

OWNER AGREEMENT
SUBSIDIZED HOUSING EMERGENCY RENTAL ASSISTANCE (SHERA) PROGRAM

Owner tax identification number: _____

THIS AGREEMENT ("Agreement") is entered into by and between _____ ("Owner"), who owns the rent-restricted residential property located at [_____] (the "Development") in The Commonwealth of Massachusetts (the "Commonwealth"), and the Commonwealth, acting by and through the Department of Housing and Community Development ("DHCD"). This Agreement shall become effective on the date this Agreement is signed by the Owner ("Effective Date").

WHEREAS, The Commonwealth has received a portion of the federal assistance provided for under section 501 of Division N of the Consolidated Appropriations Acts, 2021, Pub. L. No. 116-260, enacted December 27, 2020 (the "Act," and the funds available thereunder, the "Emergency Rental Assistance (ERA) Funds"); and

WHEREAS, the Act along with any regulations and guidance promulgated by the U.S. Department of Treasury thereunder, as may be amended or supplemented from time to time, prescribe certain requirements for the eligibility, use, and reporting of ERA Funds (collectively, the "Emergency Rental Assistance (ERA) Program"); and

WHEREAS, DHCD has contracted with Massachusetts Housing Finance Agency ("MassHousing") and the Massachusetts Housing Partnership Fund Board ("MHP") (DHCD, MassHousing and MHP are hereinafter collectively referred to as "Administrators") for the administration and operation of a program to qualify, document, and facilitate the disbursement of ERA Funds consistent with the federal ERA Program, such program, as further described in the Policy and Program Overview, dated April 8, 2021, incorporated by reference herein and made a part hereof, hereinafter referred to as the "Subsidized Housing Emergency Rental Assistance (SHERA) Program;" and

WHEREAS, this Agreement will govern the Owner's participation in the SHERA Program for the benefit of Eligible Households (defined below) residing at the Owner's Development.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

A. Definitions:

1. *"Eligible Households"* means one or more natural persons or a family who resides at the Development, is determined by Owner to be eligible for ERA Funds under this Agreement and the ERA Program, and has not engaged in serious or repeated violation of the lease, including criminal activity, other than non-payment of rent,

that would warrant termination of their tenancy.

2. *“Eligible Relief Period”* means the period commencing April 1, 2020 to, and including, March 31, 2021, or such later date as determined by DHCD.
3. *“Expend”* means when the Owner applies ERA Funds to the rent arrearages incurred by the applicable Eligible Households during the Eligible Relief Period.
4. *“SHERA Portal”* means <https://sherafunding.mass.gov/> or such other website designated by Administrators for registration of Owner and submission of the documents required in Section C hereof.
5. *“Tenant Certification”* means the certificate signed by each applicable tenant, in a form approved by Administrators, certifying, among other things, that (i) tenant has incurred loss of income, increased expenses or other financial hardship due directly or indirectly to the Covid-19 pandemic; (ii) receipt of ERA Funds is not duplicative of any other federal rental assistance; (iii) tenant consents to Owner’s application to the SHERA Program on its behalf and to sharing information necessary for such application; and (iv) tenant verifies the truth and completeness of the information submitted.

B. Receipt and Use of Funds:

1. Program Participation: By participating in the SHERA Program, Owner agrees to the following:
 - a. with respect to each Eligible Household, to:
 - i. Submit an application to the SHERA Portal for any household that has signed a Tenant Certification;
 - ii. Give notice, in a manner and form consistent with the SHERA Policy and Program Overview, to each Eligible Household of (i) the application for ERA Funds, (ii) if applicable, the denial of the Eligible Household’s claim, (iii) if applicable, the receipt of ERA Funds to pay rental arrearages for the Eligible Household, and (iv) the Expending of ERA Funds to satisfy applicable rental arrearages for that Eligible Household;
 - iii. For Eligible Households whose rents are not calculated based on their household incomes, not increase monthly rent charge as of March 1, 2021 for such Eligible Household’s rent through the later to occur of (i) July 31, 2021 and (ii) the date on which the applicable subsidy program permits Owner to implement a rent increase;
 - iv. Waive all costs, fees and charges incurred by Eligible Households as a result of non-payment or partial payment of rent during the Eligible Relief Period;
 - v. Disregard non-payment or partial payment of rent by Eligible Households

during the Eligible Relief Period when considering renewal of an Eligible Household's lease, and not share such information with other rental properties, credit bureaus and tenant screening companies;

