

**FREE RECORDING IN
ACCORDANCE WITH CALIFORNIA
GOVERNMENT CODE SECTIONS
27383 and 27388.1**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

[Subrecipient Address]

Attn: [Subrecipient Clerk/Counsel]

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER RECOVERY
MULTIFAMILY HOUSING PROGRAM**

REGULATORY AGREEMENT

CONTRACT NUMBER **20-DRMHP-00002, AS AMENDED**

This Regulatory Agreement (the "Agreement") **dated November 1, 2020**, for reference purposes only, is made and entered into by and between Escalante Meadows, L.P., a California limited partnership (the "Developer"), and County of Santa Barbara, a public body corporate politic the ("Subrecipient"), pursuant to the requirements of the Community Development Block Grant - Disaster Recovery Multifamily Housing Program administered by the Department of Housing and Community Development, a public agency of the State of California (the "Department").

RECITALS:

- A. Developer has applied to Subrecipient for Community Development Block Grant - Disaster Recovery Multifamily Housing Program financial assistance (the "Assistance") for the development of a rental housing development located **at 1090 and 1093 Escalante St., City of Guadalupe**, California, consisting of a total of 80 Housing Units (the "Development"), of which 7DR-MHP Assisted Units are to be occupied by eligible Households as provided in this Agreement. The Development is located on the real property described in Exhibit A hereto (the "Property"). The Subrecipient, with Department's approval, has agreed to provide the Assistance under the Community Development Block Grant - Disaster Recovery Multifamily Housing Program (the "Program") and the DR-MHP Policies and Procedures Manual (the "DR-MHP Policies and Procedures"). The obligations imposed on the Developer by the Program and the Program policies and procedures are

collectively referred to herein as the “Program Requirements.”

- B. Community Development Block Grant Disaster Recovery (CDBG-DR) funding was appropriated under Public Laws 115-254 and 116-20, and awarded by the U.S. Department of Housing and Urban Development (HUD) to the Department via Federal Register Notice [83 FR 4681](#). The Department serves as the lead agency and responsible entity for administering CDBG-DR funds. CDBG-DR supports the State of California’s unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4407 and DR-4382 in August 2018. HCD performed an unmet needs assessment that covered the areas affected by DR 4407 and DR 4382, and included data from FEMA, Small Business Administration (SBA), California’s Department of Forestry and Fire Protection (CAL FIRE), and California Department of Insurance (CDI). The Department developed the Disaster Recovery Multifamily Housing Program (DR-MHP). DR-MHP projects are funded to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.
- C. As required by the Program, Subrecipient and the Department have entered into a Master Standard Agreement, numbered **20-DRMHP-00002**, and dated **December 4, 2020, and amended on August 30, 2022** which provides the overarching terms and conditions for implementing the Program and the terms of the Assistance common to all projects to be completed by the Subrecipient (the “Master Standard Agreement”).
- D. As required by the Program and the Master Standard Agreement, Department has issued to Subrecipient a Notice to Proceed for the Development, dated October ___ 2022, which provides the specific terms and conditions for the Development (the “Notice to Proceed”).
- E. As required by the Program, Developer and the Subrecipient have entered into that certain Development Agreement dated **November 1, 2022** governing the terms and conditions of the Development and governing the terms of the Assistance for the Development (the “Development Agreement”). As required by the Program, Subrecipient has made a part of the Development Agreement the DR-MHP Development Agreement Rider (the “Development Agreement Rider”) to include terms required by the Department for the Development.
- F. The Master Standard Agreement, the Notice to Proceed, the Development Agreement, the Development Agreement Rider, Ground Lease Rider (as applicable), this Agreement and such other documents which govern and secure the Development as are reasonably required by the Subrecipient and Department are collectively referred to herein as the “Program Legal Documents.”
- G. As further consideration for the Assistance and in furtherance of the purposes of the Program, Developer has agreed to enter into this Agreement and consent to its recordation against the Development. The purpose of this Agreement is to

regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program Requirements and put such regulations and restrictions on title for the term of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement and are incorporated herein by reference as if fully stated herein.
2. Property. Developer is the owner in fee of the Property and all improvements now and hereafter located thereon.
3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program policies and procedures. The following terms shall have the respective meanings assigned to them in this paragraph unless the context in which they are used clearly requires otherwise:
 - a. **Affordable Rents**: means rents that are at or below the “High” HOME Program rents published by HUD for different metropolitan areas.
 - b. **Affordable Units**: means a “dwelling” that is rented at an Affordable Rent to a household that earns less than 80 percent of Area Median Income adjusted for household size as calculated by HUD for different metropolitan areas within the State and published annually by the Department and HUD.
 - c. **Area Median Income (AMI)**: means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD for the CDBG program.
 - d. **Commercial Space**: any nonresidential space located in or on the property of the Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income, as applicable, which ensures the fiscal integrity of the Development.
 - e. **Developer Fee**: All Funds paid at any time as compensation for developing the Development, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.
 - f. **Distributions**: the amount of cash or other benefits received from the operation of the Development and available to be distributed to the Developer or any party having a beneficial interest in the Development after payment of all due and outstanding obligations incurred in connection with the Development.
 - g. **Disability**: any disability, including mental or physical disability, that limits a

major life activity, including a disability that falls within the definitions in Government Code (G.C.) Sections 11135, 12926, and 12926.1 or within the definition of disability used in the federal Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12102.

- h. Elderly Person: A person at least 62 years of age (24 CFR Part 5.100).
- i. Extremely Low Income (ELI): ELI individuals or families whose income is at or below 30% of the area median income (AMI) or the federal poverty level, whichever is higher for the area of the Development.
- j. Fiscal Year: the Fiscal Year for the Development shall mean the annual period commencing on January 1 and concluding on December 31 each year.
- k. Household: One or more persons occupying a housing unit.
- l. Initial Operating Year: the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed project and ending on the last day of the Fiscal Year for the Development.
- m. Low- to Moderate-Income (LMI): Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.
- n. Operating Expenses: the amount approved by the Subrecipient that is necessary to pay for the recurring expenses of the Development, such as utilities, maintenance, management, taxes, licenses, and Supportive Services costs, but not including debt service or required reserve account deposits.
- o. Operating Income: all income generated in connection with operation of the Development including rental income for DR-MHP Assisted Units and non-DR-MHP Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Development. "Operating Income" does not include security and equipment deposits, payments to the Developer for Supportive Services not included in the operating budget, cash contributed by the Developer, or tax benefits received by the Developer.
- p. Ordinary Maintenance and Repair: means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a decent, safe, sanitary condition.
- q. Project Closeout Documentation: required documentation to be submitted to the Department by the Subrecipient and includes, but may not be limited to:

project completion report, final activity report, recorded notice of completion, relocation report (if applicable) and a resolution from the governing body.

