

FREE RECORDING IN ACCORDANCE WITH  
CALIFORNIA GOVERNMENT CODE  
SECTION 27383 and 27388.1

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

County of Santa Barbara  
Community Services Department  
Division of Housing and Community Dev.  
123 East Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

Attn: Housing Manager

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

SENIOR REGULATORY AGREEMENT  
(Affordability Restrictions)

CONTRACT NUMBER 20-DRMHP-00002 AS AMENDED

This Senior Regulatory Agreement (Affordability Restrictions) (the “**Agreement**”) dated November 1, 2022 for reference purposes only, is made and entered into by and between Escalante Meadows, L.P., a California limited partnership (the “**Developer**”), and County of Santa Barbara, a public body corporate and politic (the “**Subrecipient**”), pursuant to the requirements of the Community Development Block Grant - Disaster Recovery Multifamily Housing Program administered by the Department of Housing and Community Development, a public agency of the State of California (the “**Department**”).

**RECITALS:**

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

- B. Community Development Block Grant Disaster Recovery (CDBG-DR) funding was appropriated under Public Laws 115-254 and 116-20, and awarded by the U.S. Department of Housing and Urban Development (HUD) to the Department via Federal Register Notice 83 FR 4681. The Department serves as the lead agency and responsible entity for administering CDBG-DR funds. CDBG-DR supports the State of California's unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4407 and DR- 4382 in August 2018. HCD performed an unmet needs assessment that covered the areas affected by DR 4407 and DR 4382, and included data from FEMA, Small Business Administration (SBA), California's Department of Forestry and Fire Protection (CAL FIRE), and California Department of Insurance (CDI). The Department developed the DR-MHP Program. DR-MHP projects are funded to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.
- C. As required by the Program, Subrecipient and the Department have entered into that certain Master Standard Agreement, numbered 20-DRMHP-00002, and dated December 4, 2020, as amended on August 30, 2022 which provides the overarching terms and conditions for implementing the Program and the terms of Assistance common to all projects to be completed by the Subrecipient (the "**Master Standard Agreement**").
- D. As required by the Program and the Master Standard Agreement, Department has issued to Subrecipient a Notice to Proceed for the Development, dated October , 2022, which provides the specific terms and conditions for the Development (the "**Notice to Proceed**").
- E. As required by the Program, Developer and the Subrecipient have entered into that certain Development Agreement dated November 1, 2020 governing the terms and conditions of the Development and governing the terms of the Assistance for the Development (the "**Development Agreement**"). As required by the Program, Subrecipient has made a part of the Development Agreement the DR-MHP Rider to Development Agreement (the "**Development Agreement Rider**") to include terms required by the Department for the Development.
- F. In addition to this Agreement and the Master Standard Agreement, Developer has executed or will execute each of the following documents in form approved by the Subrecipient:
1. A promissory note evidencing the Loan specifying, inter alia, the principal amount thereof, the interest accruing thereon, and the terms of repayment thereof (the "**Note**").
  2. A deed of trust, assignment of rents, security agreement, and fixture filing securing the Note and naming the Department as beneficiary and the Developer as trustor and recorded or to be recorded against the Property (the "**Deed of Trust**"). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department; provided, however, this

Agreement shall be senior to and have priority over the Deed of Trust and the Senior Deed of Trust (defined below.)

