

**COUNTY COMMUNITY DEVELOPMENT
BLOCK GRANT DISASTER RECOVERY
MULTI-FAMILY HOUSING PROGRAM (CDBG-
DR MHP) DEVELOPMENT AGREEMENT
(\$1,377,665)**

Between

County of Santa Barbara

and

Escalante Meadows, L.P.

**(Escalante Meadows Apartments
Affordable Housing Development Project)**



Community Development Block Grant DR-MHP
Assistance Listing Number 14.228

**COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY
MULTIFAMILY HOUSING PROGRAM DEVELOPMENT AGREEMENT
FOR ESCALANTE MEADOWS AFFORDABLE HOUSING DEVELOPMENT
BETWEEN COUNTY OF SANTA BARBARA
AND
ESCALANTE MEADOWS, L.P., A CALIFORNIA LIMITED PARTNERSHIP**

This Community Development Block Grant – Disaster Recovery Multifamily Housing Program Development Agreement for Escalante Meadows (hereinafter referred to as this “Agreement”) is entered into by and between the County of Santa Barbara (hereinafter referred to as the “County” or “Subrecipient”), and Escalante Meadows, L.P., a California limited partnership, as the owner and developer (hereinafter referred to as the “Owner” or “Developer”) of an affordable rental housing development project known as “Escalante Meadows” (hereinafter referred to as the “Development,” and as more particularly described in Section V.A., below), and this Agreement shall be effective upon the execution and delivery hereof by all of the parties hereto (the “Effective Date”).

I. DEFINITIONS

In the event that the definition of any term set forth in this Section I contradicts the definition of such term as otherwise specifically defined elsewhere in this Agreement, the definition of such term as otherwise specifically set forth elsewhere in this Agreement shall prevail. Any capitalized terms used but not defined in this Agreement shall have the meaning ascribed to such terms in the Senior Regulatory Agreement (defined below). In the event of a conflict between any provision of this Agreement and the Senior Regulatory Agreement, the provisions of the Senior Regulatory Agreement shall prevail.

Affiliate: As to any Partner: (i) any such Partner or member of his Immediate Family, meaning parents, siblings, spouse, and/or children; (ii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, any such Partner or member of his Immediate Family; (iii) any entity of which a majority of the voting interests is owned by any one or more of the Persons referred to in the preceding clauses (i) and (ii); (iv) any officer, director, trustee, employee, stockholder (ten percent (10%) or more), or partner or member of any Person referred to in the preceding clauses (i), (ii) and (iii); and (v) any Person directly or indirectly controlling (ten percent (10%) or more), or under direct or indirect common control with, any Person referred to in the preceding clauses (i), (ii), (iii), or (iv).

Affordable Rents: Rents that are at or below the “High” HOME Program rents, as defined in 24 CFR 92.252, published by the U.S. Department of Housing and Urban Development (“HUD”) for the applicable metropolitan area, as more specifically identified in Exhibit B of the Senior Regulatory Agreement.

Area Median Income (AMI): The median family income for specific geographic areas, adjusted for household size, as calculated by HUD and published annually by the State of California Department of Housing and Community Development (“Department” or “HCD”) for the CDBG program.

CALGreen: California’s first green building code and first in the nation state-mandated green building code, formally known as the California Green Building Standards Code, Title 24, Part 11, of the California Code of Regulations.

California Environmental Quality Act (CEQA): A California law that requires State and local

agencies to evaluate and disclose the significant environmental impacts of their actions and to avoid or mitigate those impacts, to the extent feasible. The laws and rules governing the CEQA process are contained in the CEQA statute (Public Resources Code Section 21000 and following), the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 and following), published court decisions interpreting CEQA, and locally adopted CEQA procedures (collectively, “CEQA Requirements”).

CDBG-DR MHP: Community Development Block Grant – Disaster Recovery Multifamily Housing Program.

DR-MHP Assisted Units: Any Affordable Unit that is subject to rent and occupancy restrictions in accordance with the Senior Regulatory Agreement.

Code of Federal Regulations (CFR): The Code of Federal Regulations.

Contractor: A properly licensed person or company that Subrecipient or Developer, including the Managing General Partner of Developer (as defined below in the definition of “Developer”), hire to undertake a contract to provide materials or labor to perform a service or do a job in connection with the Development and/or this Agreement.

Davis Bacon Wage Requirements: For projects that include eight (8) or more dwelling units, the Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federally assisted contracts in excess of \$2,000, including Contractors, to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the applicable area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

Deep Affordability: Multifamily housing with at least 10% of units available for households whose income is at or below 30% of AMI.

Department of Housing and Urban Development (HUD): Federal department through which the CDBG-DR funds are provided to HCD.

Rider to Development Agreement: The legal document that sets forth terms and conditions for use of CDBG-DR funds in connection with the Development, as issued with the Notice to Proceed and attached hereto as Exhibit I and incorporated herein by reference.

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.

Disaster Recovery Multifamily Housing Program (DR-MHP): The Disaster Recovery Multifamily Housing Program administered by HCD.

DR-MHP Assisted Unit: An Affordable Unit that is subject to rent and occupancy restrictions as a result of the financial assistance provided by the DR-MHP, as specified herein and in the Senior Regulatory Agreement.

Environmental Review Record (ERR): A permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents as required by CEQA Requirements and NEPA regulations. (See California Environmental Quality Act and National Environmental Policy Act).

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 proposed Development.

Fair Market Value (FMR): The hypothetical price that a willing buyer and seller agree upon when they are acting freely, carefully, and with complete knowledge of the situation.

Federal Emergency Management Agency (FEMA): An agency of the United States Department of Homeland Security, whose primary purpose is to coordinate the response to disasters that occur in the United States and overwhelm the resources of local and state authorities.

Household: One or more persons occupying a **DR-MHP Assisted Unit**.

HSC: The California Health and Safety Code.

Regulatory Agreement or Junior Regulatory Agreement: That certain Regulatory Agreement or Junior Agreement between County and Owner dated concurrently herewith that describes the construction and permanent loans structure and terms, which may be recorded in a junior lien position against the fee and leasehold title to the Development for the applicable Affordability Period as required by the MSA (defined below).

Low- to Moderate-Income (LMI): Low to moderate income people are those having incomes not more than the “moderate-income” level (80% AMI) 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.

Master Standard Agreement (MSA): That certain Master Standard Agreement, Agreement Number 20-DRMHP-00002, dated December 4, 2020, by and between HCD and the County, as amended on August 30, 2022, which sets forth the terms and conditions for use of CDBG-DR Program funds allocated to the County, a copy of which is attached hereto as Exhibit J and incorporated herein by reference.

Minority- and/or Women-Owned Business Enterprise (M/WBE): A business that is owned and controlled (minimum of 51% ownership) by a member of a minority group, or women.

Most Impacted and Distressed (MID): An area that meets the definition of Most Impacted and Distressed set by HUD in the Federal Register Notice. For purposes of the unmet needs’ allocation, HUD has defined Most Impacted and Distressed as an area (county or zip code) that meets the following criteria:

- A. Individual Assistance/Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.
- B. Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and zip codes with high levels of damage, collectively referred to as “most impacted areas”. For this allocation, HUD is defining most impacted areas as either most impacted counties—counties exceeding \$10 million in serious unmet housing needs—and most impacted zip codes—zip codes with \$2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.
- C. Disasters meeting the most impacted threshold. Only 2017 disasters within the threshold are

funded: a. One or more most impacted county, and/or b. An aggregate of most impacted zip codes of \$10 million or greater than was declared by the President to be a major disaster area under the Stafford Act for a disaster event occurring in 2017.

National Environmental Policy Act (NEPA): Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that could significantly affect the environment.

National Flood Insurance Program (NFIP): Created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. FEMA manages the NFIP.

Notice to Proceed: The legal document that provides an approved project's specific description, budget, milestones, construction schedule, reporting requirements and special conditions.

Program Income (PI): Program income means gross income that is directly generated from a CDBG-funded activity. Program income is subject to the CDBG rules in perpetuity.

Property: Defined in Exhibit A Legal Description.

Reconstruction; Rehabilitation: Demolishing and re-building a housing unit on the same lot in substantially the same manner. Reconstruction and rehabilitation shall have the same meaning for purposes of this Agreement.

Responsible Entity (RE): Under the ERR requirements at 24 CFR Part 58, the term "responsible entity" (RE) means the agency receiving CDBG assistance. The RE must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

Senior Regulatory Agreement: The Senior Regulatory Agreement between County and Owner dated concurrently herewith that regulates and restricts the occupancy, rents, operation, ownership and management of the Development in compliance with the CDBG-DR MHP P&P, which shall be recorded in first lien position against the fee and leasehold title to the Property (as applicable) for the applicable Affordability Period as required by the MSA.

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.

Uniform Relocation Assistance and Real Property Acquisition Act (URA): 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.

II. PURPOSE

This Agreement sets forth the responsibilities of the County, as Subrecipient of CDBG-DR MHP funds from HCD (the “CDBG-DR MHP Funds”), and the Owner in accomplishing the objectives of the HUD CDBG-DR MHP. Under this Agreement the County is providing Owner a loan (“Loan”) in the amount of One Million Three Hundred Seventy-Seven Thousand Six Hundred Sixty-Five Dollars (\$1,377,665), as described in more detail in Section VI.H., below.

CDBG-DR MHP requirements (“CDBG-DR MHP Requirements”) are set forth in the HCD Community Development Block Grant – Disaster Recovery Multifamily Housing Program Policies and Procedures Manual (version 3.0 (October 2021)) (“CDBG-DR MHP P & P”), the MSA, and any additional applicable regulations issued by HUD or HCD from time to time for the CDBG-DR MHP. The CDBG-DR MHP P&P is designed to address program policies and provide general guidance for the use of CDBG-DR MHP funds appropriated under Public Law 115-123, Catalog of Federal Domestic Assistance Number 14.228. HCD is the lead and Responsible Entity for administering the CDBG-DR MHP funds allocated to the State of California. CDBG-DR MHP supports the State of California’s unmet recovery needs related to the FEMA Major Disaster Declarations DR-4344 in October 2017 and DR-4353 in December 2017. HCD performed an Unmet Needs Assessment that covered the areas affected by DR 4344 and DR 4353, 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”). Recognizing the requirement included in Federal Register Notice 83 FR 5844, published February 9, 2018, and 83 FR 40314, published August 14, 2018, to address housing needs first and based on the results of the needs assessment, HCD developed the CDBG-DR MHP. CDBG-DR MHP projects are funded to assist with meeting unmet rental housing needs, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the DR 4344 and DR 4353 disasters.

The Owner and Developer agrees to abide by all applicable existing and subsequent CDBG-DR MHP Requirements.

Pursuant to the CDBG-DR MHP P&P and in accordance with 24 CFR 570.208, all CDBG-DR funded activities must meet a national objective. The work proposed under this Agreement meets the national objective of Low-to-Moderate Income Housing (“LMH”), which requires that 51% of the units are designated as LMH. LMH is defined as activities undertaken for the purpose of providing or improving permanent residential structures, which, upon completion, will be occupied by Low-to-Moderate Income (“LMI”) households. LMI households are defined as households at or below 80% of AMI.

III. STATUTORY AND REGULATORY REQUIREMENTS; INCORPORATION OF EXHIBITS BY REFERENCE

The Owner shall abide by the requirements which apply to its duties and responsibilities under this Agreement, including as set forth in the Exhibits that are attached hereto and incorporated herein by this reference.

IV. PROVISIONS TO CLARIFY ROLES AND EXPECTATIONS

A. COUNTY

The County has the responsibility to monitor and enforce all applicable CDBG-DR MHP Requirements in connection with the Development and ensure that the Owner and Developer meets all Development performance goals and performance standards. Development oversight and monitoring will be conducted throughout the development process and annually throughout the CDBG-DR MHP Affordability Period.

B. OWNER

Escalante Meadows, L.P., a California limited partnership. The Managing General Partner of the Owner and Developer is **Surf Development Company, a California non-profit public benefit corporation** (the “MGP”). The Housing Authority of the County of Santa Barbara is the Administrative General Partner. The MGP will arrange all financing, professional, technical, and construction services necessary to develop or rehabilitate the Development on behalf of Developer.

As set forth in the CDBG-DR MHP P&P, a private or nonprofit organization that owns or has site control over real property and arranges all financing, professional, technical, and construction services necessary to develop or rehabilitate affordable housing is considered an owner, not a subrecipient.

The Owner shall not assign or otherwise transfer, directly or indirectly, by operation of law or otherwise, any of its interest in the Property, or any of Owner’s rights or obligations under this Agreement, without the prior written consent of both HCD and the County, excluding Permitted Transfers as defined herein. The following shall constitute Permitted Transfers hereunder and shall not require the prior consent of the County or HCD: (i) the Owner’s limited partner may transfer its respective limited partnership interest in the Owner to any person or entity, at any time, provided that written notice of such transfer is provided by Owner to the County and HCD at least 120 days prior to any such transfer; (ii) in connection with the exercise of an option and/or right of first refusal agreement, as referenced in Exhibit J of the Limited Partnership Agreement executed between Escalante Meadows, L/O, and Housing Authority of the County of Santa Barbara (a) the transfer of title to the Property to a general partner or affiliate of Owner and the assumption of all obligations under this Agreement, including all Exhibits hereto, by such transferee, or (b) the transfer of the limited partnership interest in Owner to a general partner or affiliate of Owner, provided that written notice of such transfer is provided by Owner to the County and HCD at least 120 days prior to any such transfer; and (iii) the Owner’s limited partner may remove and replace a general partner of the Owner in accordance with the Partnership Agreement of Escalante Meadows, L.P., subject to the prior written consent of the County and HCD to such general partner substitution, which consent will not be unreasonably withheld or delayed.

Owner hereby warrants, covenants, and agrees that, as of the Effective Date (defined below) of this Agreement, and at all times during the term of this Agreement and the Affordability Period (as defined in the MSA and Section VI.B., below):

- (i) Owner is not and shall not be listed on any state or federal debarment list;

- (ii) No affiliate of Owner is or shall be listed on any state or federal debarment list;
- (iii) No affiliate of Owner's limited partner is or shall be listed on any state or federal debarment list; and
- (iv) Owner, each of Owner's affiliates, and each affiliate of Owner's limited partner, is, and shall remain, in good standing with HCD and the State of California.

The Owner shall timely perform all of its duties and obligations as set forth in this Agreement and in the CDBG-DR MHP Requirements. In addition, the Owner shall assume and perform the duties and obligations assigned to the County by HCD with respect to the County's application and certifications regarding the Development, except with respect to the County's independent monitoring and enforcement responsibilities. The Owner's duties and responsibilities under this Agreement include, but are not limited to, completing the Development as described in the application for Development funds and as set forth in the MSA and this Agreement, and complying with all applicable federal laws and regulations, policies and procedures related to the CDBG-DR MHP.