- r. Reconstruction: Demolishing and re-building a housing unit on the same lot in substantially the same manner. Reconstruction is rehabilitation for purposes of DR-MHP.
- s. Rehabilitation: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.
- t. Rent: means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of a DR-MHP Assisted Unit, plus a utility allowance established in accordance with HOME Regulations at 24 CFR 92.252(a).
- u. Restricted Unit: DR-MHP Assisted Units and any units that are subject to Rent and occupancy restrictions that are comparable to those applicable to DR-MHP Assisted Units. Restricted Units include units subject to a TCAC regulatory agreement, and all units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.
- v. Special Needs or Special Needs Populations: means agricultural workers, individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental disabilities, serious mental illness or substance abuse disorders; individuals who are survivors of domestic violence, sexual assault, and human trafficking; individuals who are experiencing Homelessness; individuals with HIV; homeless youth as defined in Government Code (GC) Section 12957(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; frequent users of public health or mental health services, as identified by a public health or mental health agency; Frail Elderly Persons; or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.
- w. Substantial Rehabilitation: Rehabilitation as defined in 24 CFR 5.100.
- x. Supportive Housing: means housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.
- y. Supportive Services: social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.

- z. TCAC: means the California Tax Credit Allocation Committee.
 - aa. Uniform Relocation Assistance and Real Property Acquisition Act (URA) (42 U.S.C. Chapter 61): A federal law that establishes minimum standards for federally funded programs and Projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.
4. Compliance with Program Requirements. The Developer agrees that at all times its actions regarding the Development and the use of funds provided under the Master Standard Agreement and the Notice to Proceed shall be in conformity with all Program Requirements, including the requirements of this Agreement and the Program Legal Documents. The Developer acknowledges that it is familiar with the Program Requirements, the requirements imposed on the Developer in the Program Legal Documents, and has access to professional advice to the extent necessary to enable the Developer to fully comply with the Program Requirements and the applicable provisions of the Program Legal Documents.
 5. Term of Agreement. This Agreement shall commence on the date set forth above and remain in full force and effect and shall apply to the Development through and including the twentieth (20th) anniversary of the date of Department acceptance of the Project Closeout Documentation hereof regardless of any prepayment of the Assistance or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the Department or Subrecipient or extended by the mutual consent of the Parties.
 6. DR-MHP Assisted Units, Restricted Units, Special Needs Populations Units and Supportive Housing Units.
 - a. For the full term of this Agreement, Developer shall provide within the Development, the number, type and size of DR-MHP Assisted Units set forth in Exhibit B, Part I, attached hereto and incorporated herein.
 - b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
 - c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Developer may change the designation of a particular Unit from DR-MHP Assisted Unit to non-DR-MHP Assisted Unit, and vice versa, over time, only to address situations when a tenant in a DR-MHP Assisted Unit is no longer qualified to reside in that unit or if the unit is no longer habitable. Any other proposed changes to the unit designation must be approved in writing in advance by the Subrecipient.
 7. Affirmative Marketing and Tenant Selection Procedures. Affirmative Marketing involves special outreach and advertising efforts designed to communicate the

availability of DR-MHP assisted housing to those groups or individuals who might otherwise be unlikely to apply. Affirmative marketing efforts must be commenced by the Developer at least 90 days prior to initial or renewed occupancy for new construction and Substantial Rehabilitation Projects, respectively. The Department has determined that in addition to the required demographic analysis, individuals and families that were impacted by the disasters and Section 8 Housing Choice Voucher holders are least likely to apply. Examples of renters impacted by the disasters include renters that have lost rental units or have been displaced due to the impacts of DR-4382 and DR-4407. The Affirmative Marketing Plan shall be updated and submitted to Subrecipient every five (5) years during the term of this Agreement.

Developer shall rent DR-MHP Assisted Units in the Development to eligible Households in accordance with the management plan prepared by the Developer and approved by and on file with the Subrecipient and Department (the "Management Plan") pursuant to paragraph 13 of this Agreement. The Management Plan shall, at minimum:

- a. detail actions to be taken by Developer to affirmatively market all Housing Units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor;
 - b. specify reasonable criteria for determination of tenant eligibility, including Household size;
 - c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Subrecipient;
 - d. require eligible applicants to be notified of eligibility and, based on turnover history, when a DR-MHP Assisted Unit may be available;
 - e. require ineligible applicants to be notified of the reason for their ineligibility;
 - f. specify procedures through which applicants deemed to be ineligible may appeal this determination;
 - g. require maintenance of a waiting list of eligible applicants;
 - h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations; and
 - i. be made available to prospective tenants upon request.
8. Non-Discrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920 and United States Code 42 U.S.C section 3601 – 3019,

including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other arbitrary factor in violation of any state, federal or local law governing discrimination in rental housing. The restriction of housing to Elderly and Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law, and only with prior approval of the selection criteria by the Subrecipient.

9. Rental Agreement and Occupancy Procedures.

- a. Each eligible Household selected to occupy a DR-MHP Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Developer, the form of which shall be subject to approval by the Subrecipient and be consistent with the Program Requirements. Such rental agreement shall provide for, inter alia, good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.
- b. The Developer may establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the Program Requirements and shall not distinguish or discriminate between Restricted Units and non-Restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall become effective no less than thirty (30) days after giving written notice thereof to each Household in the Development.

10. DR-MHP Assisted Unit Rents and Maximum Income.

- a. For the Initial Operating Year, Developer shall charge Rents for the DR-MHP Assisted Units in the Development in accordance with Exhibit B hereto.
- b. After the Initial Operating Year, Rents for DR-MHP Assisted Units may be adjusted no more often than every twelve (12) months. Developer shall provide tenants of DR-MHP Assisted Units not less than 30 days prior written notice, or a longer period as required by state or local law, before implementing any increase in rents. In no event shall the rents exceed the High HOME Rents as designated for the area and published by HUD. If the Project is assisted with tax credits, the amount and method of rent adjustment for DR-MHP Assisted Units shall be in accordance with the Tax Credit Allocation Committee (TCAC) policy or a longer period as required by state or local law.
- c. Notwithstanding the previous subparagraph, Rents for DR-MHP Assisted Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the DR-MHP Assisted Units continue to receive the rental assistance.