3. The Department's customary regulatory agreement regulating and restricting the occupancy, rents, operation, ownership and management of the Development and Property in compliance with Program Requirements and recorded or to be recorded against the Property (the "**Regulatory Agreement**" or "**Junior Regulatory Agreement**").
  4. Such other documents and instruments as the Subrecipient and Department may reasonably require, including but not limited to, a Development Agreement.
- G. The Master Standard Agreement, the Notice to Proceed, the Development Agreement, the Development Agreement Rider, Ground Lease Rider (as applicable), the Regulatory or Junior Regulatory Agreement, this Agreement and such other documents and instruments as are reasonably required by the Subrecipient and Department are collectively referred to herein as the "**Program Legal Documents.**"
- H. The senior construction and permanent loan encumbering the Property ("**Senior Loan**") is from Pacific Western Bank, a commercial banking institution (the "**Senior Lender**") in the amount of \$42,260,000 which will be paid down at permanent-conversion to a maximum amount of \$19,300,000. The Senior Loan is evidenced by a promissory note and secured by a deed of trust to be recorded against the Property ("**Senior Deed of Trust**"). The construction term of the loan is for thirty (30) months, with certain extension rights as further described in the Senior Lender's loan agreement with Developer ("**Senior Loan Agreement**"). The Senior Loan will be fully amortized at thirty-five (35) years and due in thirty-five (35) years from the conversion of the construction phase to the permanent phase. Pursuant to applicable authority, the affordability restrictions of the Regulatory or Junior Regulatory Agreement being executed and recorded against the Property must be senior to the Senior Loan, the Senior Deed of Trust, and the Deed of Trust. Accordingly, this Agreement, which repeats and contains such affordability restrictions, and the Regulatory or Junior Regulatory Agreement shall both be executed in connection with the closing of the Loan and recorded in a manner which ensures that this Agreement shall be prior and senior to the Senior Loan, the Senior Deed of Trust, the Deed of Trust, and the Regulatory or Junior Regulatory Agreement.
- I. As further consideration for the Assistance and in furtherance of the purposes of the Program, Developer has agreed to enter into this Agreement and consent to its recordation against the Development. The purpose and intent of this Agreement is to regulate and restrict the occupancy and rents of the Development in compliance with the Program Requirements and put such regulations on title for the term of this Agreement.

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

1. Recitals. The foregoing recitals are true and correct and made a part of this Agreement.
2. Property. Developer is the owner in fee of the Property and all improvements now and hereafter located thereon.

**Commented [BL1]:** The County (Subrecipient) is not a party to the Senior Loan agreement between Pacific Western Bank and the Developer.

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program Policies and Procedures and Master Standard Agreement. The following terms shall have the respective meanings assigned to them in this paragraph unless the context in which they are used clearly requires otherwise:
- a. **Affordable Rents:** means rents that are at or below the “High” HOME Program rents published by HUD for different metropolitan areas.
  - b. **Affordable Units:** means a “dwelling” that is rented at an Affordable Rent to a household that earns less than 80 percent of Area Median Income adjusted for household size as calculated by HUD for different metropolitan areas within the State and published annually by the Department or HUD.
  - c. **Area Median Income (AMI):** means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD for the CDBG program.
  - d. **Commercial Space:** any nonresidential space located in or on the property of the Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income, as applicable, which ensures the fiscal integrity of the Development.
  - e. **Developer Fee:** All Funds paid at any time as compensation for developing the Development, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.
  - f. **Distributions:** the amount of cash or other benefits received from the operation of the Development and available to be distributed to the Developer or any party having a beneficial interest in the Development after payment of all due and outstanding obligations incurred in connection with the Development.
  - g. **Disability:** any disability, including mental or physical disability, that limits a major life activity, including a disability that falls within the definitions in Government Code (G.C.) Sections 11135, 12926, and 12926.1 or within the definition of disability used in the federal Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12102.
  - h. **DR-MHP Assisted Units:** An Affordable Unit that is subject to rent and occupancy restriction as a result of the financial assistance provided by DR-MHP, as specified in this Regulatory Agreement.
  - i. **Elderly Person:** A person at least 62 years of age (24 CFR Part 5.100).

- j. Extremely Low Income (ELI): ELI individuals or families whose income is at or below 30% of the area median income (AMI) or the federal poverty level, whichever is higher for the area of the Development.
- k. Fiscal Year: the Fiscal Year for the Development shall mean the annual period commencing on January 1st and concluding on **December 31<sup>st</sup>** each year.
- l. Household: One or more persons occupying a housing unit.
- m. Initial Operating Year: the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed project and ending on the last day of the Fiscal Year for the Development.
- n. Low- to Moderate-Income (LMI): Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.
- o. Operating Expenses: the amount approved by the Subrecipient that is necessary to pay for the recurring expenses of the Development, such as utilities, maintenance, management, taxes, licenses, and Supportive Services costs, but not including debt service or required reserve account deposits.
- p. Operating Income: all income generated in connection with operation of the Development including rental income for DR-MHP Assisted Units and non-DR-MHP Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Development. "Operating Income" does not include security and equipment deposits, payments to the Developer for Supportive Services not included in the operating budget, cash contributed by the Developer, or tax benefits received by the Developer.
- q. Ordinary Maintenance and Repair: means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a decent, safe, sanitary condition.
- r. Project Closeout Documentation: required documentation to be submitted to the Department by the Subrecipient and includes, but is not limited to: project completion report, final activity report, recorded notice of completion, relocation report (if applicable) and a resolution from the governing body.
- s. Reconstruction: Demolishing and re-building a housing unit on the same lot in substantially the same manner. Reconstruction is rehabilitation for purposes of DR-MHP.
- t. Rehabilitation: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.

