management agent will comply with and is aware of the terms and conditions hereof.

8.9 In the event any provision of this MOU shall be considered illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions, hereof, but such provisions shall be fully severable, and this MOU shall be construed and enforced as if such illegal or invalid provisions had never been inserted therein.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the date and time first above written.

NHHFA:

NEW HAMPSHIRE HOUSING  
FINANCE AUTHORITY

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Witness

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

Name:

Title:

DHHS:

NEW HAMPSHIRE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

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Witness

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

Name:

Title:

DEVELOPER:

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Witness

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

Name:

Title:

EXHIBIT A

Inter-Agency Partnership Agreement

**EXHIBIT B**

**811 Units**

**I. UNITS IN EXISTING PROJECTS/BUILDINGS**

Number of Units Committed: \_\_\_\_\_\*

Location of Units:

<u>PROJECT NAME:</u>	<u>ADDRESS</u>	<u>NUMBER OF UNITS IN PROJECT TO BE 811 UNITS</u>

[ADD MORE LINES IF NECESSARY]

Number of Points Awarded: \_\_\_\_\_

\* It is the intention of this MOU that the 811 Units shall be floating units and be made available on a “next unit available” basis. For example if Developer commits three (3), one (1) bedroom units at a particular project, and receives a request from DHHS to place an individual with SMI, if the Developer has a one (1) bedroom unit available they must accept the individual for placement in the unit (subject to the terms and conditions of this MOU). Once the Developer has three (3), one (1) bedroom units occupied by 811 tenants at that particular project, the Developer can refuse to take another individual 811 tenant under this MOU. Once a unit (or units) at said project is vacated by an 811 tenant, the project will again have a unit (or units) available for placement with an 811 tenant.

## II. UNITS AT NEW PROJECT

Number of New Units Committed: \_\_\_\_\_  
At the Project\*\*

Number of Points Awarded: Five (5)

\*\* Must be ten percent (10%) or 2 units, whichever is greater, of the total units at the Project; and must be one (1) bedroom units.

## EXHIBIT C

### Certification of Compliance

The undersigned hereby represents and warrants to NEW HAMPSHIRE HOUSING FINANCE AUTHORITY (“NHHFA”) and NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES (“DHHS”) that it is in compliance with the terms and conditions of that certain Memorandum of Understanding by and between NHHFA, DHHS and the undersigned, dated \_\_\_\_\_, 20\_\_\_\_ (the “MOU”).

The undersigned agrees and understands that if there is any false statement contained herein or if the undersigned is in default of the terms and conditions set forth in the MOU, that NHHFA and DHHS shall have any and all rights available to them pursuant to the terms of the MOU.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Compliance as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Witness

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