- d. The maximum income of a Household occupying a DR-MHP Assisted Unit shall not exceed 80% of the Area Median Income at initial Household income certification, consistent with Section 4.11 of t.
11. Rents for non-DR-MHP Assisted Units and Commercial Space. Developer shall establish and implement a rent structure and operations budget for non-DR-MHP Assisted Units and Commercial Space, if applicable, in order for the Department to ensure continued financial viability throughout the affordability period.
- a. For the Initial Operating Year, rent for non-DR-MHP Assisted Units and Commercial Space shall be in accordance with Exhibit B attached hereto. After the Initial Operating Year, rents for non-DR-MHP Assisted Units and Commercial Space may be adjusted in accordance with the provisions outlined by other funding sources and requirements of state and local laws.
- b. Developer shall estimate all income and expenses attributable to the non-DR-MHP Assisted Units and, if applicable, Commercial Space, in the annual operating budget described in paragraph 16 herein, and shall report all income and expenses attributable to non-DR-MHP Assisted Units and Commercial Space in the annual report described in paragraph 18 herein.
12. Certification of Tenant Income and Household Size.
- a. The income and Household size of all Households occupying DR-MHP Assisted Units shall be certified by the Developer prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the Program.
- b. If, at the time of tenant recertification, the income of a Household occupying a DR-MHP Assisted Unit exceeds the income level applicable to new tenants for respective DR-MHP Assisted Units, the Developer shall:
- 1) increase the tenant's rent to the lesser of 30 percent of adjusted income, fair market rent, or the rent limitations of other funding programs governing the unit; and
- 2) to the extent another non-DR-MHP Assisted Unit becomes available within the Development, designate the next available comparable non-DR-MHP Assisted Unit as a DR-MHP Assisted Unit at the income level originally applicable to the Household until the unit mix required by this Agreement is achieved. A Housing Unit shall be deemed "comparable" if it has the same number of bedrooms, the same or similar features, and is similar in size to the original DR-MHP Assisted Unit.
13. Management and Maintenance.

- a. Developer is responsible for all maintenance, repair, and management functions, including without limitation, the following: selection of tenants; recertification of family income and size; evictions; collection of Rents; ordinary and extraordinary maintenance and repairs; and replacement of capital items. Developer shall maintain all Housing Units, common areas and Commercial Space in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan described above.
 - b. Developer is responsible for operating the Development in accordance with the Management Plan. All amendments to this plan require prior written approval of the Subrecipient.
 - c. Developer may, with the prior written approval of the Subrecipient, contract with a management agent for the performance of the services or duties required in subparagraphs a. and b. of this paragraph 13. However, such an arrangement does not relieve the Developer of responsibility for proper performance of these duties. Such contract shall be subject to prior written approval by the Subrecipient and shall contain a provision allowing the Developer to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Subrecipient, and notice to the Developer thereof, that the contractor performing the functions required in subparagraphs a. and b. has failed to operate the Development in accordance with this Agreement and the approved Management Plan, the Developer shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Subrecipient approval, for continuing performance of the functions required in subparagraphs a. and b.
 - d. Upon a determination by the Subrecipient, and notice to the Developer thereof, that the Developer has failed to operate the Development in accordance with this Agreement, the Subrecipient may require the Developer to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Subrecipient deems necessary to ensure performance of the functions required in subparagraphs a. and b.
 - e. Developer shall operate, maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.
14. Insurance. Subrecipient, its Developers and Contractors shall comply with all requirements outlined in the (A) General Provisions section and (B) Project Insurance Requirements outlined herein. These requirements are in addition to, and not in lieu of, any other insurance coverages required elsewhere in the Development Agreement and elsewhere in the Master Standard Agreement. The Department reserves the right to waive or adjust required insurance coverages from time to time in its sole discretion.
- a. General Provisions Applying to All Policies

- 1) Coverage Term – Subrecipient’s coverage needs to be in force for the complete term of the Agreement, unless otherwise noted herein. The Developer’s coverage needs to be in force for the complete affordability period of each Approved Project. The Developer’s coverage needs to be in force until a certificate of occupancy is issued for each Approved Project. No work may be performed by Subrecipient, Developer, or a contractor until and unless all insurances required by this Agreement are in full force and effect. If insurance expires during the term of the Agreement/affordability period/certificate of occupancy issuance, as applicable, a new certificate must be received by the Department at least thirty (30) days prior to the expiration of said insurance. Any new insurance must comply with the original terms of this Agreement.
- 2) Policy Cancellation or Termination & Notice of Non-Renewal – Subrecipient is responsible to notify the Department within fifteen (15) business days prior to any actual or proposed cancellation, non-renewal or material change that affects required insurance coverage. No policy may be cancelled upon less than thirty (30) days’ prior written notice from the insurer to the insured and the Department. New certificates of insurance are subject to the approval of the Department and the Subrecipient agrees no services will be commenced or performed prior to obtaining such approval. In the event Subrecipient and Developer fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Agreement.
- 3) Premiums, Assessments and Deductibles – Subrecipient, Developer and contractors for each Approved Project are responsible for the payment of all premiums, policy assessments, deductibles or self-insured retentions associated with their respective insurance programs.
- 4) Primary Clause – Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the Department.
- 5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least “A–” with a financial category rating of no lower than VII. If the Subrecipient, Developer and/or contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Acceptance of self-insurance is within the sole discretion of the Department, and the Department reserves the right to require insurance from third-party commercial insurers.
- 6) Endorsements – Any required endorsements requested by the Department must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate the Subrecipient's, Developer's, or contractor's obligations under this Agreement or the terms specific to the relevant Approved Project, nor does the availability or limits of any insurance policies required herein in any way limit the liability of Subrecipient, or any Developer or contractor, to the Department hereunder, nor does it in any way limit the liability of such parties to the Department in regards to any indemnification obligations of such parties herein.
- 8) Available Coverages/Limits – All coverage and limits available to the Subrecipient, Developer, or contractor shall also be available and applicable to the Department.
- 9) Satisfying an SIR - All insurance required by this Agreement and any required by the terms specific to the relevant Approved Project must allow the Department to pay and/or act as the Subrecipient's, Developer's, or contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Subrecipient's, Developer's, or contractor's agent in satisfying any SIR is at the Department's discretion.
- 10) Use of Subcontractors - In the case of Developer or contractor's utilization of subcontractors to complete the contracted scope of work for the relevant Approved Project, Developer or contractor shall include all subcontractors as insureds under Developer's or contractor's insurance or supply evidence to the Subrecipient of subcontractor's insurance equal to policies, coverages, and limits required of Developer and contractor.

b. Project Insurance Requirements Developer, and/or contractor shall display evidence, as applicable for the relevant Approved Project, of the following on a certificate of insurance evidencing the below coverages. No work shall be commenced on any Approved Project prior to such coverages being in effect and the required certificate(s) have been provided to the Department.

- 1) Commercial General Liability – Subrecipient and Developer or contractor on an Approved Project shall maintain commercial general liability insurance on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate for the duration of this Agreement. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Developer's or contractor's limit of liability.

The policy must name The State of California, its officers, agents, and employees as additional insureds, but only with respect to work performed under this Agreement.

- 2) Automobile Liability – Developer or Contractor shall maintain, as applicable, business automobile liability insurance for limits not less than \$1,000,000 combined single limit. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. Should the scope of the relevant Approved Project involve transportation of hazardous materials, evidence of an MCS-90 endorsement is required.

The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under this Agreement.

- 3) Workers' Compensation and Employer's Liability – Subrecipient and Developer or Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Agreement and the relevant Approved Project. In addition, employer's liability limits of \$1,000,000 are required. By signing this Agreement, Subrecipient acknowledges compliance with these regulations. A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.

- 4) Flood Insurance – The Subrecipient shall ensure that Developer complies with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). Subrecipient shall ensure flood insurance coverage is provided by the Developer for the Approved Project if required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- 5) Builders Risk insurance – Developer or Developer’s contractor on an Approved Project shall maintain builders risk coverage prior to or upon commencement of construction of the Approved Project, including any delivery and storage of materials to be incorporated into the Approved Project, through the completion of construction and until property insurance can be secured. This coverage must cover all risk of physical damage or risk of loss for an amount equal to the full amount of the cost of construction. This coverage must include coverage for flood if the Property is located in a Special Flood Hazard Area as determined by the Federal Emergency Management Agency. Additionally, Developer or Developer’s general contractor must obtain a builder’s risk installation floater for coverage of the contractor’s labor, materials, and equipment to be used for completion of work performed under the construction contract. The minimum amount of coverage to be carried must be equal to the full amount of the cost of construction.
- 6) Property Insurance – Developer on an Approved Project shall maintain including all risk coverage or standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of full replacement value of the Approved Project for the duration of the term of the Affordability Period. Coverage amount may be adjusted for fluctuation in replacement values. This coverage is required upon completion of construction of the Approved Project, or upon closing of the financing for the Approved Project if it is a rehabilitation project.

15. Condemnation.

- a. The Developer shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Subrecipient. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Subrecipient.
- b. In the event of any fire or other casualty to the Development or eminent domain proceedings resulting in condemnation of the Development or any part thereof, Developer shall be obligated to rebuild the Development, and to use all

available insurance or condemnation proceeds therefore, provided that, as determined by the Subrecipient in its sole discretion, (i) such proceeds are sufficient to keep the Assistance in balance and rebuild the Development in a manner that provides adequate security to the Subrecipient for repayment of the Assistance or if such proceeds are insufficient, then Developer shall have funded any deficiency (ii) the Subrecipient shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (iii) no material breach or default then exists under the Program Legal Documents. If the casualty or condemnation affects only part of the Development and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Assistance in a manner that provides adequate security to the Subrecipient for repayment of the remaining balance of the Assistance.

- c. In the event that the Developer fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project timely, the Department and Subrecipient shall have the right, in addition to any other remedies granted in the Program Legal Documents or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default hereunder.

16. Annual Operating Budget.

- a. For the Initial Operating Year, Developer shall operate the Development and expend Operating Income in accordance with the initial operating budget approved by and on file with the Subrecipient. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year.
- b. No later than sixty (60) days prior to the beginning of each subsequent Fiscal Year of the Development, the Developer shall submit to the Subrecipient a proposed annual operating budget on a form provided by the Subrecipient. The proposed annual operating budget shall set forth the Developer's estimate of Operating Income, Operating Expenses and debt service for the upcoming year, amounts payable to reserves, and proposed Rent adjustments.
- c. If the Development contains either non-Restricted Units or Commercial Space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between DR-MHP Assisted Units, Restricted Units, non-Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Subrecipient approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Development.

17. Periodic Reports. Developer shall submit to the Subrecipient such periodic reports as deemed necessary by the Subrecipient to monitor the Developer's compliance with this Agreement. The reports may include, but are not limited to:
- a. an income and expense statement for the reporting period;
 - b. a summary of the occupancy of the Development, indicating the number and type of Units reserved for eligible Households, the number of vacant Units, and the number of evictions completed or in process;
 - c. a report on maintenance or other issues anticipated to impact the current budget needs of the Development;
 - d. information on the status of waiting lists for the DR-MHP Assisted Units, including the number of households on lists for different Unit sizes and by income group, as well as evidence of compliance with Project's Affirmative Marketing Plan; and
 - e. other information as required by the Subrecipient to accurately monitor Developer's performance hereunder.
- If, after the Initial Operating Year, the Subrecipient determines that such periodic reports continue to be necessary, the Subrecipient shall so notify the Developer as part of the annual budget approval process. Upon such notification, Developer shall submit the requested reports.
18. Annual Report and Audit.
- a. Developer shall file an annual report with the Subrecipient no later than ninety (90) days after the end of each Fiscal Year for the Development. The report shall be in such form and contain such information as required by the Subrecipient.
 - b. As part of the annual report, the Developer shall submit an audit of the Development prepared by an independent certified public accountant in accordance with Subrecipient audit requirements, and as specified in the Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing", published April 2018, as periodically updated, located on the Department's website here: <https://www.hcd.ca.gov/grants-funding/already-have-funding/all-rental-projects.shtml>.
19. Required Reserves. Developer shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the name of the Developer, earn interest, and, unless otherwise approved in writing by the Subrecipient, be insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. Withdrawals from the reserve accounts shall require prior written approval of the Subrecipient, except as specifically noted in

Exhibit C. Should the Subrecipient fail to take action on a request for a withdrawal from a reserve account within thirty (30) days of documented receipt of the request, that request will be deemed approved.

- a. Replacement Reserve Account. Commencing no later than the date funds are disbursed pursuant to the Program Legal Documents, Developer shall establish a segregated replacement reserve account. Developer shall make annual deposits from Operating Income to the replacement reserve account in the amount set forth in Exhibit C, unless the Subrecipient determines, in its sole discretion, that more frequent deposits are required. Developer shall also deposit any Development funds designated for replacement reserves into this account, including those identified in Exhibit C. The amount of the minimum annual deposit may be adjusted, as determined by the Subrecipient, in its sole discretion, based on the results of reserve studies, performed by an independent third party at the Developer's expense as requested by the Subrecipient or as based on other reliable indicators of the need for reserve funds over time.
 - b. Operating Reserve Account. Developer shall establish an operating reserve account or sub-account within the Development's general operating account no later than sixty (60) days from the date of recordation of this Agreement. Developer shall fund the operating reserve account with an initial deposit in an amount as specified in Exhibit C, and through monthly deposits from Operating Income in amounts as specified in Exhibit C or in approved annual operating budgets. Developer shall fully replace any withdrawals from the operating reserve account using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.
 - c. Other Reserve Accounts. Developer certifies that Exhibit C hereto contains a complete listing of all reserve accounts established or to be established for the Development. All withdrawals from these accounts shall require prior written Subrecipient approval, except as specifically noted in Exhibit C.
20. Accounting System. In a manner subject to Subrecipient approval, Developer 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 Development.
21. Records Retention. All records and books relating to the initial development phase of the Development (application through project completion) shall be retained for a minimum period of five (5) years after the Department notifies the Subrecipient that the grant agreement between HUD and the State of California has been closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relating to the operational phase of the Development shall be retained for the most recent five (5) year period, until five years after the affordability period terminates. All records must be maintained in

such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the Subrecipient, the Department, HUD, or its representative.

22. Use of Income from Operations.

- a. The Developer, or Developer's management agent, shall promptly deposit all Operating Income in a segregated account established in the Developer's name exclusively for the Development and insured by an agency of the federal government or other comparable federal insurance program.
- b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement, and the approved 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 any other compensation due and payable to the employees or agents of the Developer employed on site in connection with the maintenance, administration or operation of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;
 - 2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums;
 - 3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, including the Assistance when such Assistance is provided as a loan, which are secured by liens on the Property, which have been approved by the Subrecipient, payments on which are to be made prior to the determination of net cash flow, as specified in Exhibit C, hereto;
 - 4) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the Subrecipient;
 - 5) deposits to required reserve accounts;
 - 6) deferred Developer Fee;
 - 7) asset management, partnership management and similar fees, to the extent such fees are specified under the terms of financing from a public entity and approved by the Subrecipient, or if there is no public entity financing, asset management, partnership management and similar fees, in accordance with the UMR Section 8314(a).

8) Distributions, in accordance with paragraph 23 of this Agreement.

The withdrawals permitted under subparagraph 22 (b) (6), (7) and (8) shall also be subject to the restrictions of paragraph 19 (b) above.

The Developer may depart from the foregoing priorities of payment only upon the express written approval of the Subrecipient. Net Cash Flow shall be distributed in accordance with paragraph 24 hereto.

23. Distributions.

- a. Developer shall be limited to annual Distributions equal to fifty-percent (50%) of the annual Operating Income remaining after payment of the items allowed in clauses (1) through (7) of subparagraph b of paragraph 22 above. If the Development generates insufficient cash flow to permit payment of Distributions in a particular year, Distributions in future years shall not be increased to cover the lack of Distributions in prior years.
- b. Developer may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future Distributions shall not reduce the otherwise permitted Distributions in those subsequent years.
- c. Distributions shall be permitted for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Developer submits a complete annual report and operating budget and the Subrecipient determines that the report and budget demonstrate compliance with all Program Requirements.
- d. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, partnership management fees, and/or similar fees shall be made or paid include:
 - 1) when written notice of default has been issued by any entity, (including the Subrecipient) with an equitable or beneficial interest in the Development or which has a contractual relationship with the Developer regarding the Development;
 - 2) when the Developer is in default under the terms of this Agreement, the Development Agreement, the Development Agreement Rider, or the Policies and Procedures as they may be amended from time to time;
 - 3) when the Subrecipient determines that the Developer or Developer's management agent has failed to comply with the Subrecipient's written notice of any reasonable requirement for proper maintenance or operation of the Development;

- 4) if all currently required debt service, including mandatory payments on the Assistance, and Operating Expenses have not been paid; or
 - 5) if the replacement reserve account, operating reserve account or any other required reserve account has not been funded in accordance with this Agreement.
24. Use of Net Cash Flow. Net Cash Flow shall be applied to payment of interest, principal, impound fees and charges, if any, on loans which are secured by liens on the Property, including the Assistance (if made as a loan), which have been approved by the Subrecipient and which are to be paid from Net Cash Flow in the amounts, proportion and in accordance with the terms specified in Exhibit C hereto. Upon payment in full of the loans payable from Net Cash Flow as set forth in Exhibit C, all Net Cash Flow shall be used for other purposes related to the Development as approved by the Subrecipient.
25. Department or Subrecipient Review and Inspections.
- a. At any time during the term of this Agreement, the Department, the Subrecipient, or their designee may enter and inspect the physical premises and inspect all accounting records pertaining to the construction, development or operation of the entire Development. Upon request by the Department or Subrecipient, the Developer shall notify occupants of upcoming inspections of their Units in accordance with state law.
 - b. In addition to the annual audit required in paragraph 18 above, and at the Department's or Subrecipient's request, the Developer shall provide, at Developer's expense, a special audit of the Development certified by an independent certified public accountant. The Department or Subrecipient may also perform or cause to be performed audits of any and all phases of the Developer's activities related to the Development.
 - c. The Department or Subrecipient may request any other information that it deems necessary to monitor compliance with the Program Requirements and the requirements set forth in this Agreement and the Program Legal Documents. The Developer shall promptly provide such information.
26. Restrictions on Sale, Encumbrance, and Other Acts. Prior to making any of the below changes or entering into any of the below agreements, Developer shall give written notice to Subrecipient and the Department no less than 60 days of its intention to take such action.
- a. Except with the Subrecipient's prior written approval, and Department's prior written approval at the Department's sole discretion, Developer shall not:
 - 1) make any direct or indirect sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or Development or of any of Developer's interest in either of them;

- 2) substantially add to, remodel, remove, reconstruct, or demolish any part of the Development;
 - 3) permit the use of the Development for any purpose other than that permitted by this Agreement;
 - 4) incur any liability or obligation in connection with the Property or Development, other than for current Operating Expenses, nor incur any liability, charge, assessment, or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Property provided that the Subrecipient may permit refinancing or additional financing secured by the Property to the extent necessary to maintain or improve the Development's fiscal integrity, or to maintain Affordable Rents;
 - 5) enter into any contract relating to rehabilitating or managing the Development;
 - 6) enter into any lease for more than a single rental Unit, a ground lease of the Property or any interest therein, except for the rental of Commercial Space in the Development; or
 - 7) if the Developer or its successor in interest is a limited partnership, discharge or replace any general partner or amend, modify or add to its partnership agreement, or amend, modify or add to the organizational documents of the general partner; except that it may transfer limited partner interests without such approval. The withdrawal, removal, and/or replacement of a general partner of the partnership pursuant to the terms of the partnership agreement shall not constitute a default under any of the Program Legal Documents, and any such actions shall not accelerate the maturity of the Assistance, provided that any required substitute general partner is reasonably acceptable to the Subrecipient and the Department, and is selected with reasonable promptness.
 - 8) **NOT APPLICABLE** If the Developer maintains site control for the Development via a long-term ground lease, Developer shall not modify the terms of said ground lease in any way that would change the Department's lien position, change the terms or effectiveness of any lease rider executed in connection with the Department's interest and funds in the Development, or impede or change the affordable housing goals of the Development upon which the Department approved the Development.
- b. Any and all proposed sale, transfer, conveyance of the Property or Development, or proposed refinancing of any loans for the Development, must be approved in writing by both the Subrecipient and the Department, in the Department's sole discretion. In evaluating such requests, the Department will

consider, among other factors, the following:

- 1) The transferor Developer (or Developer, as applicable) is in compliance with this Agreement, or the sale, transfer, conveyance or refinance will result in the cure of any existing violations of this Agreement.
 - 2) The transferee Developer agrees to assume all obligations of the transferor Developer pursuant to this Agreement, the other Program Legal Documents and the Program Requirements.
 - 3) The transferee Developer demonstrates to the Subrecipient's satisfaction that it has the ability and capacity to own and operate the Development in full compliance with this Agreement and the Program Requirements for the duration of this Agreement.
 - 4) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the Subrecipient's security or the transferee Developer's (or Developer's, as applicable) ability to comply with all Program Requirements.
 - 5) The Subrecipient and Department will not approve any cash payment to the selling party, or to any party related to or affiliated with the selling party. The Developer may not cash out its equity. Deferred developer fee, and seller carry back loans, cannot be cashed out from the proceeds of a sale, transfer, conveyance or refinance.
- c. The Subrecipient and Department may grant its approval for a sale, transfer, conveyance or refinance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the Development or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.
- d. If Developer or its successor in interest is a limited partnership, the execution and delivery of the purchase option and right of first refusal agreement described in the partnership agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. Any requisite consent of the Subrecipient and Department to (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and to (b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the Subrecipient. Subject to any such consent requirement, the exercise of rights under the partnership agreement

shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.

- e. If the Developer or its successor in interest is a limited liability company, the execution and delivery of the purchase option and right of first refusal agreement described in the operating agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. Any requisite consent of the Subrecipient and Department to (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and to (b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the Subrecipient. Subject to any such consent requirement, the exercise of rights under such the operating agreement shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.
- f. If Developer or its successor in interest is a limited partnership or limited liability company and the purchase option and right of first refusal agreement described in the partnership or operating agreement, if any, is not exercised and the Development is sold subject to low-income housing use restrictions contained in this Agreement, the requisite consent of the Subrecipient and Department to said sale, and to the assumption without penalty of Assistance obligations by the purchaser and the release of Developer from such obligations, shall not be unreasonably withheld, but may be conditioned upon, among other requirements, the execution of an operating guaranty from the Developer in form provided by the Subrecipient.
- g. The Developer agrees that if it is organized as a partnership or limited liability company, Developer shall not dissolve the partnership or limited liability company prior to the expiration of the term of this Agreement, without the prior written approval of the Subrecipient and the Department.

27. Breach of Agreement by Developer.

- a. In the event of the Developer's breach, violation or default in the performance of any covenant, agreement or obligation of the Developer set forth in this Agreement including, but not limited to, Developer's covenant to perform its obligations under the Program Legal Documents, the Subrecipient shall give the Developer written notice in the manner specified in paragraph 42 of this Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Subrecipient within the time period specified in the notice, which shall not be less than the applicable time to cure as stated in paragraph 28 of this Agreement, the Subrecipient may declare a default hereunder and

may take any one or more of the following actions:

- 1) Collect all Rents and income in connection with the operation of the Development and use the same and the reserve funds for the operation and maintenance of the Development.
- 2) Take possession of the Development and bring any action necessary to enforce any rights of the Developer growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the Subrecipient, in its sole discretion, shall determine that the Developer is again in a position to operate the Development in accordance with the terms of this Agreement.
- 3) Apply to any court, state or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Developer that the injury to the Subrecipient arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Subrecipient, in light of the purposes and requirements of the Program, would be impossible to ascertain.
- 4) Accelerate all amounts including outstanding principal and interest, due under the terms of the Program Legal Documents (if any) and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Note provides that the Subrecipient may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

- 5) Seek such other appropriate remedies as may be available under the law.
- b. In the event that the breach or violation involves charging tenants Rent or other charges in excess of those permitted under this Agreement, the Subrecipient may demand that Developer immediately return all such excess Rents or other charges to the affected households. If legal action is necessary to enforce the provisions of this Agreement, the Subrecipient may seek the return of such overcharges to the affected households.
- c. The remedies of the Subrecipient hereunder and under the other Program Legal Documents 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 Subrecipient of any one or more of its other remedies.
- d. The tenants of the DR-MHP Assisted Units shall be considered third party beneficiaries of this Agreement, all shall have such rights and remedies to enforce the Program Requirements of this Agreement as may be available to third party beneficiaries under the law.

28. Time To Cure.

- a. If a monetary event of default occurs under the terms of any of the Program Legal Documents, prior to exercising any remedies thereunder the Subrecipient shall give Developer written notice of such default. Developer shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by the Subrecipient under the Program Legal Documents, or such longer period of time as may be specified in the Program Legal Documents.
- b. If a non-monetary event of default occurs under the terms of any of the Program Legal Documents, prior to exercising any remedies thereunder, the Subrecipient shall give Developer written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, as determined by the Subrecipient in its sole discretion, Developer shall have such period to effect a cure prior to exercise of remedies by the Subrecipient under the Program Legal Documents, or such longer period of time as may be specified in the Program Legal Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Subrecipient in its sole discretion, or such longer period if so specified, and if Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is determined by the Subrecipient, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by the Subrecipient. If Developer or its successor in interest is a limited partnership, if Developer fails to take corrective action or to cure the default within such a specified time, the

Subrecipient shall give Developer written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall the Subrecipient be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in the Program Legal Documents.

- c. In the event of either a monetary or non-monetary default under the Program Legal Documents by the Developer, Subrecipient shall provide notice of such default to the Department simultaneously with the giving of notice to the Developer.

29. Property Tax Exemption. To the extent the property tax exemption provisions of section 214 of the Revenue and Taxation Code are applicable to the Developer and the Development, Developer shall take all actions necessary to qualify the Development for the maximum exemption from property taxes available pursuant to said section 214 of the Revenue and Taxation Code within 18 months of the recordation date of this Agreement. Such actions may include, but are not limited to the following:

- a. Modify, add to or delete from the articles of incorporation, bylaws or other organizational documents of Developer or of the managing general partner of Developer;
- b. Apply for nonprofit, tax-exempt status to the appropriate state or federal agency;
- c. Provide the certifications and assurances required by section 214 of the Revenue and Taxation Code; and
- d. Comply with the procedures and requirements imposed by local government agencies as a condition of receiving the property tax exemption.
- e. Developer's failure to qualify the Development for the maximum exemption from property taxes as described in this Section 29 shall constitute a default under the terms of this Agreement, and may also constitute a default under the Program Legal Documents, subject to applicable notices and cure periods.

30. Controlling Agreement.

- a. Developer specifically agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement, the

Notice to Proceed and the Program Requirements shall control as to the use of the funds provided under the Development Agreement and all Operating Income from the Development.

- b. In the event of any inconsistencies or conflicts between the terms of this Agreement and the terms of the other Program Legal Documents, the terms of this Agreement shall control.
31. Assignment of Subrecipient Rights. The Subrecipient retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder to a Subrecipient-owned or controlled entity such as its Housing Authority. In addition, the Subrecipient may designate or hire an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof. In the event Subrecipient assigns all or part of its rights for the purpose of ensuring compliance and enforcement, or designates or hires an agent to act on its behalf with respect to monitoring and enforcement as described in this paragraph, Subrecipient shall remain obligated under, and ultimately responsible for fulfilling, the terms of this Agreement.
32. Amendment. This Agreement shall not be altered or amended except in writing, executed by all of the parties hereto, with prior written approval by the Department.
33. Partial Invalidity. If any provision of this 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.
34. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transfers, successors in interest and assigns, provided, however, that the Developer may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Subrecipient. The term "Developer" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary or possessory interest of Developer in the Development.
35. Recording of Agreement. This Agreement, and all amendments hereto, shall be executed by each of the parties and their respective signatures acknowledged. This Agreement, shall be recorded against the Property in the official records of the county(ies) in which the Development is situated before construction begins, but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department and shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department. Exceptions to the position of this Agreement must be approved in writing and in advance by the Department.
36. Indemnification of Department; Civil Code §1542 Waiver.

- a. Developer agrees to indemnify and defend the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any and all costs, losses, damages, liabilities, claims, demands, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of any of the following: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Department 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 Department, the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Developer's duty to indemnify and defend the Department shall survive the term of this Agreement. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.
- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY"**.

37. Indemnification of Subrecipient; Civil Code §1542 Waiver.

- a. Developer agrees to indemnify the Subrecipient and its agents, employees and officers against, and holds the Subrecipient and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorney's fees) of every name, kind and description, which the Subrecipient may incur as a direct or indirect consequence of: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Subrecipient's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Subrecipient 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 Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Subrecipient. Developer's duty to indemnify the Subrecipient shall survive the term of this Agreement. In the event HUD acquires title to the Development, this indemnification provision will not apply to HUD.
- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Subrecipient or its agents, officers or employees.
- c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**
38. No Waiver. No waiver by the Department or Subrecipient of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation hereof or default hereunder. All waivers must be in a writing signed by the party making the waiver in order for such waiver to be

effective.

39. Third-Party Beneficiaries. The Developer and Subrecipient expressly agree and acknowledge that the Department is an intended third-party beneficiary to the provisions of this Agreement. Among other things, the performance of this Agreement benefits the Department by creating, rehabilitating, or otherwise making available, affordable housing units within the State of California, and allows the Department to ensure compliance with applicable program requirements governing the Development. The Department is the sole third-party beneficiary and no other parties are intended or should be deemed as such.
40. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.
41. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California and the United States of America. All code references herein refer to the California state statutes, unless specifically indicated otherwise.
42. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

To Borrower:

Escalante Meadows, LP
815 West Ocean Avenue
Lompoc, CA 93436
Attention: Executive Director

With a copy to:

Daryll Kidd, Esq.
Bocarsly, Emden, Cowan, Email & Arndt LLP
633 W. Fifth St., 64th Floor
Los Angeles, CA 90071
Telephone: (213) 239-8020
Facsimile: (213) 239-0410

To County:

County of Santa Barbara
Community Services Department
Division of Housing and Community Development
123 East Anapamu Street, 2nd Floor
Santa Barbara, CA 93101
Attention: Deputy Director

A copy of any notice delivered to Borrower hereunder shall be delivered to Borrower's limited partner as follows, or at another address provided by the Borrower in writing to the County from time to time in accordance with this Section 18:

To Limited Partner:

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn.: Asset Management
Phone: (410) 964-0552
Facsimile: (410) 772-2630

With a copy to:

sshack@enterprisecommunity.ocm

Attn: General Counsel

With a copy to:

Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Copies of any and all notices of default and any and all other notices that may be given by the Department or Subrecipient to Developer shall be sent, in the same manner as the notice is given to Developer, to Developer's limited partner (if applicable).

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn.: Asset Management

Phone: (410) 964-0552
Facsimile: (410) 772-2630

With a copy to:

sshack@enterprisecommunity.ocm
Attn: General Counsel

With a copy to:

Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Developer's limited partner may change its address for receipt of copies of notices by giving notice in writing stating its new address to the Department or Subrecipient. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be effective for purposes of all such copies of notices required to be sent by the Department or Subrecipient to Developer's limited partner.

43. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of DR-MHP Assisted Units, shall be entitled to reasonable attorneys' fees and costs as determined by the trier of fact in that forum.
44. Subrecipient's Approval, Etc. Whenever this Agreement or any of the other Program Legal Documents requires the approval, consent, or other determination by the Subrecipient, the Subrecipient shall act reasonably and in good faith.
45. Compliance with IRC Section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department and Subrecipient agree to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.
46. Special Conditions. The Developer agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
47. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property

- Exhibit B: Unit Designation and Rent Schedule and requirements for Supportive Housing Units or Special Needs Population Units; and
- Exhibit C: Special Conditions.

[Signatures of the Developer and the Subrecipient follow on page 33 of this Regulatory Agreement. The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereby execute and enter into this Agreement as of the date first set forth above and agree to be bound hereby:

ATTEST:

MONA MIYASATO
Clerk of the Board

By: _____
Deputy Clerk of the Board

**APPROVED AS TO ACCOUNTING
FORM:**
BETSY SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By: _____
Deputy

APPROVED AS TO FORM

COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED AS TO FORM:
RISK MANAGEMENT

By: _____
Greg Milligan, ARM, AIC
Risk Manager

COUNTY:

County of Santa Barbara,
a political subdivision of the State of California

By: _____
Joan Hartman, Chair
Board of Supervisors

By: _____
George Chapjian, Director
Community Services Dept.

DEVELOPER:

ESCALANTE MEADOWS, L.P.,
a California limited partnership

By: _____
SURF DEVELOPMENT COMPANY,
a California nonprofit public benefit corporation,
its managing general partner

By: _____
Raymond F. Down,
President

By: _____
Housing Authority of the County of Santa Barbara,
a public body, corporate and politic,
its administrative general partner

By: _____
Robert P. Havlicek Jr., Executive Director

ALL SIGNATURES MUST BE ACKNOWLEDGED

EXHIBIT A TO REGULATORY AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B TO REGULATORY AGREEMENT

I. UNIT DESIGNATIONS AND RENT SCHEDULE

Developer shall comply with Rent provisions of all regulatory agreements regulating the Property.

The Initial Operating Year ends at the end of the initial Fiscal Year, which is: _____, 20____.

During the Initial Operating Year:

- A. Developer shall charge Rents for DR-MHP Assisted Units that do not exceed Rents set forth in the schedule below; and
- B. Developer shall charge Rents for Units other than DR-MHP Assisted Units in amounts not less than the amounts shown herein.

After the Initial Operating Year, Rents may be increased in accordance with paragraphs 10 and 11 of this Agreement.

II. UNIT MIX

<i>No. of Bedrooms</i>	<i>AMI</i>	<i>Number of County CDBG-DR MHP-Assisted Units</i>	<i>Number of Other Affordable Units Not Restricted by this Agreement</i>	<i>Number of Other Non-Affordable Units</i>	<i>Total Number of Units</i>
One-Bedroom	<30%		10		10
One-Bedroom	<40%	2	0		2
Two-Bedroom	<30%	1	9		10
Two-Bedroom	<50%	1	11		12
Two-Bedroom	<80%		2		2
Three-Bedroom	<30%		4		4
Three-Bedroom	<50%		6		6
Three-Bedroom	<60%	2	13		15
Four-Bedroom	<30%		3		3
Four-Bedroom	<60%	1	12		13
Three Bedroom	MKT Rate			2	2
Three-Bedroom	Mgr			1	1
Total		7	70	3	80

The above Unit Mix chart is based on the following:

2022 High HOME Program Rents and CDBG Income Limits for Santa Barbara County, California.

DRAFT

III. COMMERCIAL SPACE RENTS

NOT APPLICABLE

IV. DR-MHP PRIORITY PROVISIONS AND/OR SUPPORTIVE HOUSING UNITS REQUIREMENTS

THIS SECTION IV IS NOT APPLICABLE

- A. For the full term of this Agreement, Developer shall restrict occupancy of ___ Units within the Development as Supportive Housing Units to be occupied by eligible Households experiencing Chronic Homelessness, as defined in 24 CFR 578.3. For these units, Developer shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Subrecipient, as may be amended from time to time. For the full term of this Agreement, Developer shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Subrecipient. At a minimum, Developer shall provide without cost to tenant the following services, or arrange for their provision: _____.
- No later than ninety (90) days after the end of each Fiscal Year for the Development, Developer shall submit for Subrecipient review and approval a report on the Supportive Housing Units households in the Development. This report shall be on a form provided by the Subrecipient, and shall include a listing of the number and type of Supportive Housing Units residents, a description of the supportive services provided to them, and such other matters as the Subrecipient may require.
- B. For the full term of this Agreement, Developer shall restrict occupancy of _____ Units within the Development for Elderly Persons, defined in the DR-MHP Policies and Procedures as persons 62 years of age or older, or in the State Multifamily Housing Program Guidelines as residents who are 62 years of age or older under applicable provisions of Cal. Civ. Code, Section 51.3 and the federal Fair Housing Act, or the Project is for residents who are 55 years of age or older, per 24 CFR 100.300-308 subpart E.
- C. For the full term of this Agreement, Developer shall restrict occupancy of _____ Units within the Development for persons with at least one Disability.
- D. For the full term of this Agreement, Developer shall restrict occupancy of _____ Units within the Development for Low-Income Immigrants. "Low-income" persons means individuals, families, and

households whose incomes are no more than 50% of the area median income involved, as set by HUD. From the demography point of view, the low-income working families are those earning less than twice the federal poverty line; and recent immigrants are those who came to the United States within the past 10 years.

V. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

THIS SECTION IV IS NOT APPLICABLE

- A. For the full term of this Agreement, Developer shall restrict occupancy of units within the Development to the following Special Needs Population or Populations:
- B. For these units, Developer shall select tenants in strict accordance with the criteria and procedures identified in the supportive services plan for the Development approved by the Subrecipient, as may be amended from time to time. For the full term of this Agreement, Developer shall make a good-faith effort to provide all the supportive services identified in the supportive services plan for the Development approved by the Subrecipient. At a minimum, Developer shall provide without cost to tenant the following services, or arrange for their provision:
- C. No later than ninety (90) days after the end of each Fiscal Year for the Development, Developer shall submit for Subrecipient review and approval a report on the Special Needs Population households in the Development. This report shall be on a form provided by the Subrecipient, and shall include a listing of the number and type of Special Needs Population residents, a description of the supportive services provided to them, and such other matters as the Subrecipient may require.

EXHIBIT C TO REGULATORY AGREEMENT
Special Conditions

In the event of any inconsistencies or conflicts between these Special Conditions and the terms of this Agreement or any of the other Program Legal Documents, the terms of these Special Conditions shall control.

I. Required Reserves (paragraph 19).

A. Replacement Reserves (paragraph 19.a).

Annual Deposit Amount ³ :	\$40,000
Initial Capitalization Amount:	\$40,000
Date of Deposit:	[close of escrow or conversion to permanent loan]
Withdrawals Require Prior Subrecipient Approval?	YES

B. Operating Reserve (paragraph 19.b).

Deposit Amount:	\$322,211 per month
Initial Capitalization Amount:	\$966,633
Date of Deposit:	[close of escrow or permanent loan]
Withdrawals Require Prior Subrecipient Approval?	YES

C. Other Reserves (paragraph 19.c).

If applicable, approved transition reserve account established to prevent tenant displacement resulting from the termination of rent subsidies.

Name:	
Deposit Amount:	\$ per
Initial Capitalization Amount:	
Withdrawals Require Prior Subrecipient Approval?	

Name:	
Deposit Amount:	\$ per
Initial Capitalization Amount:	
Withdrawals Require Prior Subrecipient Approval?	

II. Payments to be made Prior to Determination of Net Cash Flow (paragraph 22b.(3)).

Lender:	Pacific Western Bank
Initial Principal Amount:	\$16,100,000
Payment Amount ¹	\$1,132,192 per year for 35 years
Term to Maturity:	35 years
Lien Position:	1st lien position
Interest Rate and Type:	4.75%

III. Deferred Developer Fee (paragraph 22.b.).

The Subrecipient approved Deferred Developer Fee from paragraph 22.b.(6) is \$43,795

¹ Payment Amount to include details on future adjustments, caps, and balloons

IV. Use of Net Cash Flow (paragraph 24).

Net Cash Flow shall be applied towards payment of the following loans, in the percentages noted:

Lender:	Housing Authority of the County of Santa Barbara Seller Carryback Loan
Initial Principal Amount:	\$1,050,000
Percentage of Net Cash Flow:	10%
Term to Maturity:	55 years
Lien Position:	2 nd
Interest Rate:	4%

Lender:	Housing Authority of the County of Santa Barbara AHSC Loan
Initial Principal Amount:	\$11,731,995
Percentage of Net Cash Flow:	10%
Term to Maturity:	55 years
Lien Position:	3 rd Position
Interest Rate:	4%

Lender:	Housing Authority of the County of Santa Barbara HHC Loan
Initial Principal Amount:	\$5,600,000
Percentage of Net Cash Flow:	10%
Term to Maturity:	55 years
Lien Position:	4 th
Interest Rate:	4 %

Lender:	CDBG-DR MHP Loan
Initial Principal Amount:	\$1,377,665
Percentage of Net Cash Flow:	10%

Term to Maturity:	55 years
Lien Position:	5 th
Interest Rate:	3%

Lender:	Housing Authority of the County of Santa Barbara AHP Loan
Initial Principal Amount:	\$1,000,000
Percentage of Net Cash Flow:	10%
Term to Maturity:	55 years, 9 months
Lien Position:	6 th
Interest Rate:	4 %

Limited Partner Cure Rights. Notwithstanding anything to the contrary herein, the Subrecipient hereby agrees that any cure of any default offered by the limited partners of the Developer shall be accepted or rejected on the same basis as if cure was offered by the Developer. Copies of all notices of default sent hereunder shall be sent to the limited partners of the Developer at the following address:

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn.: Asset Management
Phone: (410) 964-0552
Facsimile: (410) 772-2630

With a copy to:

sshack@enterprisecommunity.ocm
Attn: General Counsel

With a copy to:

Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

The Subrecipient's failure to provide a duplicate copy will not be a breach by the Subrecipient, nor will it impair the Subrecipient's or Department's foreclosure or other remedies in any way.