- u. Rent: means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of a DR-MHP Assisted Unit, plus a utility allowance established in accordance with HOME Regulations at 24 CFR 92.252(a).
  - v. Restricted Unit: DR-MHP Assisted Units and any units that are subject to Rent and occupancy restrictions that are comparable to those applicable to DR-MHP Assisted Units. Restricted Units include units subject to a TCAC regulatory agreement, and all units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.
  - w. 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.
  - x. Substantial Rehabilitation: Rehabilitation as defined in 24 CFR 5.100.
  - y. Supportive Housing: means housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.
  - z. Supportive Services: social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.
  - aa. TCAC: means the California Tax Credit Allocation Committee.
  - bb. Uniform Relocation Assistance and Real Property Acquisition Act (URA) (42 U.S.C. Chapter 61): A federal law that establishes minimum standards for federally funded programs and Projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.
  - cc. Unit: A residential unit that is used as a primary residence by its occupant.
4. Compliance with Program Requirements. The Developer agrees that at all times its actions regarding the Development and the use of funds provided under the Master

Standard Agreement and the Notice to Proceed shall be in conformity with all Program Requirements, including the requirements of this Agreement and the Program Legal Documents. The Developer acknowledges that it is familiar with the Program Requirements, the requirements imposed on the Developer in the Program Legal Documents, and has access to professional advice to the extent necessary to enable the Developer to fully comply with the Program Requirements and the applicable provisions of the Program Legal Documents.

5. Term of Agreement. This Agreement shall commence on the date hereof and remain in full force and effect and shall apply to the Development through and including the twentieth (20<sup>th</sup>) anniversary of the date of Department acceptance of the Project Closeout Documentation hereof regardless of any prepayment of the Loan or sale, assignment, transfer, or conveyance of the Development or the Property, unless terminated earlier by the Department or extended by the mutual consent of the parties.
6. DR-MHP Assisted Units, Restricted Units, Special Needs Populations Units, and Supportive Housing Units.
  - a. For the full term of this Agreement, Developer shall provide within the Development, the number, type, and size of DR-MHP Assisted Units set forth in Exhibit B, Part II, attached hereto and incorporated herein.
  - b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.
  - c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Developer may change the designation of a particular Unit from DR-MHP Assisted Unit to non-Assisted Unit, and vice versa, over time, only to address situations when a tenant in a DR-MHP Assisted Unit is no longer qualified to reside in that unit or if the unit is no longer habitable. Any other proposed changes to the unit designation must be approved in writing in advance by the Subrecipient.
7. Affirmative Marketing and Tenant Selection Procedures. Affirmative Marketing involves special outreach and advertising efforts designed to communicate the availability of DR-MHP assisted housing to those groups or individuals who might otherwise be unlikely to apply. Affirmative marketing efforts must be commenced by the Developer at least 90 days prior to initial or renewed occupancy for new construction and Substantial Rehabilitation Projects, respectively. The Department has determined that in addition to the required demographic analysis, individuals and families that were impacted by the disasters and Section 8 Housing Choice Voucher holders are least likely to apply. Examples of renters impacted by the disasters include renters that have lost rental units or have been displaced due to the impacts of DR-4344 and DR-4353. The Affirmative Marketing Plan shall be updated and submitted to Subrecipient for approval every five (5) years during the term of this Agreement.