- vi. For each Eligible Household that receives rental assistance under the SHERA Program, not initiate a new eviction for non-payment of rent and suspend any pending evictions for non-payment of rent against such Eligible Household until a date that is no earlier than six (6) months following the date on which the Owner last Expends ERA Funds on behalf of such Eligible Household;
 - vii. Maintain the documents and records as set forth in Section E hereof.
- b. During the term of this Agreement, with respect to all households in the Development, Owner agrees to proactively reach out to households in the Development with rent arrearages and to:
- i. meet with households suffering financial hardship due to the COVID-19 pandemic in a structured, interactive mediation process including the state-funded no cost community mediation program, to fully understand and document the household's entire financial hardship (job or income loss, unforeseen and increased expenses, etc.) and their inability to pay all or a portion of their monthly rent, for the purposes of identifying mutual resolution;
 - ii. make reasonable and good faith efforts to offer rent arrearage forgiveness to and/or enter into payment agreements with any household that has experienced a financial hardship due to the COVID-19 pandemic. Such agreements will be based on current rent obligations and the household's full financial hardship. The agreements will also attempt to avoid lump sum repayments at the end of the rent deferral period, allow households to amortize the repayment over time, and not be charged late fees upon entering into a payment agreement. Hardship verifications and payment plans should be memorialized and agreed upon in writing by both property management and households;
 - iii. promote program access and awareness to residents, support resident applications for rental assistance payments, accept emergency rental assistance payments when made (including but not limited to assistance available under the SHERA Program), and assist affected households in determining eligibility for federal, state and local rental relief funds. All relevant and needed information required from the property manager/owner will be provided in a timely manner;

- iv. utilize repayment plans, rent arrearage forgiveness, and rental assistance resources for affected households in lieu of legal eviction filing, whenever possible; and
 - v. proactively contact all affected households with mobile vouchers and project-based rental assistance to 1) actively promote Interim Income Recertifications and rent adjustments; and 2) work with relevant voucher administrators to make all necessary rent adjustments as soon as possible by supporting hardship and income verification information access.
- 2. Disbursement of ERA Funds: Rental assistance will be provided to Owner on behalf of each Eligible Household which Owner has determined meets the eligibility criteria and for which a complete application has been received by Administrators as set forth herein and under the SHERA Program. ERA Funds will be disbursed promptly by DHCD upon receipt of Administrators' notification of Owner's complete application.
- 3. Expenditure and Repayment of ERA Funds:
 - a. ERA Funds shall be Expended by Owner for rental assistance on behalf of Eligible Households for rent arrearages owed during the Eligible Relief Period. Eligible rent arrearages shall only include the housing portion of rent arrearages and shall not include other costs or fees imposed by Owner, including, but not limited to, parking fees, pet fees, or damages. For any household with mobile vouchers and project-based rental assistance, eligible rent arrearages are further limited to such household's portion of rent.
 - b. Owner shall refund to DHCD any funds paid to Owner in excess of the amount to which Owner is entitled under the terms and conditions of this Agreement, including, but not limited to, any Additional Funds, as defined in Section E(3) hereof.
 - c. Owner shall refund to DHCD any funds not Expended and/or not used in accordance with the terms and conditions of this Agreement or applicable law. Such refund shall be sent to DHCD within 30 calendar days from Owner's knowledge of such non-compliance.
 - d. In executing this Agreement, Owner certifies and covenants that all ERA Funds it receives for each Eligible Household will be Expended within thirty (30) days following receipt of such ERA Funds or if not Expended within such thirty (30) day period, shall be returned to DHCD as soon as practicable following the expiration of the thirtieth (30th) day.
 - e. The Owner's obligations under this section shall survive the termination of the Agreement.