Owner shall be responsible for all management functions of the Development including construction, rehabilitation, maintenance, selection of the tenants, annual recertification of household income and size, and managing the Development units in accordance with CDBG-DR MHP Requirements.

The Owner is responsible for all repair and maintenance functions of the Development, including, but not limited to, ordinary maintenance and replacement of capital items. The Owner shall ensure maintenance of Development's residential units, commercial space, and common areas in accordance with local health, building, and housing codes, and the Owner's Management Plan (defined below).

The Owner shall ensure that the Development is managed by an entity approved by the County that is in good standing with the County and the State, is not on any state or federal debarment list, and is actively engaged in the business of managing affordable housing. Any management contract entered into for the purpose of Development management shall be subject to County's prior written approval, and shall contain a provision allowing the Owner to terminate such management contract upon 30-days' notice ("Management Contract"). The Owner shall terminate any such Management Contract at the directed of the County upon determination by the County that such management is not in compliance with CDBG-DR MHP Requirements.

The Owner shall develop a management plan (Management Plan) subject to County's prior written approval. Any change to the Management Plan shall be subject to the prior written approval of County. The Management Plan shall be consistent with CDBG-DR MHP Requirements and all other funding requirements and shall include the following:

- The role and responsibility of the Owner and its delegation of authority;
- Personnel policy and staffing arrangements;
- Plans and procedures for publicizing and achieving early and continued occupancy;
- Procedures for determining tenant eligibility and selecting tenants, and for certifying and annually recertifying household income and size;
- Plans for carrying out an effective maintenance and repair program;
- Rent collection policies and procedures;
- A program for maintaining adequate accounting records and handling necessary forms and vouchers;
- Plans for enhancing tenant-management relations;
- The Management Contract, if any;

- Provisions for periodic update of the Management Plan;
- Appeal and grievance procedures;
- Plans for collections for tenant-caused damages, processing evictions and lease terminations; and
- A supportive services plan for the Development serving Special Needs Populations, including Supportive Housing and/or providing Supportive Services to the Development tenants.

The Owner shall (i) obtain and all land use entitlements, subdivision approvals, and building and zoning permits and licenses required for the performance of Owner’s obligations under this Agreement, (ii) meet all performance goals and performance standards, and (ii) provide requested documentation and access to the Development site and files as scheduled and/or requested by the County.

1. Subcontractors: The Owner shall incorporate the same or substantially equivalent requirements as are contained in this Agreement in all subcontracts related to the Development; all funds shall be subject to applicable Federal statutes, regulations, and CDBG-DR MHP Requirements. Notwithstanding any such subcontract, the Owner shall not be relieved of its responsibilities and obligations as set forth in this Agreement. The Owner may not assign or transfer, by operation of law or otherwise, any of Owner’s obligations under this Agreement without the prior written consent of the County to each such assignment or transfer.

Projects that use federal money, such as CDBG-DR MHP-assisted projects, must include a debarment/exclusion check on all contractors and subcontractors who are to provide goods or services in connection with any such project. Prior to entering into a contract with a contractor or subcontractor in connection with the Development, the Owner shall conduct a “System for Award Management” (SAM) debarment/exclusion review via the SAM system at www.sam.gov of each such contractor and subcontractor to ensure that no such contractor or subcontractor has been debarred or excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts or certain types of federal financial and nonfinancial assistance and benefits. The Owner shall not contract or subcontract with any individual or entity that has been excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. The Owner shall print and maintain documentation evidencing the Owner’s SAM search results and review of each contractor and subcontractor engaged in connection with the Development.

2. The Owner will monitor all contracted and subcontracted services on a regular basis to ensure contract compliance. Results of Owner’s monitoring efforts shall be summarized in written reports upon request by the County, and shall be supported with documented evidence of follow-up actions taken by the Owner to correct each instance of noncompliance, if any.

C. ENVIRONMENTAL ASSESSMENT

An Environmental Assessment for the Development pursuant to CDBG-DR MHP Requirements was completed on October 4, 2021. An Authority to Use Grant Funds was signed by HUD on July 8, 2019, for Section 8 Project Based Vouchers. A supplemental Categorical Exclusion Not Subject to 58.5 (CENST) was completed on August 28, 2022 for the supplemental CDBG-DR MHP funds, which includes CDBG-DR MHP funds that were allocated by the State of California to the County and the

CDBG-DR MHP funds that were allocated by the State of California to the City of Santa Barbara, which were relinquished to the County for the Development, , which CENST contains certain environmental mitigation measures to be completed by the Owner, as set forth in Exhibit F hereto and incorporated herein by reference (the “Environmental Mitigation Measures”). Owner shall timely complete the Environmental Mitigation Measures in compliance with the CENST.

V. PROJECT AND UNIT DESCRIPTIONS

A. PROJECT AND PROPERTY DESCRIPTION

The Owner is utilizing CDBG-DR MHP funding for the Development. The Development shall be situated on that certain real property located at 1090 and 1093 Escalante Street, City of Guadalupe, California, identified as Assessor Parcel Numbers 115-230-003 and 115-230-004, census tract number .0025.02, the legal description of which is attached hereto as Exhibit A – “Property Legal Description” and incorporated herein by reference (the “Property”). The Property is comprised of approximately 7.5 acres and is currently improved with outdated public housing buildings. The Development entails the demolition of the existing improvements on the Property, and the re-development of the Property with an 80-unit affordable housing apartment complex for qualifying households at or below 80% of the AMI, including seven (7) CDBG-DR MHP Assisted Units (the “CDBG-DR MHP Assisted Units”). Development amenities will include a parking, landscaped open space, and access to and use of a community center, which is being developed concurrently with the Development housing units on a separate parcel, under separate financing, not subject to this Agreement.

B. ELIGIBLE ACTIVITIES

The following chart lists all of the CDBG-DR MHP eligible activities for a rental housing development. The Owner shall carry out the eligible activities for this Development that are indicated by an “X” in the first column of the following chart.

The following is a list of eligible activities for Rental Housing - Check all that apply to the Development:	
N/A	Acquisition
N/A	Rehabilitation
N/A	Reconstruction - rebuild housing that was standing on the site at time of commitment
N/A	Reconstruction - facilitate rebuilding efforts after a disaster when housing may no longer be standing on the site (within 12 months of the date of destruction)
X	New Construction

C. SINGLE ROOM OCCUPANCY (SRO) – NOT APPLICABLE

The Development shall not include any Single Room Occupancy (SRO) units.

D. BENEFICIARIES

CDBG-DR MHP Requirements include rules about targeting program resources and establishing beneficiary eligibility. The Development will comply with such rules by designating Development housing units to be affordable to households with income at or below eighty-percent (80%) of the AMI.

The Owner hereby acknowledges and agrees to include the following Beneficiary Requirements in the Owner’s Tenant Selection Policies and Procedures
100% of all CDBG-DR MHP funds must assist tenants with household incomes below 80% AMI.
Tenant selection criteria must be reasonably related to Program eligibility and the applicant’s ability to meet the obligations of the lease, including the applicant’s ability to pay rent, to maintain the unit in reasonable condition, and to refrain from interfering with the rights of other tenants.
The tenant selection criteria require a written waiting list and written notification to rejected applicants.
These Beneficiary Requirements shall be included in the Tenant Selection Policies and Procedures documents for the Development.

Notwithstanding the foregoing, the County’s CDBG-DR MHP Assisted Units are set forth in Section XI. C. of this Agreement.

E. HCD PROJECT PRIORITY AND TYPE

The CDBG-DR MHP P&P requires CDBG-DR MHP-funded projects to meet one of HCD’s Project Priority Criteria. The Development will comply with the requirement for accommodating “Deep Affordability” with at least 10% of Development units reserved for tenants with household incomes below 30% AMI as shown in the table in Section XI.C., below.

Additionally, the Project will comply with the CDBG-DR MHP P&P requirement that the Development must meet one of five HCD Project types as defined in the 2019 Multifamily Housing Program Guidelines, Article 2, Section 7302(e)(1-5). The Development qualifies as a Large Family Housing Project.

F. FLOATING CDBG-DR MHP-ASSISTED UNITS

Consistent with CDBG-DR MHP P&P requirement that includes the HOME Investment Partnerships (HOME) program at 24 CFR 92.252(h), if, at the time of tenant recertification, the household income of a tenant occupying a CDBG-DR MHP-Assisted Unit exceeds the income level applicable to new tenants for Affordable Units, the Owner may not evict the tenant, and shall instead take the following specific actions to remedy such temporary noncompliance:

- Increase such tenant’s rent to the lesser of:
 - 30 percent of such tenant’s adjusted income;
 - the HUD Fair Market Rent applicable to such unit based on unit size and location; or
 - the rent limitations of a rental property that was developed with federal or state financing that restricts units at the same income level as the Affordable Unit and which is located in Santa Barbara County.

If another comparable unit in the Development that is not a CDBG-DR MHP Assisted Unit becomes available, Owner must designate that unit as a CDBG-DR MHP-Assisted Unit; at the income level originally applicable to such tenant until the ratio of CDBG-DR MHP-Assisted Units to Development units required by this Agreement is achieved. A unit shall be deemed “comparable” if it has the same number of bedrooms and is similar in size to the original CDBG-DR MHP-Assisted Unit, except that a unit that is ADA-Accessible does not need to be designated as a CDBG-DR MHP Assisted Unit if there is an immediate need for the unit for occupancy by a disabled tenant who is not otherwise eligible to occupy a CDBG-DR MHP Assisted Unit.

G. DESCRIPTION OF UNITS AND SUBSIDY LIMITS

Section 2.3 of the CDBG-DR MHP P&P adopted the regional per unit subsidy limits established by HUD under the HOME Investment Partnerships Program. Below is the updated maximum per unit subsidy limits for affordable housing projects utilizing HOME funding.

# Bedrooms	HOME Maximum Subsidy Limits per HOME funded unit*
0	\$159,754
1	\$183,132
2	\$222,694
3	\$288,094
4+	\$316,236

This Project has a total of eighty (80) units (“Development units”), including seven (7) designated as County CDBG-DR MHP-Assisted Units. The number and type of each Development unit is listed below. The total Subsidy Limit for this Project, including all CDBG-DR MHP funds allocated to this Project, is \$1,704,076.00. The aggregate amount of CDBG-DR MHP funds allocated for this Project falls below the Subsidy Limit, as required by HUD.

Unit Type	Total No. of Affordable Units	Market rate units	Mgr unit	Total # of CDBG-DR MHP-Assisted Units	County CDBG-DR MHP-Assisted Units	Subsidy Limits	Subsidy Limit Subtotals (Subsidy Limit X # of CDBG-DR MHP-Assisted Units)
Total # of 1 bedroom units:	12			Total # of 1 bdrm CDBG-DR MHP- units: (2)	2	\$183,132	\$351,504
Total # of 2 bedroom units:	24			Total # of 2 bdrm CDBG-DR MHP- units: (2)	2	\$222,694	\$427,436
Total # of 3-bedroom units	28	2	1	Total # of 3 bdrm CDBG-DR MHP- units: (2)	2	\$288,094	\$552,964
Total # of 4-bedroom units	16			Total # of 4 bdrm CDBG-DR MHP- units: (1)	1	\$316,236	\$303,490
Total Units:	80	2	1	Total CDBG-DR MHP-Assisted Units:	7	-----	-----
				Total Maximum Subsidy Limit			\$1,704,076

				Total County CDBG-DR MHP Funds	\$1,377,665
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H. INITIAL OCCUPANCY OF VACANT UNITS

CDBG-DR MHP Assisted Units must be occupied by low-income households no later than January 1, 2025. The following occupancy benchmarks have been adopted to ensure timely lease-up of CDBG-DR MHP-Assisted Units:

Initial Occupancy of Vacant Units Requirements
If any CDBG-DR MHP-Assisted Unit remains unoccupied six months after the date of Project completion, defined as the issuance by the City of Guadalupe of a final certificate of occupancy (COO), the Owner must provide to the County a written report regarding Owner’s current marketing efforts with respect to such unit(s), and setting forth an enhanced plan for marketing such unit(s) so that such unit(s) are leased to eligible tenants as quickly as possible.
If efforts to market CDBG-DR MHP-Assisted Units are unsuccessful such that any CDBG-DR MHP-Assisted Unit is not occupied by an eligible tenant within 18 months from the date of Development completion, the Owner shall repay to the County all CDBG-DR MHP funds invested in such unit(s). Any CDBG-DR MHP-Assisted Unit that has not served a low- or very low-income household at such time shall not have fulfilled the purposes of the CDBG-DR MHP or complied with the CDBG-DR MHP Requirements. Therefore, the costs associated with such unit(s) are ineligible to be paid using CDBG-DR MHP funds.

I. CDBG-DR MHP UNIT INTEGRATION

The Owner shall ensure the CDBG-DR MHP-Assisted Units are dispersed throughout the Project and shall not concentrate CDBG-DR MHP-Assisted Units in one area of the Development or in one building if the Development constitutes a multi-building projects.

VI. PROVISIONS TO CONVEY AFFORDABILITY REQUIREMENTS

A. CDBG-DR MHP AFFORDABILITY PERIOD

CDBG-DR MHP funded affordable housing must meet affordability requirements set forth in the CDBG-DR MHP P&P and the Senior Regulatory Agreement (Exhibit D). Notwithstanding the requirements set forth in Section V. H. above, the Development must receive a final Certificate of Occupancy (COO) by January 31, 2025. All Project units must be fully-rented with qualified tenants prior to the HUD/HCD grant close-out date of August 31, 2025.

The CDBG-DR MHP Affordability Period is imposed by the Senior Regulatory Agreement, which shall be recorded with the Santa Barbara County Clerk Recorder’s Office at the time construction loans are closed, as set forth in the Senior Regulatory Agreement. Failure to comply with the Senior Regulatory Agreement will constitute a Loan default by Owner as described in Section 5.E. of the Rider to Development Agreement.

B. DURATION, TERM AND AFFORDABILITY PERIOD

In accordance with the Senior Regulatory Agreement (Exhibit D), the term of the Affordability Period begins on the date that a final Certificate of Occupancy is issued by the City of Guadalupe, and ends on the date that is fifty-five (55) years thereafter.

VII. FUNDING

The Owner agrees to cooperate with the County and to take all practicable measures necessary to ensure that 100% of all CDBG-DR MHP funding is expended for eligible activities in accordance with Section VII. A. of this Agreement.

A. CDBG-DR MHP ELIGIBLE COSTS

The Owner shall select the specific CDBG-DR MHP eligible activities for this Project to be funded with CDBG-DR MHP funds and identify them in the Sources and Uses table contained in the Project Proforma (Exhibit G). The County may, at County's discretion, approve or deny a budget line item and substitute another budget line item to ensure compliance with CDBG-DR MHP Requirements.