Developer shall rent DR-MHP Assisted Units in the Development to Eligible Households and otherwise operate the Property in accordance with the Management Plan developed

by the Developer and approved by and on file with the Subrecipient and Department (the “**Management Plan**”) pursuant to paragraph 13 of this Agreement. The Management Plan shall, at minimum:

- a. detail actions to be taken by Developer to affirmatively market all Units in a manner that ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination and without regard to any arbitrary factor;
  - b. specify reasonable criteria for determination of tenant eligibility, including household size;
  - c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Subrecipient;
  - d. require eligible applicants to be notified of eligibility and, based on turnover history, when a Unit may be available;
  - e. require ineligible applicants to be notified of the reason for their ineligibility;
  - f. specify procedures through which applicants deemed to be ineligible may appeal this determination;
  - g. require maintenance of a waiting list of eligible applicants;
  - h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations; and
  - i. be made available to prospective tenants upon request.
8. Non-Discrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920 and United States Code 42 U.S.C section 3601 – 3019, including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other arbitrary factor in violation of any federal, state, or local law governing discrimination in rental housing. The restriction of housing to elderly and Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law and only with prior approval of the selection criteria by the Subrecipient.
9. Rental Agreement and Occupancy Procedures.
- a. Each Eligible Household selected to occupy a DR-MHP Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Developer, the form of which shall be subject to approval by the Subrecipient and be consistent with the Program Requirements. Such rental agreement shall, inter alia, provide for good cause eviction, reference the appeal and grievance

procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.

- b. The Developer may establish reasonable rules of conduct and occupancy. Such rules shall be consistent with state law and the Program Requirements and shall not distinguish or discriminate between Restricted Units and non-Restricted Units. The rules shall be in writing and shall be given to each tenant upon occupancy. Any change to such rules shall become effective no less than thirty (30) days after giving written notice thereof to each household in the Development.

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

- a. For the Initial Operating Year, Developer shall charge Rents for the DR-MHP Assisted Units in the Development in accordance with Exhibit B hereto.
- b. After the Initial Operating Year, Rents for DR-MHP Assisted Units may be adjusted no more often than every twelve (12) months. Developer shall provide tenants of DR-MHP Assisted Units not less than 30 days prior written notice, or a longer period as required by state or local law, before implementing any increase in rents. In no event shall the rents exceed the High HOME Rents as designated for the area and published by HUD. If the Project is assisted with tax credits, the amount and method of rent adjustment for DR-MHP Assisted Units shall be in accordance with the Tax Credit Allocation Committee (TCAC) policy or a longer period as required by state or local law.
- c. Notwithstanding the previous subparagraph, Rents for DR-MHP Assisted Units subsidized under section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the DR-MHP Assisted Units continue to receive the rental assistance.
- d. For DR-MHP Assisted Units in the Development that are covered by approved project-based rental assistance (if applicable), the Developer shall:
  - (1) In good faith timely apply for and accept all available renewals of project-based rental assistance; and
  - (2) If the project-based rental assistance is terminated, Rents for DR-MHP Assisted Units previously covered by this assistance, with written permission from the department, may be increased, but only to the minimum extent required for project feasibility, as determined by the Subrecipient and Department in their discretion. In addition, Rents for DR-MHP Assisted Units designated in Exhibit B, shall not in any event be increased to an amount in excess of the high HOME rent limit for the county, as published by the Department.
- e. The maximum income of a Household occupying a DR-MHP Assisted Unit shall not exceed eighty percent (80%) of the Area Median Income at initial Household

income certification, consistent with Section 4.11 of the DR-MHP Policies and Procedures.

11. Certification of Tenant Income and Household Size.

- a. The income and household size of all households occupying DR-MHP Assisted Units shall be certified by the Developer prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the Program.
- b. If, at the time of tenant recertification, the income of a household occupying a DR-MHP Assisted Unit exceeds the income level applicable to new tenants for respective DR-MHP Assisted Units, and, to the extent a rent increase for the household is permitted by statutes and regulations, the Developer shall:
  - (1) Increase the tenant's rent to the lesser of 30 percent of adjusted income, fair market rent, or the rent limitations of other funding programs governing the unit; and
  - (2) To the extent another non-DR-MHP Assisted Unit becomes available within the Development, designate the next available comparable non-DR-MHP Assisted Unit as a DR-MHP Assisted Unit at the income level originally applicable to the Household until the unit mix required by this Agreement is achieved. A Housing Unit shall be deemed "comparable" if it has the same number of bedrooms, the same or similar features, and is similar in size to the original DR-MHP Assisted Unit.
- c. At any time, and from time to time during the term of this Agreement, the Department or Subrecipient or their designee(s) may, upon reasonable notice to Developer and accompanied by a representative of Developer, enter and inspect the physical premises of the Development and the Property and inspect and copy all accounting records pertaining to the Development's or Property's compliance with the covenants and agreements set forth in this Agreement and other Program Legal Documents. Upon request by the Department or Subrecipient, the Developer shall notify occupants of upcoming inspections of their Units in accordance with state law.