4. Owner's Designated Management Agent

- a. Owner may designate a third-party to act on its behalf for purposes of fulfilling the Owner's obligations under this Agreement (a "Management Agent") by providing the name, address, and contact information for such third party immediately following this paragraph. If so designated, any reference to Owner hereunder shall include the Management Agent.

Management Agent

Company Name: _____

Authorized Representative: _____

Address: _____

Phone: _____

Email: _____

- b. Administrators are entitled to rely on the applications, certifications, instructions or any other document or information provided by Owner or any Management Agent, conclusively without liability, provided such reliance is made in good faith and in the absence of negligence or willful misconduct.

- C. **Application Requirements:** Owner shall timely and diligently conduct, obtain and document all required eligibility verification and prepare and submit an application for payment, as set forth below for each Eligible Household that has signed a Tenant Certification.

1. Eligibility.

- a. Income Verification. Owner shall determine and document each Eligible Household's income in one of the following ways:
- i. Eligible Household has completed an income certification during calendar year 2020 or 2021 in connection with a local, state, or federal government assistance program indicating household income at or below 80% Area Median Income (AMI), as published by the U.S. Department of Housing and Urban Development in accordance with 42 U.S.C. 1437a(b)(2), available under the heading for "Access Individual Income Limits Areas" at <https://www.huduser.gov/portal/datasets/il.html>;
 - ii. Owner has received documentation of income for calendar year 2020 in the form of a filed 2020 IRS Form 1040 for each member of the household over eighteen years old, if filing separately;
 - iii. Owner has received documentation of income for at least two consecutive months prior to application showing income at or below 80% AMI if prorated annually (documentation of income may include

paystubs, W-2 forms or other wage statements, tax filings, bank statements, or such other evidence deemed acceptable by Administrators);

- iv. Owner has received benefit letters dated January 1, 2020 or later, confirming receipt of benefits from (i) the Department of Transitional Services, (ii) MassHealth, (iii) the Department of Veterans' Services, Chapter 115 – Safety Net Program, or (iv) the Department of Early Education and Care for subsidized childcare; or
 - v. Owner conducts a new income verification.
 - b. COVID Hardship Verification. Owner shall include verification that the Eligible Household has experienced financial hardship due directly or indirectly to the COVID-19 pandemic that has caused their inability to pay rent in the form of a signed Tenant Certification, plus any additional documentation required by the ERA Program.
 - c. Consent to Apply. Owner will secure from each Eligible Household a Tenant Certification.
2. Application. Owner will timely and diligently prepare and submit all applications in the required format through the SHERA Portal or such other method approved by Administrators. Applications, unless otherwise provided below, must include, with respect to each Eligible Household, the following:
- a. The name, unit address, and contact information for each head of household;
 - b. The date of birth, last four digits of social security number, ethnicity, race, gender, primary language, and limited English proficiency status, provided that Administrators may waive the requirement for any information under this clause (b) to the extent it reasonably believes such information is not available;
 - c. For each month of rental arrearage, the total unit rent, the tenant-owed portion of that rent, and the arrearage due;
 - d. Certification from Owner that:
 - i. the tenant is income eligible;
 - ii. the tenant has suffered financial hardship due directly or indirectly to the COVID-19 pandemic;
 - iii. to the best of Owner's knowledge, all information provided is true, accurate, and complete
 - e. A statement substantially the same as set forth in Section (C)(4)(a) hereof; and