B. INELIGIBLE COSTS

Owner agrees that ineligible costs are not reimbursable with CDBG-DR MHP funds. Ineligible costs include:

- Pre-application and application development costs;
- Land and building costs;
- Advances of any type including construction;
- Facility operating or maintenance expenses; and
- Off-site improvements.

C. CHARGING COSTS TO BENEFICIARIES

Staff and overhead costs related to carrying out the Development shall not be charged to or paid by low-income families. The Owner shall not charge fees to cover administrative costs (these costs may be charged as Development costs). Examples of prohibited fees include construction management fees, loan servicing fees, origination fees, loan processing fees, underwriting fees or other fees related to the cost of administering the CDBG-DR MHP.

Owner shall not charge fees to tenants in the Development that are not reasonable or customary (e.g., a monthly fee for access to pay laundry facilities). Allowable fees include reasonable application fees to prospective tenants, parking fees in neighborhoods where such fees are customary, and the cost of non-mandatory services such as meal and bus services.

D. PROPERTY STANDARDS

Owner agrees to comply with all applicable existing and future property standards requirements as determined by HCD, HUD, or the County.

At a minimum, Owner shall ensure that construction of the Development shall meet the following requirements:

- Comply with all State and local zoning, subdivision and building codes, including but not limited to the California Building Code. This will be documented through Certificates of Occupancy, signed permit cards and a certification signed by the Owner and Project architect.
- Comply with all CEQA Requirements.
- Comply with the 2009 edition of the International Energy Conservation Code (IECC). This will be documented through a certification signed by green consultants and/or Project architect.
- Comply with the 2007 edition of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) 90.1. This will be documented through a certification signed by green consultants and/or architect for the Development.
- Comply with California's the California Green Building Standards Code, Title 24, Part 11 of the California Code of Regulations ("CalGreen").
- Comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as applicable. At least 5% of the Project units must be accessible to persons with mobility impairments and 2% of the Project units must be accessible for persons with sensory impairments. All calculations shall be rounded up. Compliance will be documented through architectural plans demonstrating that these requirements are met and through a certification provided by the architect for the Development that such equipment was installed and in properly working order.
- To the extent there is any demolition of existing structures required or lead discovered in the Property soil through a Phase I ESA, comply with all lead-safe abatement measures required by the County.
- Compliance with the 2017 HUD Final Rule Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing requiring installation of broadband infrastructure for all HUD-assisted new construction housing. Per 83 FRN 40314, any substantial rehabilitation or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the Owner documents, and County approves, that: 1) the location of the new construction or Substantial Rehabilitation makes installation of broadband infrastructure infeasible; 2) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or 3) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.
- Per the CDBG-DR MHP P&P, all rehabilitation, reconstruction, and new construction must be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Wherever feasible, the State of California follows best practices, such as those provided by the U.S. Department of Energy, Home Energy Professionals: Professional Certifications and Standard work specifications. The State of California intends to promote high quality, durable and energy efficient construction methods in areas impacted by the 2017 fires. In May 2018, the California Energy Commission adopted new building standards that will require all newly constructed homes to include solar

photovoltaic systems, effective January 1, 2020. Homes built with the 2019 standards will use approximately 53 percent less energy than those built under current 2016 standards.

- Per the CDBG-DR MHP P&P, California continues to be a national leader in implementing statewide policy to both prepare for climate change and reduce greenhouse gas emissions and has dedicated substantial resources to mitigating the impacts of climate change. Housing resilience measures are set forth in state legislation, including requirements for local building codes, such as the Wildland-Urban Interface building codes (WUI codes) addressing wildfire risk since 2005. Therefore, all eligible multifamily housing under this program that is located in a CAL FIRE high fire zone must comply with WUI codes, found in Title 24, Chapter 7a of the California Building Code, which offer specific material, design and construction standards to maximize ignition- resistance. All CDBG-DR MHP-Assisted Projects, including the Project, must require new construction to adhere to WUI standards.
- Per the CDBG-DR MHP P&P, Owner is strongly encouraged to incorporate Resilient Home Construction Standards, meaning that all non-substantial or Substantial Rehabilitation or new construction meet an industry-recognized standard such as those set by the FORTIFIED Home Silver and Bronze levels.

E. BUDGET - APPROVAL OF FUNDS

Pursuant to a State-HCD approved competitive Project Solicitation Process with public announcements and public hearings, the Santa Barbara County Board of Supervisors approved One Million Three Hundred Seventy-Seven Thousand Six Hundred Sixty-Five Dollars (\$1,377,665) in CDBG-DR MHP funding for the Development (“CDBG-DR MHP Development Funds”). CDBG-DR MHP Development Funds shall be allocated to the eligible costs (“Eligible Costs”) identified in the “Sources and Uses” statement attached hereto as Exhibit G and incorporated herein by reference (“Project Proforma/Sources and Uses Statement”).

The Owner shall notify the County in writing of any proposed changes or additions to the (“Project Proforma/Sources and Uses Statement”)30 days prior to such change or addition. Any revision to the (“Project Proforma/Sources and Uses Statement”) must be approved in writing by County.

F. COMMITMENT, OBLIGATION AND RELEASE OF FUNDS

CDBG-DR MHP Development Funds are not available for expenditure until HCD issues a Notice to Proceed for the project.

Owner shall not obligate any funds, incur any costs, or initiate the Development until all environmental reviews and a determination of historic preservation have been completed and certified by the County and the County has issued a written notice of “Authority to Use Grant Funds” by HUD or State HCD. County will reimburse Owner for County-approved Eligible Costs, provided that County is in receipt of the funds from State HCD.

G. AVAILABILITY OF CDBG-DR MHP FUNDS

Funding of the Loan under this Agreement is contingent on the availability of CDBG-DR MHP funds and continued HCD authorization for Development activities, and is subject to amendment or termination by the County due to lack of funds or authorization from HCD.

H. LOAN TERMS AND REPAYMENT

The Loan, funded by CDBG-DR MHP Funds, shall be evidenced by a Promissory Note in the form attached hereto as Exhibit B (“Note”), and secured by a Deed of Trust in the form attached hereto as Exhibit C (“Deed of Trust”). The Loan shall bear simple interest at three-percent (3%) per annum which interest shall begin to accrue on the date of the final disbursement in accordance with Section VII.J., below, and the Note. The term of the Loan shall be concurrent with the Affordability Period. Annual Loan payments shall be due 45 days following the completion of Owner’s annual audited financial statements, which are generally completed by March 31. If the audit is not completed by March 31, Owner shall provide notice to County by March 31 stating when the audited financial statements will be available and remit a payment to County in an amount estimated by Owner. Notwithstanding the foregoing, Owner must provide the audited financial statements to County and remit any required additional payments no later than July 31. Payments will be made from residual receipts after payments of Operating Expenses as outlined below in Subsection H. i., , and required payments on the Senior Construction Loan and the Senior Permanent Loan as set forth in the Senior Construction Loan Documents (as defined in the Senior Regulatory Agreement). In any event, all unpaid principal and accrued interest on the Loan shall be due and payable to the County on the date that is fifty-five (55) years after the date of issuance of the final Certificate of Occupancy for the Development by the City of Guadalupe.

- i. “Operating Expenses” shall include Development costs necessary for the payment of reasonable and customary charges for administrative and property management, utilities, payroll and payroll taxes, insurance, property maintenance, and the monitoring fee charged by County which is currently set at \$2,500 annually.

R

I. REPAYMENT OF CDBG-DR MHP FUNDS

If, prior to the expiration of the Affordability Period, the Owner sells, or defaults on, the Development (with the exception of any permitted transfers, as defined in the Note), or defaults on the Loan, and such default is not cured within the applicable notice and cure period as set forth in the Note, the outstanding principal balance and all accrued interest of the Loan and all interest accrued thereon, shall become immediately due and payable to the County. In any event, the outstanding principal balance of the Loan and all interest accrued thereon shall become immediately due and payable to the County no later than the date that is fifty-five (55) years after the date of issuance of the final Certificate of Occupancy for the Development by the City of Guadalupe.

J. DISBURSEMENT OF FUNDS

To request disbursement of Loan funds:

1. Upon receipt of the “Notice to Proceed” from HCD and full execution of this Agreement, the County will send written notification to the Owner granting authorization to incur Development

costs against the Loan.

2. Drawdown of Loan funds is on a reimbursement basis for Eligible Costs pre-approved by the County. The amount of each Loan disbursement shall not exceed the actual Eligible Costs incurred by Owner, as specified in the ESPR Form (defined below) submitted by Owner for such Loan disbursement.
3. An Expenditure Summary and Payment Request (ESPR) form (Exhibit H – “ESPR Form and Instructions”) will be issued to the Owner when the County sends written notification to the Owner granting authorization to incur Eligible Costs against grant funds for the Project. Owner shall comply with alternate expenditure summary and payment request formats and provide additional information as reasonably required by HCD to disburse CDBG DR MHP funding to the County for this Project.
4. The ESPR, signed by Owner (which may be via electronic means approved by County or DocuSign), is due to the County monthly on the 1st of each month for processing, or in accordance with such schedule as may be approved by County from time to time during the term of the Loan. The County may allow electronic submission of the ESPR workbook for each reimbursement request. Late ESPR submissions will be processed the following month. Owner may reasonably expect to wait four to six weeks to receive a reimbursement check through the U.S. Mail or earlier via electronic payment (ACH). Owner must submit a completed IRS Form W-9 in order to receive payment by ACH.
5. Backup documentation clearly referencing the Development is required to be submitted with each ESPR to substantiate costs, including approvals for construction work and progress reports, and Owner shall submit such documentation with each ESPR, including copies of invoices and corresponding proof of payment, e.g. cancelled checks, along with a cover sheet summarizing all reimbursable costs. Owner shall submit a signed American Institute of Architecture (AIA) G702/703 form or equivalent form approved in advance by the County (Architect Certification) with each ESPR that requests reimbursement of construction work.
6. Payment by County is not to be construed as final in the event HCD disallows reimbursement for the Development or any portion thereof.

K. DRAW DEADLINES OF CDBG-DR MHP FUNDS

HUD requires that the first payment of CDBG-DR MHP Funds must be made by County no later than one year from the Effective Date of this Agreement; therefore, the first request for payment must be received by Owner no later than ten months after the Effective Date of this Agreement. The final payment by County of CDBG-DR MHP Project Funds cannot occur more than 120 days after Development completion and lease-up; therefore, the final request for payment must be received by Owner no later than 60 days after Development completion and lease-up. In any event, all CDBG-DR MHP funds must be fully expended by April 30, 2025.

L. DRAW REQUIREMENTS

The Owner agrees to timely provide to County each of the Draw requirement items as set forth below under “Progress Payments”, “Final Payment” and “Release of Retention”. As required in the CDBG-DR MHP P&P, a retention of no less than 10% of each Draw shall be retained by the County and released to Owner upon receipt by County of all of the items listed below under Final Payment, which items shall be provided to County by Owner:

Progress Payments:

- Progress report and photos of the Project;
- Submission to the County of all documentation reasonably required by HCD, e.g. labor standards report, Section 3 Reports, and any other reports that may be required by HUD or HCD for compliance with federal or State regulations, and evidence of compliance with the Notice to Proceed and all Special Conditions set forth in the First Amendment to the Master Standard Agreement;
- Unconditional lien waivers from all Contractors and subcontractors with respect to the payments requested from County;
- Owner has submitted an Architect’s Certification stating that all improvements were completed in good, workmanlike manner and in compliance with all approved plans, and all required permits, licenses, certificates and governmental approvals related to the Project, and that the Project was designed and constructed in compliance with all property standards listed in Section VII(D) of this Agreement. This may be documented by the Project architect’s signature on a completed G702/703 form submitted with the Draw request; and
- Documentation evidencing completion of Environmental Mitigation Measures .

Final Payment:

- Owner has submitted all documentation to the County reasonably required by HCD , e.g. labor standards report, Section 3 Reports, and any other reports that may be required by HUD or HCD for compliance with federal or State regulations, and evidence of compliance with the Notice to Proceed and all Special Conditions set forth in the First Amendment to the Master Standard Agreement;
- Owner has submitted an Architect’s Certification stating that all improvements were completed in good, workmanlike manner and in compliance with all approved plans and all required permits, licenses, certificates and governmental approvals related to construction and/or completion and occupancy of the Project, which were duly obtained, and the Project was designed and constructed in compliance with all property standards listed in Section VII(D) of this Agreement. Such Architect’s Certification may be documented by the Architect’s signature on a completed G702/703 form submitted with the final Draw request; and
- Documentation evidencing completion of environmental mitigation measures outlined in the Environmental Mitigation Measures.

Release of Retention:

- Completed Project has been inspected by the County of Santa Barbara;
- Owner has submitted all documentation to the County reasonably required by HCD to close-out the Project, including, but not limited, to a recorded Notice of Completion, relocation report (if applicable), audited cost certification, final labor standards report, Section 3 Reports, and evidence of compliance with the Notice to Proceed and any Special Conditions set forth in the First Amendment to the Master Standard Agreement ;

- Signed Certificates of Occupancy;
- Owner has submitted an Architect's Certification stating that all improvements were completed in good, workmanlike manner and in compliance with all approved plans and all required permits, licenses, certificates and governmental approvals related to construction and/or completion and occupancy of the Project, which were duly obtained, and the Project was designed and constructed in compliance with all property standards listed in Section VII(D) of this Agreement. Such Architect's Certification may be documented by the Architect's signature on a completed G702/703 form submitted with the final Draw request; and
- Documentation evidencing completion of the Environmental Mitigation Measures.

M. PROGRAM INCOME

HCD manages Program Income (PI) as set forth in the First Amendment to the MSA, which County has executed to receive CDBG-DR MHP funds. In the event that PI is generated, County must report the PI to HCD through a request for payment, and must expend PI prior to drawing additional grant funds. PI may only be used for eligible Project or activity delivery costs related to the Project. Subrecipient must provide monthly reports to HCD on PI generated and retained. Per 83 FRN 5844, HCD must report all PI to HUD through the Disaster Recovery Grant Reporting System (DRGR), Quarterly Performance Report (QPR). PI remaining at the end of each quarter and at the expiration of the MSA in excess of \$35,000.00 must be remitted to HCD.

Any PI in excess of \$35,000.00 remaining at the end of the term of the MSA shall be remitted to HCD during closeout where it is tracked and reported as revenue until it is allocated through a new Master Standard Agreement. PI held by HCD and awarded is tracked through the Grant Management System similarly to HUD grant funds.

PI does not include gross income from the use, rental, or sale of the Property received by the Owner, unless such funds are paid by the Owner to the County. PI proceeds, unexpended funds and all other assets in accordance with Section VII. S. of this Agreement will be returned to the County.

Annual Loan payments submitted by Owner to County pursuant to Section VII. H. of this Agreement are considered PI. PI must be remitted by County to State HCD unless otherwise permitted by State HCD.