12. Management and Maintenance.

- a. Developer is responsible for all maintenance, repair, and management functions, including without limitation, the following: selection of tenants; recertification of family income and size; evictions; collection of Rents; ordinary and extraordinary maintenance and repairs; and replacement of capital items. Developer shall maintain all Units, common areas and Commercial Space in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan described above.

- b. Developer is responsible for operating the Development in accordance with the Management Plan. All amendments to this plan require prior written approval of the Subrecipient.
- c. Developer may, with the prior written approval of the Subrecipient, contract with a management agent for the performance of the services or duties required in subparagraphs a. and b. of this paragraph. However, such an arrangement does not relieve the Developer of responsibility for proper and timely performance of these duties. Such contract shall be subject to prior written approval by the Subrecipient and shall contain a provision allowing the Developer to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Subrecipient, and notice to the Developer thereof, that the contractor performing the functions required in subparagraphs a. and b. of this paragraph has failed to operate the Development in accordance with this Agreement and the approved Management Plan, the Developer shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Subrecipient approval, for continuing performance of the functions required in subparagraphs a. and b. of this paragraph.
- d. Upon a determination by the Subrecipient, and notice to the Developer thereof, that the Developer has failed to operate the Development in accordance with this Agreement, the Subrecipient may require the Developer to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Subrecipient deems necessary to ensure performance of the functions required in subparagraphs a. and b. of this paragraph.
- e. Developer shall operate, maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.

13. Periodic Reports.

Developer shall submit to the Subrecipient such periodic reports as deemed necessary by the Subrecipient and the Department to monitor the Developer's compliance with the affordability provisions of this Agreement. The reports may include, but are not limited to:

- a. an income and expense statement for the reporting period;
- b. a summary of the occupancy of the Development, indicating the number and type of Units reserved for eligible Households, the number of vacant Units, income recertification, and the number of evictions completed or in process;
- c. a report on maintenance or other issues anticipated to impact the current budget needs of the Development;
- d. information on the status of waiting lists for the DR-MHP Assisted Units, including the number of households on lists for different Unit sizes and by income group, as well as evidence of compliance with Project's Affirmative Marketing Plan; and

- e. any other information as required by the Subrecipient to accurately monitor Developer's performance hereunder.

14. Violation of Agreement by Developer.

- a. In the event of the Developer's breach, violation, or default in the performance of any covenant, agreement, or obligation of the Developer set forth in this Agreement, the Subrecipient shall give the Developer written notice in the manner specified in this Agreement, specifying the nature of the violation, breach, or default and the action needed to cure. If the default, breach, or violation is not cured to the reasonable satisfaction of the Subrecipient pursuant to paragraph 15 below, the Subrecipient may declare a default hereunder and may, as its exclusive remedy pursuant to this Agreement or applicable law, apply to a court of applicable jurisdiction to seek Equitable Relief (as defined below). As defined herein, "Equitable Relief" shall mean seeking, applying for, pursuing, and obtaining any one or more of the following:
  - (1) An order for specific performance enforcing the covenants, agreements, and obligations of the Developer set forth herein, and in connection therewith, Developer acknowledges and agrees that the injury to the Subrecipient or Department arising from a failure or default under this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Subrecipient or Department, in light of the purposes and requirements of the Program, would be impossible to ascertain;
  - (2) A temporary restraining order, preliminary injunction, or permanent injunction with respect to or against the breach or violation of the covenants, agreements, and obligations set forth herein;
  - (3) Declaratory Relief;
  - (4) Conducting a Subrecipient or Department investigation or holding a Subrecipient or Department hearing to determine whether or what action, if any, is appropriate with respect to the project; and/or
  - (5) Seeking the payment and/or reimbursement of any and all court costs, attorneys' fees, witness fees, and the like incurred by the Subrecipient or Department in pursuing any or all of the foregoing.
  - (6) Seek such other appropriate remedies as may be available under the law.
- b. The Equitable Relief remedies of the Subrecipient or Department referenced above are cumulative and non-exclusive, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Subrecipient or Department of any one or more of its other remedies hereunder. The Subrecipient or Department hereby waives the right to seek any other remedy here under for breach, violation, or default of any of the

covenants set forth in this Agreement, provided, however, notwithstanding the foregoing or any other provision of this Agreement:

- (1) The limitations of rights to Equitable Relief as provided above shall apply solely and exclusively to breaches, defaults, and violations of this Agreement only;
- (2) The limitations on remedies set forth herein shall not limit what causes of action may be plead but shall circumscribe the relief available thereunder;
- (3) The limitations set forth herein do not apply to the Regulatory or Junior Regulatory Agreement, or any of the other Loan Documents, or other actions at law that are not brought as a contract cause of action premised on this Agreement;
- (4) Nothing contained herein shall restrict a court of competent jurisdiction from providing, on its own motion, any other remedial relief or orders with respect to any breach, violation, or default of the terms of this Agreement in addition to that contemplated by subsections (1),(2),(3),(4) and (5) of subparagraph a. of this paragraph..
- (5) The tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement and shall have such rights to seek Equitable Relief as set forth above as may be available to third party beneficiaries under the law.

15. Time to Cure. If a breach, violation, or default occurs with respect to the covenants set forth in this Agreement, prior to exercising the exclusive remedy described in paragraph 14 hereunder, the Subrecipient shall give Developer and its limited partner (if applicable) written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of the Subrecipient's remedy. If the default is such that it is not reasonably capable of being cured within such 30-day period and if Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time, not to exceed an additional 180 days, to cure the default prior to exercise of the remedy by the Subrecipient. If Developer or its successor in interest is a limited partnership, if Developer fails to take corrective action or to cure the default within such a specified time, the Subrecipient shall give Developer written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.
16. Assignment of Subrecipient Rights. The Subrecipient retains the right at its sole discretion to assign all or part of its rights under this Agreement to another governmental entity or agency for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder. In addition, the Subrecipient may designate or hire an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof. In the event Subrecipient assigns all or part of its rights for the purpose of ensuring compliance and enforcement, or designates or hires an agent to act on its behalf with respect to

monitoring and enforcement as described in this paragraph, Subrecipient shall remain obligated under, and ultimately responsible for fulfilling, the terms of this Agreement, and no such assignment shall relieve Developer of any of its duties or obligations under this Agreement or any of the other Program Legal Documents.

17. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties hereto, with prior written approval by the Department.
18. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
19. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transferees, successors in interest and assigns, provided, however, that the Developer may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Subrecipient. The term "Developer" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary, or possessory interest of Developer in the Development.
20. Recording Agreement. This Agreement, and all amendments hereto, shall be executed by each of the parties and their respective signatures acknowledged. This Agreement shall be recorded against the Property in the official records of the county(ies) in which the Development is situated, prior and superior to the lien of the Senior Lender, the Senior Deed of Trust, and all other matters of record except as may be approved by the Department, before construction begins, but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department.
21. Indemnification of Department; Civil Code §1542 Waiver.
  - a. Developer agrees to indemnify and defend the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any and all costs, losses, damages, liabilities, claims, demands, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of any of the following: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to

indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Developer's duty to indemnify and defend the Department shall survive the term of this Agreement. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers, or employees.
- c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY"**.

22. Indemnification of Subrecipient; Civil Code §1542 Waiver

- a. Developer agrees to indemnify the Subrecipient and its agents, employees and officers against, and holds the Subrecipient and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorney's fees) of every name, kind and description, which the Subrecipient may incur as a direct or indirect consequence of: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Subrecipient's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Subrecipient and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold

harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Subrecipient. Developer's duty to indemnify the Subrecipient shall survive the term of this Agreement. In the event HUD acquires title to the Development, this indemnification provision will not apply to HUD.

- b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Subrecipient or its agents, officers or employees.
  - c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**
22. No Waiver. No waiver by the Department or Subrecipient of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder. All waivers must be in writing and signed by the party making the waiver in order for such waiver to be effective.
23. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.
24. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
25. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands, or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

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

With a copy to:

Daryll Kidd, Esq.

Bocarsly, Emden, Cowan, Esmail & Arndt LLP  
633 W. Fifth St., 64<sup>th</sup> 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, 2<sup>nd</sup> 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](mailto: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

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

Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center

11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attn.: Asset Management  
Phone: (410) 964-0552  
Facsimile: (410) 772-2630

With a copy to:

[sshack@enterprisecommunity.com](mailto: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

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

26. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.
27. Subrecipient's Approval, etc. Whenever this Agreement or any of the other Program Legal Documents requires the approval, consent, or other determination by the Subrecipient or Department, the Subrecipient or Department shall act reasonably and in good faith.
28. Compliance with IRC section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.
29. Special Conditions. The Developer agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.
30. Construction. Each party hereto acknowledges and agrees that it has had independent counsel review and participate in the drafting of this Agreement, and it hereby fully waives the application of any law, statute, or rule of construction or interpretation, including without limitation California Civil Code section 1654, to the effect that any ambiguities are

to be construed against the drafting party.

31. Exhibits. The following exhibits are attached hereto, incorporated herein and made a part of this Agreement:

Exhibit A: Legal Description of the Property; and

Exhibit B: Unit Designation and Rent Schedule and requirements for DR-MHP Priority, Supportive Housing Units or Special Needs Population Units, Project Based Vouchers Rent Schedule.

***[Signatures of the Developer and the Subrecipient follow on page 19 of these Affordability Restrictions. The remainder of this page is intentionally left blank.]***

DRAFT

**IN WITNESS WHEREOF**, the parties hereto hereby execute and enter into this Agreement as of the date first set forth above:

**ATTEST:**

\_\_\_\_\_  
MONA MIYASATO  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk of the Board

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

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

**APPROVED AS TO FORM**

COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:  
RISK MANAGEMENT**

By: \_\_\_\_\_  
Greg Milligan, ARM, AIC  
Risk Manager

**COUNTY:**

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

By: \_\_\_\_\_  
Joan Hartman, Chair  
Board of Supervisors

By: \_\_\_\_\_  
George Chapjian, Director  
Community Services Dept.

**DEVELOPER:**

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

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

By: \_\_\_\_\_  
Raymond F. Down,  
President

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

By: \_\_\_\_\_  
Robert P. Havlicek Jr., Executive Director

***[All signatures must be acknowledged]***

**EXHIBIT A TO REGULATORY AGREEMENT**  
**LEGAL DESCRIPTION OF THE PROPERTY**

DRAFT

**EXHIBIT B TO SENIOR REGULATORY AGREEMENT**

**I. UNIT DESIGNATIONS AND RENT SCHEDULE**

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

The Initial Operating Year ends at the end of the initial Fiscal Year, which is:

December 31, 2024.

During the Initial Operating Year:

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

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

**II. UNIT MIX**

<u>No. of Bedrooms</u>	<u>AMI</u>	<u>Number of County CDBG-DR MHP-Assisted Units</u>	<u>Number of Other Affordable Units Not Restricted by this Agreement</u>	<u>Number of Other Non-Affordable Units</u>	<u>Total Number of Units</u>
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
<b>Total</b>		<b>7</b>	<b>70</b>	<b>3</b>	<b>80</b>

The above Unit Mix chart is based on the following:

2022 High HOME Program Rents and CDBG-DR Income Limits for Santa Barbara County, California. Developer shall use the current and effective High HOME Program Rents and CDBG-DR Income Limits available at the time of lease up or recertification.

III. COMMERCIAL SPACE RENTS

NOT APPLICABLE

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

THIS SECTION IV IS NOT APPLICABLE

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

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

V. SPECIAL NEEDS POPULATIONS DEVELOPMENT REQUIREMENTS

THIS SECTION V IS NOT APPLICABLE

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