- f. Any such other information as reasonably requested by Administrators, including, but not limited to, information designated as “Required” in the SHERA Portal.
- 3. Further Owner Action. If Owner determines that a tenant is not an Eligible Household, Owner shall promptly notify the tenant of such determination, the reason for ineligibility, and the availability of an administrative review. If such tenant seeks an administrative review of the determination within the timeframe provided under the SHERA Program, Owner will diligently conduct an administrative review in a manner and timeframe approved by Administrators. If Administrators notify Owner that further documentation is necessary in order to process a tenant’s application, Owner will timely and diligently attempt to obtain and submit such documentation in the required format through the SHERA Portal or such other method approved by Administrators. If a tenant, upon notification of denial of ERA Funds, requests Owner seek an administrative review of such denial, Owner will timely and diligently attempt to obtain all applicable documentation and submit a complete request for administrative review in the required format approved by Administrators.
- 4. Owner Certifications. Owner hereby agrees, represents, and certifies that
 - a. Owner and Development both meet the eligibility requirements of the SHERA Program to the best of Owner’s knowledge;
 - b. Owner will not impose any other eligibility or application requirement upon any tenant that is not required by the SHERA Program;
 - c. all information contained in an application for ERA Funds and any related materials submitted therewith, shall, to such Owner’s knowledge, be true, accurate, and complete and shall make such same representations with respect to each application it submits. OWNER UNDERSTANDS THAT USING FEDERAL DOLLARS FOR UNJUST ENRICHMENT, PERSONAL GAIN, OR OTHER THAN THEIR INTENDED USE IS A FORM OF THEFT, SUBJECT TO CRIMINAL AND CIVIL PROSECUTION UNDER THE LAWS OF THE UNITED STATES;
 - d. Owner has established protections sufficient to meet the requirements of the SHERA Program, ERA Program, and all applicable law and regulation, for the privacy and security of all information collected, transmitted, or stored under this Agreement;
 - e. Owner or its designated Management Agent has at least one staff member holding current certification in compliance training recognized by the affordable housing industry; and
 - f. Owner has no debt obligations to any Administrator that such Administrator has declared in default as of the Effective Date.

D. Term

1. The term of this agreement will commence on the Effective Date and terminate six (6) months following the date the last ERA Fund is Expended in the Development.
2. If the United States Congress extends the deadline for the expenditure of funds under the Act, the term of this Agreement may be extended accordingly at DHCD's discretion.
3. Any ERA Funds not Expended under this Agreement, including any interest earned on such funds, must be returned to Administrators upon termination of this Agreement.

E. Program Compliance

1. W-9 Requirement: Alongside a signed copy of this Agreement, Owner will provide Administrators with a properly completed Internal Revenue Service ("IRS") Form W-9 for itself or its Management Agent, if any.
2. Duplication of Benefits: Owner shall not, directly or indirectly, take or fail to take, any action which results or would reasonably be expected to result in an Eligible Household's receipt of duplicative federal, state, municipal, or philanthropically funded rental assistance. Assistance is duplicative if it is for rental assistance for the same address/housing unit, for the same rental arrearage amount, covering the same time period. To the extent any ERA Funds received by Owner under this Agreement are determined to be a duplication of rental assistance in the reasonable opinion of Administrators, Owner agrees to immediately return such ERA Funds to DHCD.
3. In consideration of Owner's receipt of ERA Funds from DHCD, Owner hereby assigns to Administrators all of Owner's existing and future rights and interests in any payment, repayment, reimbursement, grant, subsidized loan, receivable, or other relief, in any form, received by Owner in payment or repayment of the same obligation of any Eligible Household for which ERA Funds are Expended by Owner pursuant to this Agreement. Any such funds received by the Owner shall be referred to herein as "Additional Funds."

Owner agrees to immediately notify Administrators of the source and receipt of Additional Funds received by Owner. To the extent such Additional Funds are determined to be a duplication of SHERA assistance in the reasonable opinion of Administrators, Owner agrees to immediately return such Additional Funds to DHCD.