N. ONE YEAR DEADLINE TO BEGIN CONSTRUCTION

The principal amount of the Loan, and all unpaid interest accrued thereon, shall become immediately due and payable, at the option of the County, without review, if construction of the Development has not commenced within one (1) year of the Effective Date of this Agreement. In no event shall Owner commence construction of the Development later than April 30, 2023. Owner shall provide County with written certification on Owner's letterhead evidencing that physical construction work is underway for the Development.

O. COMPLETION DEADLINE

Pursuant to the CDBG-DR MHP P&P, Owner must submit to County Certificates of Occupancy and Notice of Completion for the Development no later than January 31, 2025. The Development, if not deemed Complete by that date, shall be deemed terminated, at which time the principal amount of the Loan and all unpaid interest accrued thereon, shall become immediately due and payable to the County by Owner.

P. PROJECT COMPLETION DEFINITION

The Project will be deemed complete (“Complete”) when all of the following conditions have been met:

1. All necessary title transfer requirements are met;
2. Construction of the Development is completed and all Development units are ready for occupancy and have obtained Certificates of Occupancy or equivalent as determined by the County;
3. Development complies with all CDBG-DR MHP Requirements;
4. Final payment by County has been disbursed; and
5. Project completion data required by HCD has been provided to and approved by the County.

Q. FISCAL CONTROL

The Owner shall be responsible for the internal control and monitoring of fiscal and programmatic/operational goals and procedures for the Development. The Owner shall establish such fiscal controls and fund accounting procedures as reasonably required to ensure appropriate use of CDBG-DR MHP Funds, or as may be deemed necessary by HCD and County to assure the proper disbursement of, and accounting for, CDBG-DR MHP Funds disbursed to the Owner.

The Owner shall be liable for all amounts that are determined to be due by HCD in connection with the Development and/or the CDBG-DR MHP Funds, including, but not limited to, disallowed costs arising out of the conduct or omissions of the Owner or its contractors or subcontractors in connection with this Agreement. The Owner shall be notified in writing and shall be permitted to respond regarding any controversy or proceeding between County and HCD arising from this Agreement.

All financial transactions must be supported by complete and verifiable source documents. Owner shall maintain Development records that provide a clear audit trail.

R. ANNUAL SINGLE AUDIT AND ANNUAL FINANCIAL REPORT

The Owner shall be responsible for conducting an Annual Single Audit and Annual Financial Report of the Project in accordance with CDBG-DR MHP Requirements (“Audit”). A copy of the Audit shall be

forwarded to the County upon completion of the Audit. The Owner shall be solely responsible for all costs associated with the Audit.

S. REVERSION OF ASSETS

Upon expiration or termination of this Agreement, the Owner shall transfer to the County all CDBG-DR MHP Funds in the Owner's possession, custody, or control and all accounts receivable attributable to the use of CDBG-DR MHP Funds.

IX. DEVELOPER FEES

The amount of the Developer Fee payable to the Developer upon satisfactory completion of the Project in accordance with the terms and conditions of this Agreement is \$2,200,000 ("Developer Fee") of which \$43,795 is in form of a Deferred Developer Fee, meaning that this portion of the Developer Fee will not be paid to the Developer until such time as defined in the Limited Partnership Agreement.

Payment of the Developer Fee is contingent upon satisfactory completion of the Project in accordance with the terms and conditions of this Agreement. Where Project costs exceed the such costs as set forth in the "Sources and Uses", the County may require the Owner to contribute a portion of the Developer Fee toward such excess costs, and Owner shall timely comply with any and all such requirements upon notification of same by the County.

A. COSTS INCLUDED IN DEVELOPER FEES

Any funds disbursed to the Owner for administrative costs, provision of guarantees, or fees for services in connection with the development of the Project are considered to be a portion of the Developer Fee. Payments into reserves required by lenders or investors will not be included, but payment of fees for guaranteeing against operating deficits will be included. Operating deficits are Development income from rents, laundry, parking, or other related eligible fees collected pursuant to Section VII. C., less Operating Expenses, which result in higher Operating Expenses than income. Examples of items to be treated as part of the Developer Fee (in addition to any fees charged by the Owner) include:

1. Administration
2. Staff costs, including development consultants (but not historic preservation, environmental, or syndication consultants)
3. Net worth guarantee fees
4. Marketing and/or rent-up supervision fees
5. Tax credit compliance guarantee fees
6. All credit consultant fees
7. Real estate brokerage fees paid to a related party
8. Loan brokerage fees paid to a related party
9. Processing agent fees
10. Sponsor or Owner overhead and profit
11. Compensation for any construction management oversight provided by the Sponsor or Owner
12. The cost of any personal guarantees

13. Reserves in excess of those customarily required by multi-family housing lenders

B. MAXIMUM DEVELOPER FEES

Projects utilizing Low Income Housing Tax Credits may receive a developer fee in an amount not to exceed the limits set forth in the California Code of Regulations as stated in California Tax Credit Allocation Committee Regulations implementing the federal and State low income housing tax credit laws California Code of Regulations Title 4, Division 17, Chapter 1 April 14, 2020 as: “The base fee limit shall be the lesser of 15% of the project’s eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis or two million two hundred thousand (\$2,200,000) dollars”.

C. RESERVED

D. TREATMENT OF "PARTNERSHIP MANAGEMENT" OR "ASSET MANAGEMENT" FEES

Project management fees may be paid by the Owner from Annual Cash Proceeds from Project Operations to the MGP and/or to any limited partners of the Owner for Project management tasks including public relations work directly relating to the Project, preparation of Owner’s tax returns, and other Project management tasks performed by the MGP for the direct benefit of the Project (“Management Fees”). Where such Management Fees are funded in advance from syndication proceeds, such funds shall be placed in escrow with a third party escrow agent and paid out over time to ensure a steady stream of revenue to cover such Management Fees. The aggregate amount of all Management Fees, if any, may not exceed \$30,000 in the first year of the term of this Agreement, but may increase by up to three percent (3%) per year thereafter; provided, however, that no Management Fees shall be paid for any year in which any of the following occurred at any point during such year: (i) the Owner/Developer or the Project was subject to County monitoring findings (as described in at 24 CFR Part 92 and in HUD Guidance found at <https://www.hudexchange.info/programs/home/topics/monitoring/#policy-guidance>), (ii) the Project, the Owner/Developer, the MGP, or any limited partner or general partner of Owner was in violation of any of the CDBG-DR MHP Requirements, (iii) the Project, the Owner/Developer, the MGP, or any other partner of Owner was in violation of any applicable law, (iv) the Owner/Developer, the MGP, or any other partner of Owner was in breach, or violated any provision, of this Agreement or of any of the documents attached as Exhibits to this Agreement, or (v) the Owner/Developer, the MGP, or any partner of Owner was in breach, or violated any provision, of any other agreement between or among the County and any such party or parties.

E. INCENTIVE MANAGEMENT FEE

If Owner is a nonprofit, for any year in which, at the end of such year, Excess Net Cash Flow from Project Operations is available, which is defined as the amount, determined for any fiscal year of portion thereof, equal to the excess, if any, of cash flow over the aggregate amount of the fees and other expenses payable from cash flow in such year as set forth in Exhibit A-4 of the limited partnership agreement. after payment of Project Operating Costs, Senior Debt, any Deferred Developer Fees, and amounts to establish, fund and maintain the Reserve Accounts in accordance with the terms of the Regulatory Agreement or Junior

Regulatory Agreement, the Owner may retain 50% of such Excess Cash Proceeds, also known as Residual Receipts, from Project Operations for such year, if any, as an “Incentive Management Fee”; provided, however, that no Incentive Management Fee shall be paid for any year in which any of the following occurred at any point during such year: (i) the Owner/Developer or the Project was subject to County monitoring findings (as described at 24 CFR Part 92 and in HUD Guidance found at <https://www.hudexchange.info/programs/home/topics/monitoring/#policy-guidance>), (ii) the Owner/Developer or the Project was in violation of any of the CDBG-DR MHP Requirements, (iii) the Owner/Developer or the Project was in violation of any applicable law, (iv) the Owner/Developer or the Project was in breach, or violated any provision, of this Agreement or of any of the documents attached as Exhibits to this Agreement, or (v) the Owner/Developer was in breach, or violated any provision, of any other agreement between the Owner/Developer and the County.

X. PERFORMANCE AND SCOPE OF WORK

The Owner shall comply with the following performance goals, performance standards, and scope of work.

A. PERFORMANCE GOALS, STANDARDS AND SCOPE OF WORK

Construction of the Project must commence within one year of the Effective Date, and the Project must be Completed by the earlier of (i) the date that is four (4) years after the Effective Date(ii) January 1, 2025.

B. DEVELOPMENT STAFF

The Owner shall secure the services of professionally-qualified persons necessary for the Owner to comply with all of the terms and conditions of this Agreement, including all Exhibits attached hereto, and the CDBG-DR MHP Requirements (including, but not limited to, legal, accounting, auditing, architectural, Davis Bacon compliance, HUD Section 3 compliance, HUD Section 504 compliance and project management services), either through direct employment by the Owner or through the Owner independently contracting with a third-party for such services in accordance with the terms and conditions of this Agreement and the CDBG-DR MHP Requirements.

C. CHANGES IN GOALS, STANDARDS, SCOPE OF WORK, CONSTRUCTION OR SCHEDULES

The Project shall be constructed in accordance with approved architectural plans and specifications governing construction in accordance with Section VII(D) of this Agreement.

No material change in the Development and building schedule shall be implemented without the prior written approval of the County. Material changes include a change in the number and/or type of housing units to be constructed at the Development or other change(s) that would cause a construction delay of sixty (60) days or more, or a schedule change such that the Development could not be completed and occupied within four years from the date of execution of this Agreement.

D. PERFORMANCE MONITORING

The County will monitor the construction performance of the Owner against the Project Scope of Work, described as the phased replacement of 52 units of affordable apartments with 80 units of affordable apartments. The proposed apartments will be more energy-efficient and comfortable for the residents. A portion of the units will be handicapped accessible; and the construction schedule, the CDBG-DR MHP Requirements, and the terms and conditions of this Agreement. Owner's Failure to meet such requirements and/or non-compliance with applicable rules and regulations shall constitute breach of this Agreement. If action to correct such substandard performance is not taken by the Owner within the applicable notice and cure period set forth in this Agreement, including Exhibits attached hereto, the County is entitled to use any one or more of the following remedies for non-compliance: (i) temporarily withhold disbursement of funds pending correction of deficiencies by the Owner; (ii) disallow all or part of the cost of the noncompliant activity or action; (iii) wholly or partly suspend or terminate the award of CDBG-DR MHP Project Funds; (iv) withhold further awards for the Project; (v) initiate suspension or debarment proceedings; (vi) demand repayment to the County by Owner of the CDBG-DR MHP Project Funds; and/or pursue any other remedies that may be available at law or equity. Failure of the County to monitor the Owner's performance shall not relieve the Owner of its obligations hereunder or constitute waiver of any such requirements or obligations.

XI. RENTS AND INCOME

A. RENT LIMITS

Per the CDBG-DR MHP P&P, rents for CDBG-DR MHP-Assisted Units must be at or below the High-HOME rents designated by HUD for the HOME Investment Partnerships Program.

HUD annually updates and publishes a list of HOME Program Rent limits. The income and rent limits in effect at the time of initial occupancy of the CDBG-DR MHP-Assisted Units will be used for the Project until HUD publishes updated income and rent limits.

High HOME rent limits are the maximum rents that can be charged to low-income households.

Utilities are included in the HUD-published HOME rent limits. When a tenant pays directly for utilities, the Owner must subtract a County-approved utility allowance (using the HUD Utility Schedule Model or another HUD-approved project specific methodology as detailed in "Guidance on How to Establish Utility Allowances for HOME-Assisted Rental Units", HOMEfires, Volume 13, No. 2, May 2016, as revised) to determine the maximum rent that can be charged for the unit.

HUD updates the HOME rent limits every year. If the rent limits go up, the Owner may raise rents accordingly. If the HOME rent limits go down, the Owner is not required to decrease rents and may continue to use the rent limits in effect at the initial occupancy of the CDBG-DR MHP-Assisted Units. The applicability of tenant-paid utilities may affect the actual rent that may be charged.

The County must approve all rent schedules for the Project prior to lease-up. The County must also approve all rent increases during the CDBG-DR MHP Affordability Period.

The Owner shall be responsible for ensuring that the appropriate rent is levied for each Project unit in compliance with CDBG-DR MHP Requirements, the MSA, and this Agreement. The Project Operating Pro Forma (see Exhibit G – “Project Proforma/Sources and Uses Statement”) submitted by the Owner shall reflect maximum HOME Rents that may be charged for each unit size, calculated by subtracting the utility allowance from the HUD Rent Limits (based on bedroom size). The actual rent charged for each unit may be less but not more than the HOME limits. For Low HOME units, eligibility is determined based on the unit tenant’s gross income, rather than adjusted income.

The HUD HOME Program initial High and Low Rent Limits schedule per bedroom is:

Effective June 15, 2022	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Low Rent Limit	\$1,222	\$1,310	\$1,572	\$1,816	\$2,026	\$2,236	\$2,444
High Rent Limit	\$1,570	\$1,684	\$2,023	\$2,329	\$2,578	\$2,826	\$3,074

The Owner certifies that:
The Project rent schedule shall be submitted to the County for approval prior to lease-up
During the entire CDBG-DR MHP Affordability Period, all proposed rent increases affecting CDBG-DR MHP-Assisted Units shall be subject to prior written approval by the County.

Notwithstanding the above, County requires that the CDBG-DR MHP-Assisted Units be rented to tenants with household incomes at or below 60% AMI as more specifically shown in Section C below. The income limits published by State HCD for the CDBG program shall be used to qualify households for occupancy of the CDBG-DR MHP Assisted Units. <https://www.hcd.ca.gov/grants-and-funding/income-limits>

The federal HOME Program rent limits shall be used to determine the maximum rents that may be charged for occupancy of CDBG-DR MHP Assisted Units as published annually at www.HUDEXchange for the HOME program. <https://www.hudexchange.info/programs/home/home-rent-limits/>

B. UTILITY ALLOWANCES

The Owner is required to determine an individual utility allowance for each CDBG-DR MHP-Assisted Unit, either (1) by using the HUD Utility Schedule Model, or (2) by otherwise determining the allowance based upon the guidance provided in HOMEfires – Vol. 13 No. 2, May 2016. Utility Allowances must be updated annually.

The option that best meets the needs of this Project is the HUD Utility Schedule Model or a determined allowance based upon the specific utilities used at the Project, which is explained in detail below:
The Owner shall utilize a project-specific energy consumption model to determine the utility allowances within the Development in compliance with HOMEfires – Vol. 13 No. 2, May 2016.

C. UNIT MIX AND INCOME RESTRICTIONS

During the entire term of the CDBG-DR MHP Affordability Period, the following Project restrictions shall apply:

Unit Mix – by Income and Unit Type

Unit Type	AMI	Number of County CDBG-DR MHP-Assisted Units	Number of Other Affordable Units Not Restricted by this Agreement	Number of Other Non-Affordable Units	Total Number of Units
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

After the conclusion of the CDBG-DR MHP Affordability Period, the Income and Unit Type restrictions will continue to apply to the Project. If necessary for the long-term financial viability of the Project, the County, in its sole discretion, which will not be unreasonably withheld, may approve a request from the Owner to increase the income levels of the Project up to 80% AMI.

D. DEFINITION OF INCOME

The use of IRS adjusted gross income is the only definition of income used to determine income eligibility for all CDBG-DR MHP-funded projects, including the Project.

Household incomes must be certified using source documentation at the following times: 1) at initial lease-up of the CDBG-DR MHP-Assisted Units; 2) upon CDBG-DR MHP-Assisted Unit turnover; and 3) upon recertification of all CDBG-DR MHP-Assisted households, which must occur every six (6) years during the Affordability Period. During the interim years, household income must be recertified annually using source documentation, a self-certification of household income prepared by the household or verification provided by another governmental entity.

E. SINGLE ROOM OCCUPANCY (SRO) RENT LIMITS – NOT APPLICABLE

The Project shall not contain any SRO units.

F. INCOME ELIGIBILITY

The Owner is responsible for ensuring income eligibility requirements are imposed and enforced for CDBG-DR MHP-Assisted Units during the entire CDBG-DR MHP Affordability Period.

The Owner acknowledges and agrees to comply with all of the following:
Initial Income Eligibility: Owner will determine initial tenant eligibility using federal HOME adjusted gross income.
Owner will examine and maintain documentation of household size and income at initial occupancy for all CDBG-DR MHP beneficiaries in each tenant file pursuant to the documentation requirements at 24 CFR 5.609-612.
Annual Income Re-examinations: Owner must re-examine tenant income annually. This may be done by obtaining source documentation, or a written certification statement from the household, or a written statement from another means-tested government program.
Every 6 th year of the CDBG-DR MHP Affordability Period, the Owner must obtain and review new source documentation pursuant to 24 CFR 5.609-612 to ensure continued eligibility.
When determining the annual income of a household to establish eligibility for assistance, the Owner must count the income of <i>all</i> persons aged 18 or older in the household, including nonrelated individuals. This is intended to address situations where not all household members are related or where several adult members will reside in a CDBG-DR MHP-Assisted unit.
The Owner must take steps to maintain compliance with rent and occupancy requirements. The Project must maintain the total number of CDBG-DR MHP-Assisted Units as required in this Agreement. Rents must be adjusted accordingly for tenants whose incomes rise above 80% of AMI during the .
If income of a tenant in a CDBG-DR MHP-Assisted Unit exceeds 80% AMI, rent cannot exceed the lesser of (a) comparable market rent, or (b) 30% of adjusted income. The next available “comparable” unit must be rented to a CDBG-DR MHP eligible tenant and designated as the new CDBG-DR MHP-Assisted Unit.
CDBG-DR MHP-Assisted Unit rents may increase or decrease over time; however, the Owner is not required to charge rents that are lower than the maximum rents contained in this Development Agreement.
Existing tenants are never required to move out of the Project or to a different unit in the Project due to income change. Existing tenants may choose to move out if they do not agree to pay the new rent amount; this is not considered displacement.
The Owner must notify the County in writing prior to implementing any rent increases. Tenants must be given at least 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements. Rents may not increase until the tenant’s lease expires.
In CDBG-DR MHP-Assisted Unit that are financed with both CDBG-DR MHP and Low Income Housing Tax Credits (LIHTCs), the LIHTC rules apply.
Under the LIHTC program, the tenant’s rent is not adjusted and the unit does not need to be replaced by another comparable unit until the tenant’s income rises above 140 percent of the LIHTC program eligibility threshold. This rule only applies to over-income tenants in existing assisted units. Counties and Owners may not defer to LIHTC rents in CDBG-DR MHP units when initially developing assisted units.
The Project is not intended to serve students, and students are not eligible for Program assistance pursuant to 24 CFR 5.612.

G. LONG TERM INCOME AND RENT COMPLIANCE

The Owner acknowledges and agrees to comply with all of the following:
Rent amounts must be submitted to and approved by the County annually for all CDBG-DR MHP-Assisted Units.
On-site Project file reviews and unit inspections will occur every three years, or more frequently as warranted for health and safety violations.

XII. TENANT AND PARTICIPATION PROTECTIONS

A. SUBPART F OF 24 CFR PART 92

The Owner must meet all applicable project requirements described in Subpart F of 24 CFR Part 92 (including but not limited to, § 92.253 “Tenant protections and selection”), which requirements are summarized in this section and in the Exhibits referenced in this Section XII.

B. TENANT LEASE TERM

There must be a written lease between the tenant and the Owner of rental housing assisted with CDBG-DR MHP funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the Owner a shorter period is specified.

C. PROHIBITED LEASE TERMS

The Owner shall ensure that leases used for Project units do not contain any of the following provisions:

1. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;
2. *Treatment of property.* Agreement by the tenant that the Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Owner may dispose of this personal property in accordance with State law;
3. *Excusing Owner from responsibility.* Agreement by the tenant not to hold the Owner or the Owner’s agents legally responsible for any action or failure to act, whether intentional or negligent;
4. *Waiver of notice.* Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;

5. *Waiver of legal proceedings.* Agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
7. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and
9. *Mandatory supportive services.* Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

D. TERMINATION OF TENANCY

The Owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with CDBG-DR MHP funds, except for (i) serious or repeated violation of the terms and conditions of the lease; (ii) for violation of applicable Federal, State, or local law; (iii) for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or (iv) for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the Owner must serve written notice upon the tenant specifying the grounds for such refusal to renew at least 30 days before the termination of tenancy.

E. TENANT SELECTION

The Owner of rental housing assisted with CDBG-DR MHP funds must comply with affirmative marketing requirements. The Owner must adopt and follow written tenant selection policies and criteria that comply with the following:

1. Limit the CDBG-DR MHP-Assisted units to low-income households at the affordability levels specified in Section XI(C) of this Agreement;
2. The County adopts the Section 8 Housing Choice Voucher (HCV) program restrictions on student participation found at 24 CFR § 5.612, which exclude any student that:
 - a. Is enrolled in a higher education institution;
 - b. Is under 24 years of age;
 - c. Is not a veteran of the U.S. military;

- d. Is unmarried;
- e. Does not have a dependent child(ren);
- f. Is not a person with disabilities as defined in 24 CFR § 5.612; or
- g. Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income.

Excluded students are prohibited from receiving any type of CDBG-DR MHP assistance, including renting CDBG-DR MHP-Assisted rental units.

- 3. Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);
- 4. Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's consolidated plan).
 - a. Any limitation or preference must not violate nondiscrimination requirements in § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.
 - b. If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:
 - The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;
 - i. Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
 - ii. Such services cannot be provided in a non-segregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the Owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.
 - iii. Notice of Lead Hazard Reduction Activity – Occupants, developers, and purchasers must be notified of the results of any lead hazard reduction work

5. Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.
6. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
7. Give prompt written notification to any rejected applicant of the grounds for any rejection.

F. TENANT LEASES

Owner may use a HOME Lease Addendum to satisfy the HOME lease requirements as outlined above. County will provide the HOME Lease Addendum upon request. The HOME Lease Addendum, if used, must be signed by the property manager/landlord and by the tenant and placed in the tenant's rental file. By signature on this Agreement, Owner agrees that they have reviewed and will comply with the tenant lease requirements provided in this Agreement.

XIII. PROPERTY REQUIREMENTS

A. PROPERTY STANDARDS

The Owner shall ensure the Project meets all applicable Property Standards as outlined in Subpart F of 24 CFR Part 92 including but not limited to 92.251.

1. Housing that is constructed or rehabilitated with CDBG-DR MHP funds, including the CDBG-DR MHP-Assisted Units, must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of Project completion. The Owner shall adhere to the participating jurisdiction's written standards for rehabilitation, if applicable to the Project, that ensure that CDBG-DR MHP-Assisted Units are decent, safe, and sanitary. In the absence of local or State codes for new construction or rehabilitation, CDBG-DR MHP-Assisted Units must meet, as applicable, the International Code Council's (ICC's) International Residential Code or International Building Code, whichever is applicable to the type of building being developed. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
2. All other CDBG-DR MHP-Assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and, if there are no such standards or code requirements, the housing must meet the housing quality standards set forth in 24 CFR § 982.401.

B. PROPERTY INSPECTIONS

Owner must maintain the Development in accordance with all applicable laws, regulations, and property standards throughout the Extended Affordability Period in accordance with this Agreement. The Owner shall allow the County to inspect the physical premises of the Development upon at least 48-hour's advance notice during normal business hours and subject to applicable notice requirements in Development tenant leases following completion of the Development.

County will conduct monitoring reviews of the tenant files and CDBG-DR MHP-Assisted Units using the property standards in effect under the HOME program in accordance with the Inspection Schedule in the chart below.

Owner shall comply with property standards in effect by the HOME program during the CDBG-DR MHP Affordability Period and the Extended Affordability Period.

Inspection Schedule

Project to be Inspected:	On-Site Inspection Required
Newly constructed projects	Within 12 months project completion
Thereafter	Once every 3 years or more frequently as warranted for health and safety violations.

C. LEAD BASED PAINT

All Project units, as a project assisted with CDBG-DR MHP funds, must comply with the lead-based paint requirements at 24 CFR part 35. The lead-based paint regulations at 24 CFR part 35 consolidates all lead-based paint requirements for HUD-assisted housing. The Owner agrees to comply with section 401(b) of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. § 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851 et seq.) and implementing regulations at Code of Federal Regulations, title 24, part 35 including subparts A, B, J, K, M and R. Compliance responsibilities include notification of hazards of lead-based paint poisoning and elimination of those hazards as prescribed by 24 C.F.R. § 570.608.

1. Such regulations pertain to all HUD-assisted housing of properties constructed prior to 1978. The Owner agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations to the extent applicable.
2. The lead-based paint requirements set forth in the HUD Lead-Based Paint Regulations fall into the five major categories listed below:
 - a. Notification: Owner must meet four notification requirements:
 - i. Lead Hazard Information Pamphlet – Occupants, developers, homebuyers, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.

- ii. Disclosure – Owner shall provide purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
 - iii. Notice of Lead Hazard Evaluation or Presumption - Occupants, developers, homebuyers, tenants, and purchasers must be notified of the results of any lead hazard evaluation work when lead-based paint or lead-based paint hazards are found to be present or if a presumption is made that lead-based paint or lead-based paint hazards are present.
 - iv. Notice of Lead Hazard Reduction Activity – Occupants, developers, homebuyers, tenants, and purchasers must be notified of the results of any lead hazard reduction work.
 - b. Lead Hazard Evaluation: The evaluation activity required depends on the nature of the activity funded and the amount of federal funding. Evaluation methods include visual assessments, paint testing, and risk assessments.
 - c. Lead Hazard Reduction: The reduction activity required depends on the nature of the activity funded and the amount of federal funding. Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement.
 - d. Ongoing Maintenance: Ongoing maintenance is required if the Owner has an ongoing relationship with the federal government (e.g., Rental or Tenant-Based Rental Assistance (TBRA) activities). Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.
 - e. Response to Children with Environmental Intervention Blood Lead Levels (EIBLL): When a poisoned child with an environmental intervention blood lead level is identified in some types of properties, the new regulation prescribes certain activities. (For HOME, these requirements apply only to TBRA activities).
3. Pursuant to 24 CFR § 35.170, Owner shall be subject to sanctions authorized under the federal funding programs providing assistance to the Project for failure to comply with applicable HUD lead-based paint requirements, and may be subject to other penalties available under state or local law.
 4. Notifying developers, homebuyers, purchasers, tenants, or occupants of possible lead-based paint hazards does not relieve Owner of any of Owner's other responsibilities under applicable laws and regulations.
 5. Owner must comply with all other Federal, State, tribal, and local laws and regulations that apply to lead-based paint hazard evaluation and reduction. When multiple regulations cover a Project activity, Owner must comply with the most stringent requirement.
 6. All lead-based paint activities, including waste disposal, must be performed in accordance with all applicable laws, regulations, and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy

Act of 1969 (42 U.S.C. § 4321 et seq.), the Toxic Substances Control Act, Title IV (15 U.S.C. § 2860 et seq.), Occupational Safety and Health Administration (OSHA) worker safety regulations (29 CFR § 1910.120 [hazards waste operations and emergency response] and 29 CFR § 1926.62 [lead]), and other laws and authorities (see, e.g., environmental laws and authorities listed in 24 CFR § 50.4).

7. There are numerous records that the Owner must keep to verify that Owner conducted the required lead hazard response activities. Owner shall ensure that such documents, including, but not limited to, the documents set forth below, are located in program and Project files.
 - a. Lead Hazard Information Pamphlet: A record of the distribution of the lead hazard information pamphlet is recommended, but not required.
 - b. Notification, Evaluation, and Reduction Reports: The Owner must keep a copy of each notification, lead hazard evaluation report, lead hazard reduction documentation (such as job specifications), and clearance or abatement report for at least three years, or for such other period as specified in the program regulations.
8. Compliance During Construction
 - a. New Construction or Rehabilitation/Conversion projects proposing demolition of existing structures.
 - i. Owner is required to submit a Lead Survey Report. All lead identified in the Lead Survey Report that will be disturbed as part of the work must be remediated by a licensed contractor per the recommendations of the Lead Survey Report. Additionally, a third-party contractor must monitor the abatement and provide a Clearance Report at the end of the abatement certifying that the lead was abated per the recommendations in the Lead Survey Report.
 - b. Rehabilitation of existing structures and/or conversion.
 - i. Owner is required to submit a Lead Survey Report. All lead identified in the Lead Survey Report that will be disturbed as part of the work must be remediated by a licensed contractor per the recommendations of the Lead Survey Report. Additionally, a third-party contractor must monitor the abatement and provide a Clearance Report at the end of the abatement certifying that the lead was abated per the recommendations in the Lead Survey Report.
 - c. New Construction activities that do not include demolition of existing structures.
 - i. Owner is required to prepare and provide to the County a Phase I Environmental Site Assessment and any recommended follow-up studies to determine the presence of any conditions in need of remediation prior to construction. Additionally, a third-party contractor must monitor any recommended and/or required abatement work and provide a Clearance Report at the end of such abatement certifying that the conditions were abated per the recommendations in the Phase I Environmental Site Assessment and any follow up reports.

XIV. PROVISIONS RELATED TO CROSS-CUTTING FEDERAL AND STATE REQUIREMENTS

In addition to the CDBG-DR MHP rules, regulations, and requirements, there are several additional broad Federal cross-cutting rules to which the Owner must adhere. The Owner shall diligently stay abreast of, and ensure that the Project is and remains in compliance with, all applicable laws, rules, regulations and requirements, including, but not limited to, Federal requirements applicable to the following matters: non-discrimination and equal access, employment and contracting, environmental requirements (see, e.g., Section IV(C) “Provisions to Clarify Roles and Expectations – Environmental Assessment”, Section XIII(C) “Property Standards - Lead Based Paint”, and Section XIV(L) “Relocation”).

A. FLOOD INSURANCE

Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106) requires that federal funds shall not be provided to an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the Project is situated is participating in the National Flood Insurance Program and flood insurance is obtained.

Owner receiving CDBG-DR MHP assistance must obtain and maintain flood insurance on properties located in a 100-year floodplain. Owners subject to this requirement must obtain and maintain flood insurance in perpetuity, per part 24 CFR Part 58.6, as a condition of federal assistance.

B. NATIONAL FLOODPLAIN ELEVATION STANDARDS

Owner shall comply with national floodplain elevation standards for new construction, repair of substantially damaged structures, and substantial improvements to residential structures in flood hazard areas, as applicable. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain shall be elevated with the lowest floor at least two feet above the base flood elevation level, and shall comply with the requirements of 83 FR 5850 and 83 FR 5861, as well as Executive Order 11988, and 24 CFR Part 55. Additionally, if the Project is within a 100-year floodplain, Owner must obtain and maintain flood insurance for the Project in perpetuity, per part 24 CFR Part 58.6, as a condition of federal assistance.

C. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

The Clean Air Act (42 U.S.C. § 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.) require that contracts and subgrants of amounts in excess of \$150,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.).

Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 1857 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.). Owner agrees to report each violation to the County and understand and agrees that the County will, in turn, report each violation as required to assure notification to HUD and the appropriate Regional Office of the Environmental Protection Agency. Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with CDBG-DR MHP funds.

D. NON-DISCRIMINATION AND EQUAL ACCESS

No person in the United States and no person with responsibilities in the operation of any project under this Agreement shall on the grounds of race, religion (creed), color, national origin, age, sex, political affiliation, handicap, beliefs, or marital or familial status be excluded from participation in, be denied benefits of, or subjected to discrimination under any program or activity funded in whole or in part by CDBG-DR MHP funds. Therefore, the Owner must take measures to ensure non-discriminatory treatment, outreach and access to program resources. This applies to employment and contracting, as well as to marketing and selection of program participants. Owner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The Owner will also ensure that every effort is made to provide equal opportunity to every potential minority and women's business vendor, contractor and subcontractor as set forth in 24 CFR §§ 5.105 and 92.351.

E. FAIR HOUSING AND EQUAL OPPORTUNITY REQUIREMENTS

The Owner must comply with all of the following Federal laws, executive orders and regulations pertaining to fair housing and equal opportunity. The Owner shall abide by the following:

1. Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. § 2000d et seq.): States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin. The regulations implementing the Title VI Civil Rights Act provisions for HUD programs may be found in 24 CFR Part 1.
2. The Fair Housing Act (42 U.S.C. §§ 3601 - 3620): Prohibits discrimination in the sale, rental, the financing or advertising of housing, in the provision of brokerage services, or in the availability of residential real estate-related transactions against any person on the basis of race, color, religion, sex, national origin, disability or familial status. Furthermore, section 5304(b)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) requires that each grantee certify to the secretary of HUD that the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act and that it will affirmatively further fair housing. Certification that the grantee will affirmatively further fair housing is sufficient if the grantee takes, in the relevant period, action that is rationally related to promoting one or more attributes of fair housing as defined in 24 CFR § 5.150(a) including that housing is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws. Fair Housing Act implementing regulations for HUD programs may be found at 24 CFR parts 100-115.
3. The Fair Housing Amendment Act of 1988: Amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.

4. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259): Prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Equal Opportunity in Housing regulations may be found in 24 CFR Part 107.
5. Age Discrimination Act of 1975, as Amended (42 U.S.C. § 6101): Prohibits exclusion from participation or denial of program benefits and discrimination on the basis of age in programs receiving federal financial assistance. The Age Discrimination Act, however, permits federally assisted programs and activities and recipients of federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations. Age Discrimination Act regulations may be found at 24 CFR part 146.

Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1 :350 Paragraph 11; 101 KAR 1 :375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

6. Restoration Act of 1987: restores the broad scope of coverage and clarifies that application of the Civil Rights Act of 1964, and specifies that an institution which receives financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, Disability or age in a program or activity which does not directly benefit from such assistance.
7. Section 109 of Title 1 of the Housing and Community Development Act of 1974 (42 U.S.C. 53091): no person shall be excluded from participation (including employment) denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
8. Executive Order 11259: provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.

F. VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 (“VAWA”)

The Violence Against Women Reauthorization Act of 2013 (“VAWA”) provides housing protections for survivors of domestic and dating violence, sexual assault, and stalking when it comes to finding and keeping a home they can feel safe in.

VAWA applies for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistently with all nondiscrimination and fair housing requirements. VAWA expands protections to HUD programs.

During the performance of this Agreement, Owner shall assure that all requirements of the VAWA are complied with including but not limited to:

1. Domestic Violence survivors are not denied assistance as an applicant, or evicted or have assistance terminated as a tenant, because the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, and stalking.
2. Owner will implement an ‘emergency transfer plan’, which allows for domestic violence survivors to move to another safe and available unit if they fear for their life and safety.
3. Owner will provide “Protections against denials, terminations, and evictions that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”
4. Owner will implement a ‘Low-barrier certification process’ where a domestic violence survivor need only to self-certify in order to document the domestic violence, dating violence, sexual assault, or stalking, ensuring third party documentation does not cause a barrier in a survivor expressing their rights and receiving the protections needed to keep themselves safe.

G. AFFIRMATIVE MARKETING

Affirmative Marketing involves special outreach and advertising efforts designed to communicate the availability of CDBG-DR MHP assisted housing to those groups or individuals who might otherwise be unlikely to apply. Affirmative marketing efforts must be commenced by the Owner at least 90 days prior to initial or renewed occupancy for new construction and Substantial Rehabilitation Projects, respectively. The Affirmative Marketing Plan shall be prepared using the Affirmative Fair Housing Marketing Plan Form HUD-935-2A. The plan shall be updated and submitted to County every five (5) years during the term of this Agreement.

Owner shall rent CDBG-DR MHP-Assisted Units in the Project to eligible Households in accordance with the management plan prepared by the Owner and approved by and on file with the County (the “Management Plan”) pursuant to paragraph 13 of this Agreement. The Management Plan shall:

- Detail methods to inform the public, potential tenants, and developers about fair housing laws and the Owner’s own affirmative marketing policy;
- Detail actions to be taken by Owner 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;
- Detail practices that the Owner must adhere to in order to carry out the affirmative marketing procedures and requirements (e.g. use the equal opportunity logotype and/or slogan);
- Specify reasonable criteria for determination of tenant eligibility, including Household size;
- Require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the County;
- Require eligible applicants to be notified of eligibility;
- Require ineligible applicants to be notified of the reason for their ineligibility;
- Specify procedures through which applicants deemed to be ineligible may appeal this determination;
- Require maintenance of a waiting list of eligible applicants;

- Specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations; and
- Be made available to prospective tenants upon request;
- Describe the records that document actions taken to affirmatively market CDBG-DR MHP-Assisted Units; and
- Describe how the success of affirmative marketing actions will be annually assessed and what corrective actions will be taken where affirmative marketing requirements are not met.

Typically, an affirmative marketing process will communicate to the general public that the CDBG-DR MHP funded housing programs are administered in a nondiscriminatory manner. Examples of affirmative marketing efforts include the following:

- Communicating the equal housing opportunity message, or the equal housing opportunity logotype and/or slogan, in outreach to the general community. This can be inserted into all written outreach tools, such as press releases, newsletters, brochures, advertisements, direct mail solicitations, requests for proposals, and related advertising.
- Identifying, for each funded development, populations that are least likely to apply without special outreach, and tailoring affirmative marketing requirements accordingly.
- Utilizing HUD Form 935.2, Affirmative Fair Housing Marketing Plan. While not required, this form is a useful tool for organizing and documenting the affirmative marketing plan for Owners.

The following are examples of affirmative marketing procedures the County is requiring a CDBG-DR MHP funded project Owner undertake and place in their Affirmative Marketing Plan:

- Specify that all marketing of CDBG-DR MHP-Assisted housing be jurisdiction-wide and that all advertising be placed in sources of wide circulation. Identify locations.
- Specify the media sources Owner must use in order to advertise to a particular audience [such as a newspaper that serves protected class(es)].
- Require that all advertisements, brochures, and other written materials be published in multiple languages, in order to reach non-English-speaking audiences.
- Require that all advertising include either the HUD-approved Equal Housing Opportunity logo or slogan or statement and all advertising depicting persons shall depict persons of majority and minority groups, including both sexes.
- Provide and require the use of specific mailing lists of organizations whose membership or clientele consists primarily of protected class members.
- These special outreach efforts should be targeted to those who are least likely to apply for CDBG-DR MHP funds, to ensure that all persons-regardless of their race, color, national origin, age, religion, sex, disability or familial status-are aware of the affordable housing opportunities generated by CDBG-DR MHP activities.

For more information search “Affirmative Marketing Plan” on HUD’s website.

Owner must keep on file copies of all advertisements that are placed in the newspapers and a list of inquiries about the program and information in response to inquiries. By executing this Agreement, the Owner acknowledges and agrees that the Owner:

- Has an affirmative marketing plan that meets all HUD requirements.
- Has submitted a copy of its affirmative marketing plan to the County.
- Has had the affirmative marketing plan reviewed and approved for use on Project by State HCD CDBG-DR MHP staff.

- Recognizes that this requirement will be monitored. Documentation demonstrating compliance will be required.

H. ACCESSIBILITY:

The CDBG-DR MHP regulations also require adherence to the three following regulations governing the accessibility of Federally-assisted buildings, facilities and programs. The Owner shall ensure the Project meets these requirements.

1. Americans with Disabilities Act (42 U.S.C. §§ 4151 and 12131; 47 U.S.C. §§ 155, 201, 218, and 225): Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
2. Fair Housing Act: Multi-family dwellings must also meet the design and construction requirements at 24 CFR § 100.205, which implement the Fair Housing Act's accessibility requirements (42 U.S.C. §§ 3601 - 3619).
3. Architectural Barriers Act of 1968: The Architectural Barriers Act (ABA) ensures access to the built environment for people with disabilities and requires that buildings or facilities that were designed, built, or altered with federal dollars or leased by federal agencies after August 12, 1968 be accessible.
4. Section 504 of the Rehabilitation Act of 1973: Prohibits discrimination in federally assisted programs on the basis of disability. This Section provides that no otherwise qualified individual shall, solely by reason of his or her Disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.

Federally assisted housing must meet the accessibility requirements at 24 CFR part 8. "Covered multifamily dwellings," as defined at 24 CFR § 100.201, must also meet the design and construction requirements at 24 CFR § 100.205, which implement the Fair Housing Act's accessibility requirements (42 U.S.C. §§ 3601 - 3619). The specific program accessibility requirements under Section 504 and its implementing regulations at 24 CFR part 8 are summarized as follows:

- a. For **new construction** of multifamily rental projects, a minimum of 5 percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional 2 percent of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory

impairments (i.e., hearing or vision impairments), and cannot be the same units. Calculations must round-up to the nearest whole number.

5% or 3 unit(s) will be accessible to individuals with mobility impairments, and 2% or 1 unit(s) will be accessible to individuals with sensory impairments.

- b. **Substantial alterations** - Section 504 requires that if alterations are undertaken to a housing project that has 15 or more units, and the rehabilitation costs will be 75 percent or more of the replacement cost of the completed facility, then such developments are considered to have undergone "substantial alterations" (24 CFR § 8.23 (a)). For substantial alterations of multifamily rental housing, the accessibility requirements contained in 24 CFR § 8.22 must be followed -- a minimum of five percent (5%) of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (2%), at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.
- c. **Other alterations** -- When other alterations that do not meet the regulatory definition of substantial alterations are undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, then the entire dwelling unit shall be made accessible. Once five percent (5%) of the dwelling units (but not less than one unit) are accessible to people with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible unless HUD prescribes a higher number pursuant to 24 CFR § 8.23(b)(2). For this category of rehabilitation, the additional two percent (2%) of the dwelling units requirement for individuals with sensory impairments does not apply. Alterations to common spaces must, to the maximum extent feasible, make those areas accessible to and usable by individuals with disabilities. A recipient is not required to make a dwelling unit, common area, facility or element accessible, if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project (24 CFR § 8.23(b)(1)). Therefore, recipients are required to provide access in covered alterations up to the point of being infeasible or an undue financial and administrative burden.
- d. Accessible units must be, to the maximum extent feasible and subject to reasonable health and safety requirements, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so that a qualified individuals' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. (24 CFR § 8.26.)
- e. Owner of the Project with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals. (24 CFR § 8.27.) They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- f. When an accessible unit becomes vacant, before offering the unit to households not in need of an accessible unit, the Owner should offer the unit: first, to a current occupant of the project, or comparable projects under common control, requiring the accessibility

feature of the vacant unit and occupying a unit not having such features; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features. (24 CFR § 8.27.)

- g. Design, construction, or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with program accessibility requirements pursuant to 24 CFR § 8.32, although deviations are permitted in specific circumstances.
- h. Individuals with disabilities must be able to find out about, apply for and participate in Federally-assisted programs or activities.
- i. Special communication systems may be needed for outreach and ongoing communication (e.g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings).
- j. Policies and procedures must be non-discriminatory (e.g., housing providers may not ask people with real or perceived accessibility needs questions not asked of all applicants, screen individuals differently or assess an individual's ability to live independently).
- k. Employers must not discriminate.
- l. Employers must remove physical and administrative barriers to employment.
- m. Employers must make reasonable accommodations for individuals with known disabilities (e.g., job restructuring, providing readers or sign interpreters, making facilities accessible).
- n. If recipients or subrecipients have 15 or more employees, they must designate a Section 504 Coordinator and notify program participants and employees of non-discrimination policies.
- o. All recipients and subrecipients must conduct self-evaluations of compliance with Section 504.
- p. For any recipient or subrecipient principally involved in housing or social services, all of the activities of the agency -- not just those directly receiving Federal assistance -- are covered under Section 504.
- q. Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a recipient or subrecipient.
- r. The ultimate beneficiary of the Federal assistance is not subject to Section 504 requirements.
- s. Under Section 504, recipients and subrecipients are not required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

I. EMPLOYMENT AND CONTRACTING

The Owner must comply with the following regulations that apply to equal opportunity employment and contracting.

1. Equal Employment Opportunity Act: empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
2. Equal Employment Opportunity, Executive Order 11246, as amended: Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Requires affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Implementing regulations may be found at 41 CFR part 60. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, as amended.
3. Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.
4. The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
5. Drug Free Workplace Act of 1988: Owner and its contractors/subcontractors shall:
 - a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
 - b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
 - c. Notify employees that as a condition of employment on a federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the

employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.

- d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
 - e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
 - f. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.
6. Section 3 of the Housing and Urban Development Act of 1968 (Section 3) (12 U.S.C. § 1701u and 24 CFR part 75): Requires that, to the greatest extent feasible, opportunities for training and employment arising from CDBG-DR MHP-Assisted projects will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with CDBG-DR MHP will be awarded to business concerns that provide economic opportunities for low- and very-low income persons residing in the program service area. Owner shall maintain and submit records of its efforts related to Section 3 to the County.
- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The regulations are found at 24 CFR Part 75.
 - b. SUBRECIPIENT agrees to comply with HUD's regulations in 24 CFR part 75, which implement section 3. SUBRECIPIENT agrees to comply with the requirements set forth in 24 CFR Sections 75.9 and 75.19, as applicable. As evidenced by their execution of this contract, SUBRECIPIENT certifies that it is under no contractual or other impediment that would prevent it from complying with the part 75 regulations.
 - c. SUBRECIPIENT agrees, and will cause its contractors and subcontractors to agree, accept and implement part 75 regulatory requirements under this section 3 clause, and will conduct its business practices in a manner that provides records and reports consistent with HUD section 3 reporting and compliance under covered contracts. This may include, but is not limited to: 1) certifications, records and documentation confirming contractor and business qualification as a Section 3 Business Concern, if applicable; 2) certifications, records and documentation confirming workers' qualification and status as a Section 3 and/or Targeted Section 3 Worker; if applicable; c) certified payroll records, reports and documentation reflecting time and hours for all labor performed on section 3 covered contracts,

including hours for certified Section 3 and Targeted Section 3 workers, if and as applicable; and d) any such additional records, documents and reports that COUNTY may request to confirm compliance with part 75 requirements.

d. The SUBRECIPIENT agrees, and will cause its contractors and subcontractors, to include this section 3 clause in every contract or subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the contract or subcontract or in this section 3 clause, upon a finding that the contractor or subcontractor is in violation of the regulations in 24 CFR part 75. The SUBRECIPIENT will not contract with or permit its contractors to subcontract with any contractor or subcontractor where the SUBRECIPIENT has notice or knowledge that the contractor or subcontractor has been found in violation of the regulations in 24 CFR part 75.

e. In the event that COUNTY or HUD determines that it is necessary to deploy qualitative efforts in accordance with 24 CFR Sections 75.15(b) and/or 75.25(b), SUBRECIPIENT agrees to work in good faith with COUNTY in order to implement such qualitative efforts. Such efforts may include the qualitative efforts outlined in COUNTY's Section 3 Plan, Policies and Procedures, as it may be revised or amended from time to time. COUNTY's Section 3 Plan, Policies and Procedures are available upon request at HCD offices and provided electronically.

f. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. Minority/Women's Business Enterprise (MBE/WBE) Outreach: Under Executive Orders 11625, 12432 and 12138, as amended, the County must prescribe procedures acceptable to HUD for a minority outreach program to ensure inclusion, to the maximum extent possible, of minority businesses and women's businesses enterprises. The Owner will implement the provisions of the County's Minority and Women's Businesses Outreach Statement including the following:

- a. The Owner will recruit, employ and treat applicants and employees without regard to race, age, color, sex, religion, ancestry, national origin, marital status, or physical handicap, including, but not limited to the areas of compensation and opportunities for advancement, including upgrading and promotion.
- b. The Owner will actively use recruitment sources such as employment agencies, the Small Business Association (SBA), and the Minority Business Development Agency of the Department of Commerce, unions, and schools that have a policy of referring applicants on a nondiscriminatory basis.
- c. The Owner will place qualified small, minority-owned and women-owned business enterprises on solicitation lists.
- d. The Owner will ensure that small and minority businesses, and women owned business enterprises are solicited whenever they are potential sources.

- e. The Owner will disseminate its affirmative action policy externally by informing and discussing it with all recruitment sources, by advertising in news media, specifically including minority news media, and by notifying and discussing the policy with minority groups, handicapped and women's organizations and subcontractors, as appropriate. In addition, Owner shall maintain and submit records of its efforts to the County upon request. The policy will also be posted in all places available and accessible to employees and applicants for employment.
 - f. The Owner will maintain a file of the names and addresses of each minority, disabled, and female applicant referred to the company for hiring and if the applicant is not considered for employment or was not employed the company's file shall fully document the reasons.
 - g. The Owner will ensure that all employee specifications, selection requirements, tests, and other employee recruitment or evaluation procedures do not discriminate against any applicant or employee on the basis of race, age, color, sex, religion, ancestry, national origin, marital status or physical disability.
 - h. The Owner will make sure that seniority practices, job classifications, rates of pay, and other forms of compensation, and other employee practices and classifications do not have an unlawfully discriminatory effect on any applicant or employee on the basis of race, age, color, sex, religion, ancestry, national origin, marital status or physical disability. The Owner will retain on file evidence of such efforts described above.
 - i. Owner will divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
 - j. Owner will establish delivery schedules, where the requirement permits, which encourage participation by small and minority owned businesses, and women owned businesses.
 - k. Owner will require hiring contractor(s), if there are subcontractors, to take the affirmative steps listed above.
8. The Immigration Reform and Control Act (IRCA) of 1986: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).

J. LABOR REQUIREMENTS

The Owner must comply with all applicable laws and regulations governing wage and labor standards.

1. Davis-Bacon and HUD Related Acts (40 U.S.C. §§ 276a; 42 U.S.C. 12836): Ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. The Act also provides for the withholding of funds to ensure compliance, and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
2. Contract Work Hours and Safety Standards Act (CWHSSA), as amended (40 U.S.C. §§ 327 - 333): Provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions. CWHSSA overtime provisions do not apply to prime contracts of \$100,000 or less.

The Copeland (Anti-Kickback) Act and Fair Labor Standards Act of 1938 apply to all CDBG-DR MHP - funded projects.

1. Copeland (Anti-Kickback) Act (40 U.S.C. § 276c): Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors and subcontractors to submit weekly payroll reports and statements of compliance.
2. Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.): Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.

K. STATE PREVAILING WAGES

CDBG-DR MHP-Assisted projects shall comply with the requirements of California Labor Code, Chapter 1, commencing with Section 1720, Part 7 [Section 1720-1743] pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations.

For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "Construction Contract"). Where the County will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the "awarding body" as the term is defined in the Labor Code. Prior to any disbursement of funds, including but not limited to release of any final retention payment, the County may require a certification from the awarding body that prevailing wages have been or will be paid.

The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in LC Section 1770-1784 or the Davis-Bacon Wage Determination.

L. CONTRACTING AND PROCUREMENT

The CDBG program is subject to certain Federal procurement rules. Owners must take measures to ensure compliance; however, Owners are not subrecipients under the CDBG-DR MHP and are not subject to federal procurement requirements.

M. PERFORMANCE, PAYMENT AND FIDELITY BONDS

As a part of the execution of the Agreement, Owner shall furnish corporate surety bonds to the benefit of County of a surety company acceptable to County and authorized to do business in the State of California, as follows:

1. Faithful Performance Bond - in a sum not less than one hundred percent (100%) of the total contract price as set forth in the Agreement, to guarantee the faithful performance of all covenants and stipulations of the Agreement. The bond shall contain a provision that the surety thereon waives the provision of Section 2819 of the Civil Code of the State of California.
2. Payment Bond - in a sum not less than one hundred percent (100%) of the total contract price as set forth in the Agreement to guarantee the payment of wages and of bills contracted for materials, supplies, or equipment used in the performance of the Agreement. The bond shall be in accordance with the provisions of Sections 3225 to 3228, inclusive, and Sections 3247 to 3252, inclusive, of the Civil Code of the State of California, and any acts amendatory thereof, and shall, by its terms, inure to the benefit of all persons, companies or corporations entitled to file claims under Section 3181 of the Civil Code of the State of California. Said bond shall also contain a provision that the surety thereon waives the provisions of Section 2819 of the Civil Code of the State of California. Section 18806 of the State of California Revenue and Taxation Code shall also be applicable.
3. Fidelity Bond - Any officers, employees and agents of the Owner handling or having access to funds or authorization to sign or countersign checks shall be covered by a blanket fidelity bond in the amount of the CDBG-DR MHP Loan and issued by a corporate surety authorized to do business in the State of California. Said bond shall not be cancelled or modified except upon thirty (30) days written notice to County.

N. CONFLICT OF INTEREST

By entering into this Agreement, the Owner certifies compliance with 2 CFR Part 200.450. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 of Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Owner certifies and agrees to include the following provisions in contracts related to this Project:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and

the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Owner shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and other Federal disclosure forms as requested.
3. The Hatch Act relates to the conduct of certain political activities of federal employees as well as some state and local government employees who work in connection with federally funded programs: The Owner agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title 5 of the United States Code (§§ 1501-1508).
4. Conflict-of-interest: Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the County or of Owner, or their respective designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG-DR MHP activities assisted with Program Funds, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, including members and delegates to the Congress of the United States, may obtain a financial interest or benefit from a CDBG-DR MHP assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-DR MHP assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for 1 year thereafter. The Subrecipient and Owner shall incorporate, or cause to be incorporated, in all such contracts and subcontracts a provision prohibiting such interest pursuant to 24 CFR 570.489(h).

- **Financial Interest or Benefit**

The conflict of interest provision of 24 CFR § 92.356(b) specifies that the type of covered conflict is a *financial* benefit or interest. It further specifies that covered familial relationships are limited to *immediate family ties* as specifically defined. These changes align the HOME conflict of interest provisions with the CDBG DR MHP P & P and regulations. This change narrows the interpretation of the previous regulatory language. For instance, it is common for State and local governments to designate elected or appointed officials to serve on the boards of nonprofit organizations that may provide affordable housing within their communities. Under the pre-2013 Rule, an official might have a personal interest in this appointment, and if interpreted broadly the previous regulations might have prohibited this type of arrangement. The change in the Rule clarifies that in such situations, if the public official does not receive a salary or any other financial compensation for serving on the board, the official's interest would be a personal one only. This kind of public participation often is beneficial and should not be discouraged.

- **Occupancy of CDBG-DR MHP-Assisted Units**

The conflict of interest provisions at § 92.356(f)(1) prohibit certain persons from occupying a CDBG-DR MHP-Assisted Unit. This provision clarifies that *immediate* members of an officer, employee, agent, elected or appointed official or consultant of an Owner, Sponsor, or sponsor are prohibited from occupying a CDBG-DR MHP-Assisted Unit. In addition, the restriction on occupancy applies during the period of affordability only, and not to the entire period of ownership by the entity that received the CDBG-DR MHP assistance.

5. Debarred Contractors: CDBG-DR MHP funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status. Owner shall check all contractors, subcontractors, lower-tier contractors and subrecipients against the Federal publication that lists debarred, suspended and ineligible contractors and place evidence of such research on file (see Section IV(B)(1), above).

O. RELOCATION

The Project requires relocation of existing tenants; therefore, the Owner shall comply with all relocation requirements:

1. CDBG-DR MHP projects involving rehabilitation, conversion or demolition may be subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and regulations, as amended by the Uniform Relocation Act Amendments of 1997 (42 U.S.C. § 4601 et seq.) (URA), and implementing regulations at 49 CFR part 24, and the requirements of 24 CFR 92.353 and 24 CFR part 570.606(b).
2. The requirements of 24 Code of Federal Regulations 570.606(c) governing the Residential Anti-Displacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), as amended.
3. The requirements in 24 Code of Federal Regulations part 570.606(d) governing optional relocation policies. The County may preempt the optional policies. The Owner shall provide relocation assistance to displaced persons as defined by 24 Code of Federal Regulations part 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a HUD-assisted project. The Owner also agrees to comply with applicable County ordinances, resolutions and policies concerning the displacement of persons from their residences.
4. HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition.
5. Consistent with the other goals and objectives of this part, the Owner shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as a result of activities assisted under this part.
6. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with, the requirements of 49 Code of Federal Regulations part 24, which contains the government-wide regulations implementing the URA.

7. The State's Anti-displacement and Relocation Assistance Plan is located in Appendix D of the CDBG-DR MHP P&P and must be followed. Owner must develop an Anti-displacement and Relocation Assistance Plan for the Project, which must be approved by State HCD.

P. ENERGY STANDARDS

In compliance with Sections 12709 and 12745 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§ 12701 et seq.), the project will incorporate the requirements of the 2009 edition of the International Energy Conservation Code (IECC) to all new construction CDBG-DR MHP-units.

Additionally, all County CDBG-DR MHP-Assisted units will meet Energy Star standards.

Q. PROHIBITION AGAINST EMINENT DOMAIN

No funds allocated under this Agreement may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use as defined in 83 FRN 40314.

XV. REPORTING PROVISIONS

The Owner agrees to submit all reports required by the County, in the form, content, and frequency required by the County, in order for the County to meet all CDBG-DR MHP funded Project reporting requirements as set forth by HCD.

1. During the acquisition process, the Owner shall provide copies of all final, executed and recorded documents as it applies to the escrow and funding processes including, but not limited to: Bank Commitment Letters, Deeds of Trust, Promissory Notes, Subordination Agreements, Intercreditor Agreements, Settlement Statement, Certification of Limited Partnerships, Escrow Instructions, Acceptance of Conveyances, and the Final Closing Statement.
2. The Owner shall provide the Architect's Certification of the Project and a copy of the Notice to Proceed.
3. During construction, the Owner shall provide status reports to the County accompanied with updated construction schedules and updated photographs that illustrate key site development progress.
4. During construction projects subject to prevailing wages, Owner shall submit semi-annual labor standards reports (April 1st and October 1st) in a format prescribed by HCD.
5. During construction, the Owner shall provide a copy of all inspection reports/cards that take place throughout the entire development process.
6. During construction, the Owner shall provide reports on Section 3 of the Housing and Urban Development (HUD) Act of 1968 and MBE/WBE requirements.
7. Throughout the acquisition and/or construction phase, the Owner shall provide updated Sources and Uses and Proforma. At Project completion, the Owner shall provide the most up-to-date project financial information on forms provided by the County and a copy of the final cost audit for the project.
8. The Owner shall provide copies of the Architect's Completion Certificate, Notice of Completion and the Certificate of Occupancy.
9. The Owner shall keep auditable records demonstrating that affordability requirements have

been met, and the Owner shall provide an annual certification report to the County, supported by documentation indicating the record of occupancy of all CDBG-DR MHP-Assisted units by eligible residents during the previous annual reporting period, including documentation identifying the specific floating units that were maintained affordable, the amount of rent paid per unit, and the residents' names and incomes.

10. The County, or any of their authorized representatives, shall have the right to visit the Project site at all reasonable times, and upon completion of the Project, upon reasonable written notice to the Owner, to review the operation of the Project in accordance with the terms of this Agreement.
11. The Owner shall ensure recognition of the roles of the County, HCD and HUD in providing services through this Agreement on all signage, advertisements and marketing material. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source in a typeface and size commensurate with other acknowledgements on the signage. In addition, the Owner will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
12. At Project completion, the Owner shall provide the County with the address of each Project unit, and shall specifically identify the addresses of all CDBG-DR MHP-Assisted Units.
13. After construction is complete, the Project must, at a minimum, meet all applicable building codes, zoning ordinances, and cost-effective energy conservation standards.
14. The County reserves the right to change reporting requirements as needed pursuant to Section XXI – “Amendments/Modification.”

XV. ANTI-LOBBYING CERTIFICATION

The Owner shall comply with, and ensure the inclusion of, the following anti-lobbying certification language in all contracts and subcontracts entered into in connection with the Project:

- No federal appropriated funds have been paid or will be paid, by or on behalf of [Owner/Contractor/Subcontractor], to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, [Owner/Contractor/Subcontractor] shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The foregoing certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification

shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

XVII. RECORD RETENTION AND MONITORING

HCD, the County, designated representatives of the County, and other appropriate officials shall have access, for monitoring purposes, to all personnel records, management information, individual tenant income verifications, project rents, and fiscal data of the Owner, and all agencies and Contractors with whom the Owner executes a contract or subcontract in connection with the Project. The Owner shall respond in a timely manner to all identified corrective action required by HUD, HCD, or County, as a result of such monitoring. The Owner shall submit to County all required reports and monitoring corrective action plans on a timely basis, as delineated by the County. Records shall be maintained by the Owner as follows:

1. The Owner agrees to retain all records specified in this Agreement, including Project records and federal requirement records, based on project type, as outlined below.
2. The Owner agrees to retain all pertinent records, including financial records, as required by HUD for five (5) years past the date on which the Affordability Period expires. Such records shall be open and available for inspection by auditors and/or other staff assigned by HUD and/or the County during the normal business hours of the Owner. If there is ongoing litigation or an audit involving the Owner's or the County's records, the Owner shall retain Owner's records until the resolution of such litigation or audit and written notice by the County that such records may be disposed of.
3. The Owner shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the County, HUD, or any of their authorized representatives, for review upon request. For the avoidance of doubt, "clients" include Project tenants for purposes of this Section XVII.
4. The Owner understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the County's or the Owner's responsibilities with respect to services provided under this Agreement, is prohibited by the Health and Safety Code section 34332, subdivision (c), Article 1, section 1, and Article 1, section 3, subpart (b)(3), of the California Constitution, and Government Code section 6254, subdivision (k) unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
5. Rental Projects:
 - a. General records must be kept for five years after Project completion; and
 - b. Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the CDBG-DR MHP and Extended Affordability Periods end.

6. Written Agreements:

- a. Each written agreement in connection with the Development must be maintained for five years after the term of such agreement ends. HCD and County agreements pertaining to the Development, including, but not limited to, this Agreement, Promissory Note, Deed of Trust, and the Senior and Regulatory Agreement or Junior Regulatory Agreement, must be retained for the duration of the respective terms of such agreements.
- b. Displacement and acquisition records must be kept for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Development have received final payment in accordance with §92.353.

7. Monitoring:

- a. The County has the responsibility to monitor and enforce all applicable CDBG-DR MHP requirements and ensure the Owner meets all performance goals and performance standards. Project oversight and monitoring will be conducted throughout the development process and throughout the CDBG-DR MHP Affordability Period, and Owner and Developer shall cooperate with the County's monitoring and enforcement efforts, and shall comply with County's requests in connection with such Project oversight and monitoring throughout the CDBG-DR MHP Senior Regulatory Agreement term.
- b. The County will conduct Project monitoring during the CDBG-DR MHP Affordability Period in accordance with the monitoring requirements in the CDBG-DR MHP P&P. During the Affordability Period, the County will determine an inspection schedule in accordance with the requirements of the HOME program at 24 CFR 92.504 (d). County will request, and Owner shall provide annually a copy of the then-current rent roster, property financial reports, and report on floating units, including information on unit substitution and filling vacancies, to ensure the required unit mix is maintained.
- c. Onsite file and Project inspections will occur every three years or more frequently if there are health and safety violations or concerns.

XVIII. INSURANCE

With respect to performance under this Agreement, and prior to final Agreement processing and approval, the Owner, at its sole cost and expense, agrees to obtain and maintain in full force and effect throughout the period of this Agreement, the following minimum insurance coverages:

A. Commercially Purchased Insurance:

1. General Liability "occurrence" coverage in the minimum amount of \$2,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$4,000,000 aggregate, including personal injury, broad form property damage, products / completed operations, broad form blanket contractual and \$100,000 fire legal liability.
2. Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily

injury & property damage, including owned, non-owned and hired automobiles. Also include Uninsured / Underinsured Motorists coverage in the minimum amount of \$100,000 when there are owned vehicles.

The Owner must have on file evidence of auto insurance coverage in the minimum amount of \$100,000 CSL bodily injury & property damage for all employees and volunteers associated with the Project.

3. Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of the Developer and Employer's Liability in the minimum amount of \$1,000,000.
4. Errors & Omissions coverage in the minimum amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.
5. Owner shall name the County as additionally insured for each of the foregoing insurance coverages on a separate endorsement page.
6. The Owner and Developer shall provide to County a fidelity bond of no less than \$150,000 which meets the following requirements: The Owner and Developer shall provide and maintain a blanket fidelity bond which shall apply to the performance of any director, officer, or agent of the Owner and Developer who signs or authorizes signatures on checks or drafts, or in any manner authorizes the disbursement of Project funds. Prior to the payment of program funds by County, the Owner shall furnish County a certificate of insurance from an insurer admitted to do business in the State of California verifying that the Owner carries such a bond. Said insurance certificate shall certify that: 1) the County is named as an additional insured, with a provision in the bond requiring direct payments to County; and 2) that said bond shall not be canceled or terminated without thirty (30) days' prior written notice to the County. The Owner hereby assigns to County any right it has to claim indemnification under such bond.

B. Self-Insured:

Insurance requirements dictate that an appropriate self-insured indemnity provision be provided to the County, clearly stating that the County will be provided protection. All insurance required shall be primary coverage as respects County and any insurance or self-insurance maintained by County shall be excess of the Owner insurance coverage and shall not contribute to it.

County is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.

The County, its Boards, Agencies, Departments, Officers, Employees, Agents and Volunteers are to be named as Additional Insured as respects work done by the Owner under the terms of this Agreement on all policies required (except Workers' Compensation).

Policies shall not be cancelled, non-renewed or reduced in scope of coverage until after thirty (30) days written notice has been given to the County's Risk Management Division.

C. The Owner agrees to provide County with the following insurance documents on or before the Effective Date of this Agreement:

1. Certificates of Insurance for all required coverage.
2. Separate Additionally Insured Endorsement.

Per the CDBG-DR MHP P&P, Owner will be required to demonstrate the following:

- Maintenance of unemployment insurance, disability insurance and liability insurance which is reasonable to compensate any person, firm or corporation who may be injured or damaged during the performance of project activities.

XIX. REQUESTS FOR TECHNICAL ASSISTANCE

The Owner shall refer to County any regulatory or procedural questions regarding operation of its CDBG-DR MHP project(s). All formal requests for technical assistance shall be submitted in writing. Requests should specify the problem area, particular assistance being requested and proposed solution, if applicable. Informal questions regarding day-to-day program operation may be directed to the assigned CDBG-DR MHP Housing and Grants Program Manager.

XX. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

To Developer:

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.com
Attn: General Counsel

With a copy to:

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

XXI. AMENDMENTS/MODIFICATIONS

The County and the Owner may amend this Agreement at any time provided that such amendments are in writing, approved by the County and the Owner, make specific reference to this Agreement, and are signed by a duly authorized representative of each party hereto. No such amendments shall invalidate this Agreement, or relieve or release any party hereto from its obligations under this Agreement, except to the extent specifically provided in such amendment.

The County may, in its discretion, unilaterally amend this Agreement to conform with then-current Federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons; provided, however, that if such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the County and the Owner.

This Agreement is subject to unilateral written modification and termination as necessary by the County in accordance with requirements contained in any future Federal or State legislation, regulations, or County policy.

County agrees to consider reasonable modifications to this Agreement as may be requested by other lenders or investors for the Project.

XXII. OWNER'S WARRANTIES

The Owner represents and warrants to the County that it is duly organized, qualified, licensed, validly existing and in good standing under the laws of the State of California, that it has the full power and authority to undertake the Project in accordance with the terms and conditions of this Agreement, and to execute this Agreement, and that the persons executing and delivering this Agreement are authorized to execute and deliver this Agreement on behalf of the Owner.

The Owner represents and warrants that neither the Owner nor any of its limited partners, general partners, or affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or otherwise excluded from participation in this Agreement or in connection with the transaction contemplated by this Agreement. The Owner represents and warrants that none of the persons, contractors, consultants, businesses, and subrecipients with whom the Owner conducts business are debarred, suspended, declared ineligible, or voluntarily or otherwise excluded from providing goods or services or otherwise contracting in connection with the Project. The Owner agrees to search the Excluded Parties Listing System at www.sam.gov for each of the persons, contractors, consultants, businesses, and subrecipients with whom the Owner conducts business in connection with or relating to the Project, and to print and maintain evidence of the results of each such search.

XXIII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless continue in full force and effect.

XXIV. TERMINATION/SUSPENSION

A. Termination of Agreement:

It is mutually understood by County and Owner that this Agreement has been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available to HCD by the United States Government for the purpose of this Project. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any such reduction in funds.

HCD has the option to invalidate this Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

B. Termination of Agreement for Cause:

The parties hereto understand that, pursuant to the County's execution of the HCD application, County assumed responsibility as to the performance of the Project. If through any cause the Owner shall fail to fulfill in a timely and proper manner its obligations under this Agreement in connection with or relating to the Development, or if the Owner shall violate any of the covenants, agreements, or stipulations of this Agreement, County shall thereupon have the right to terminate this Agreement and specify the effective date of such termination at least thirty (30) days before the effective date of such termination. Notwithstanding the above, the Owner shall not be relieved of liability to County for damages sustained by County by virtue of any payments to the Owner for the purpose of set-off until such time as the exact amount of damages due County from the Owner is determined and the County is duly compensated for such damages. The Owner hereby expressly waives any and all claims for damages for compensation arising under this Agreement except as set forth in this section in the event of such termination. Notwithstanding any other provisions of this Agreement, the Owner, by entering into this Agreement, does not waive or impair to any degree whatever immunity from suit or damages to which it may legally be entitled.

C. Time to Cure.

If a breach, violation, or default occurs as described above, the County shall give Owner and its limited partner (if applicable) written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Owner and its limited partner shall have such period to effect a cure prior to exercise of remedies, including termination of this Agreement by the County. If the default is such that it is not reasonably capable of being cured within such 30-day period, and if Owner or its limited partner (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 Owner or its limited partner shall have such additional time, not to exceed an additional 180 days, to cure the default prior to exercise of remedies, including termination of this Agreement by the County. If Owner or its successor in interest is a limited partnership, if Owner fails to take corrective action or to cure the default within such a specified time, the County shall give Owner or its limited partner 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.

XXV. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XXVI. WAIVER

No waiver of any covenant, condition, or provision of this Agreement shall be deemed to have been made by or on behalf of the County unless expressly in writing and signed by the County. The failure or delay of the County to exercise or enforce any right or provision herein shall not constitute a waiver of such right or provision. The delay or failure of the County to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Agreement, or to exercise any option hereunder, shall not be construed as a waiver or relinquishment with respect to any such provisions, covenants, conditions, or options. The acceptance by County performance with knowledge of breach or failure of a covenant, condition, or provision hereof shall not be deemed to constitute a waiver of any such breach or failure. No waiver by County of a breach by Owner shall be construed as a waiver with respect to any other or subsequent breach(es).

XXVII. HOLD HARMLESS/INDEMNIFICATION

All activities and/or work covered by this Agreement shall be at the risk of the Owner alone. The Owner agrees to defend, indemnify and save harmless the County of Santa Barbara, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all third party claims, lawsuits (whether against the Owner, County or others), judgments, debts, demands and liability, including those arising from injuries or death of persons and for damages to property, arising directly or indirectly out of the obligations herein described or undertaken, or out of the obligations conducted or subsidized in whole or in part by the Owner, save and except claims or litigation arising through the sole gross negligence, wrongdoing, or sole willful misconduct of County.

XXVIII. COUNTERPARTS; MULTIPLE ORIGINALS.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

XXIX. COUNTY AND OWNER AUTHORITY APPROVAL

This Agreement, including all Exhibits hereto, constitutes the entire Agreement between the County and the Owner with respect to the subject matter hereof, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the County and the Owner with respect to the subject matter hereof. The Owner further agrees to comply with other guidelines provided by County, including County CDBG-DR MHP Information Memos which may be issued periodically during the term of this Agreement. The County and the Owner agree to abide by the terms, conditions, assurances and certifications as specified in this Agreement.

EXHIBITS

- Exhibit A – Property Legal Description
- Exhibit B – Promissory Note
- Exhibit C – Deed of Trust
- Exhibit D – Senior Regulatory Agreement
- Exhibit E – Regulatory Agreement
- Exhibit F – Environmental Assessment Mitigation Plan
- Exhibit G – Project Proforma/Sources and Uses Statement
- Exhibit H – ESPR Form

Exhibit I – Rider to Development Agreement
Exhibit J – Master Standard Agreement, as amended

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IN WITNESS WHEREOF, County and Owner have caused this Agreement to be executed by their respective duly authorized officers.

ATTEST:

MONA MIYASATO
Clerk of the Board

By: _____
Deputy Clerk of the Board

COUNTY:

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

By: _____
Joan Hartman, Chair
Board of Supervisors

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

By: _____
Deputy

By: _____
George Chapjian, Director
Community Services Dept.

APPROVED AS TO FORM

RACHEL VAN MULLEM
COUNTY COUNSEL

By: _____
Deputy County Counsel _____

RISK MANAGEMENT

By: _____
GREGORY MILLIGAN, ARM, AIC
Risk Manager

OWNER AND 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

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Exhibit “A”
Property Legal Description

Exhibit “B”
Promissory Note

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**Exhibit “C”
Deed of Trust**

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Exhibit “D”
Senior Regulatory Agreement

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Exhibit “E”
Regulatory Agreement

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Exhibit “F”
Environmental Assessment Mitigation Plan

DRAFT

Exhibit “G”
Project Proforma/Sources & Uses Statement

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Exhibit “H”
ESPR form

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Exhibit “I”
Rider to Development Agreement

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Exhibit “J”
Master Standard Agreement and Amendment

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