4. File Management and Record Retention relating to ERA Eligible Households:
 - a. Owner shall maintain books, records, and documents in accordance with the SHERA Program and generally accepted accounting principles, procedures and practices, consistently applied, which sufficiently and properly reflect the application of all ERA Funds received under this Agreement.
 - b. Owner must maintain a separate file for every tenant applicant submitted as

an Eligible Household, regardless of whether the request was approved or denied. Owner shall retain records and other relevant documentation for each tenant applicant or Eligible Household for the period set forth below.

- c. Required records include, but are not limited to:
 - 1) Applications for assistance;
 - 2) Leases effective during the term of the rental assistance;
 - 3) Income verifications and COVID hardship verifications, and
 - 4) Records and documents collected by Owner to document eligibility of all Eligible Households
 - 5) other records as required by Administrators or federal, state and local law or regulations.
- d. Owner will retain all documentation for six (6) years after the later of (i) the expiration or termination of this Agreement and (ii) the date the last ERA Funds are Expended hereunder, or such longer period as may be required by applicable law.

5. Compliance Monitoring:

- a. Owner is subject to compliance monitoring during the term of this Agreement and up to three years following the last date on which ERA Funds are Expended. Owner shall produce documentation for audit and inspection on the request of Administrators or its designated auditors, and further agrees to comply with any reporting requirements that Administrators may require with respect to the SHERA Program and the U.S. Department of Treasury may requirement with respect to the ERA Program, including any requirements that are published after the Effective Date.
- b. Administrators or any duly authorized representatives shall be permitted to inspect any files relating to tenant applicants and Eligible Households including but not limited to applications, income verifications and certifications, financial records, tracking system records, ERA Funds recipient lists, and any other applicable documents at any reasonable time with or without notice. Such records shall be maintained at a place accessible to the Administrators' staff or their designated monitoring agent(s).
- c. Owner must instruct its auditors to incorporate the receipt of ERA Funds and the application thereof to rent arrearages into the applicable annual audit of the Development, including disclosure of Owner's participation in the SHERA Program in the audit notes. Owner must also communicate to its auditors that it is not a subrecipient of DHCD, and therefore these expenditures should not be reported on its Schedule of Expenditures of Federal Awards (if applicable).

6. The Owner's obligations under this Section E will survive the termination of this Agreement.
- F. Assignability.** Owner shall not assign any interest in the Agreement and shall not transfer any interest in the same whether by assignment or novation, without the prior written consent of DHCD.
- G. Indemnity.** Owner shall be entirely and solely responsible for its actions and the actions of its employees and subcontractors while performing under this Agreement. Owner agrees to indemnify and hold harmless Administrators against all claims, demands, suits, awards, and judgments, made or recovered by any persons or agencies due to the actions of Owner or its employees or subcontractors under the Agreement, including any actions that may constitute a violation of federal or state law governing the use of protected information or a failure to comply with the Administrators' information security program. Notwithstanding the above, Owner shall not be responsible for damages caused by the gross negligence or willful misconduct of Administrators, their employees or subcontractors. Owner's obligations under this section will survive the termination of the Agreement.
- H. Additional Agreement Terms.**
- a. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and all prior negotiations, representations, contracts, and understandings are superseded hereby.
 - b. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.
 - c. Amendments. No contracts amending, altering, supplementing, or waiving any of the provisions of this Agreement shall be binding upon either party unless made in writing and signed by authorized representatives of the parties.
 - d. No Waiver. Failure of either party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.
 - e. Headings. All section headings are for convenience only and shall not be taken into consideration in interpreting or otherwise construing this Agreement.
 - f. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

- g. Electronic Signatures. This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes, shall be binding on the parties and shall have the same force and effect, for all purposes, as an original signature. Without limitation, in addition to electronically produced signatures, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.
- h. Management Agent Certification. If this Agreement is signed by the Management Agent identified in Section B.(4)(a). hereof, Management Agent certifies under the pains and penalties of perjury that it is duly authorized to sign this Agreement on behalf of Owner.

IN WITNESS WHEREOF, Owner has caused this Agreement to be executed by its duly authorized officer on the date written below.

OWNER

By: _____ Date: _____
Name:
Title: