RIDER TO DEVELOPMENT AGREEMENT

State of California
Department of Housing and Community Development
Community Development Block Grant - Disaster Recovery
DR4344 and DR4353 Disaster Recovery Multifamily Housing Program

ESCALANTE MEADOWS L.P.

Pursuant to that certain Master Standard Agreement number 20-DRMHP-00002 entered into on the 4th day of December 2020, by and between the California Department of Housing and Community Development ("Department") and the County of Santa Barbara ("Subrecipient" or "County"), as amended by that certain Amendment Number 1 Signed August 30, 2022 (as amended, the "MSA"), this RIDER TO DEVELOPMENT AGREEMENT ("RIDER") is incorporated into and made a part of that certain COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY MULTI-FAMILY HOUSING PROGRAM (CDBG-DR MHP) Development Agreement, defined as the legal instrument that conveys the Project Funds to the Approved Project (defined below), entered into on the ___th day of November, 2022, by and between Subrecipient and Escalante Meadows, L.P., a California Limited Partnership ("Developer" or "Owner") (the "Development Agreement") to include terms required by the Department for the individual multifamily affordable housing development project proposed by Subrecipient located at 1090 and 1093 Escalante Street, City of Guadalupe, California, consisting of eighty (80) affordable housing units, including seven (7) CDBG-DR restricted units, referred to as Escalante Meadows and as more particularly described in the Development Agreement (the "Approved Project").

This Approved Project is subject to the terms of the MSA, the Development Agreement, this RIDER, the Junior Regulatory Agreement entered into concurrently herewith, the Senior Regulatory Agreement entered into concurrently herewith, and the funding amount and conditions determined by the Department set forth in the Notice to Proceed ("NTP") for the Approved Project. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Development Agreement. The Subrecipient and Developer agree to abide by the following terms required by Department applicable to the Approved Project.

1. Performance Milestones

A. Project Schedule

Begin Construction	November 1, 2022
Complete Construction	April 1, 2024
100% Occupancy	July 1, 2024

B. Project Performance Milestones

1) Subrecipient shall record in the applicable County Recorder's office the DR-MHP Regulatory Agreement, substantially in the form provided by the Department, against the property before construction begins but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department. The DR-MHP Regulatory Agreement shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department. Exceptions to the position of the DR-MHP Regulatory Agreement must be approved in writing and in advance by the Department.

2) Subrecipient shall execute a Development Agreement with the Developer no later than 11/1/2022.
3) All DR-MHP units must be leased to qualified households within 18 months of construction completion (as identified by a Certificate of Occupancy from the local permitting agency) or by March 1, 2025, whichever comes first.

C. The Senior and Junior Regulatory Agreements shall be recorded against the Approved Project property before construction begins, but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department.

D. No later than April 30, 2023, Subrecipient shall provide the Department with written certification on its letterhead evidencing that physical construction work is underway for the Approved Project.

E. No later than January 31, 2025, Subrecipient shall provide the Department with a copy of the recorded Notice of Completion for the Approved Project.

2. Priority of Use of Funds

Subrecipient and Developer must utilize funds available under the NTP ("Project Funds") to supplement rather than supplant funds otherwise available. To the extent available, Subrecipient and Developer should disburse funds available to the Approved Project from, among other sources, rebates, refunds, contract settlements, audit recoveries, insurance and condemnation proceeds and interest earned on such funds before disbursing Project Funds.

3. Method of Payment

Payments will be made directly to Subrecipient as reimbursements based on the documented and satisfactory completion of agreed upon milestones detailed in the NTP. The Department shall not authorize payments or reimbursements unless it has determined the activities indicated in the Financial Report have been performed in compliance with the terms of the MSA and any other agreements executed by the parties in connection herewith.

A. Reimbursements for costs incurred

1) The Subrecipient may use Project Funds for reimbursement by the Department of Eligible Expenses as defined in the MSA, applied to Approved Projects.

2) Financial Reports for Project Funds shall be submitted to the Department by Subrecipient on a pro rata basis based on the percentage of construction completed.

3) Subrecipient shall withhold as retainage 10% of all DR-MHP funded Developer payments. No retainage payments shall be released to the Developer or reimbursed to the Subrecipient until receipt and approval by the Department of all required Approved Project closeout documents identified in Section 6 of the MSA.

4) To receive reimbursement for Approved Project activities, the Subrecipient must timely submit all required Department forms via Grants Network. Financial Reports must include the level of documentation specified by the Department in the Department's most recent version of the Grant Administration Manual located on the Department's website, in order to be reviewed and processed.

5) Developer shall provide Subrecipient with documentation as requested to evidence expenditure of eligible costs on the Approved

Project.

4. Duplication of Benefits

A Duplication of Benefits (DOB) occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the need. It is the Department's responsibility to ensure that the DR-MHP provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient must report all funds obtained for the activity by the Project owner from any source from the date of the disaster until the Project is completed.

Additionally, the Department, in coordination with the Subrecipient, will perform a check for DOB prior to issuing a Notice to Proceed to ensure that duplicative assistance is not provided for multifamily housing. The Department also reserves the right to require that the Subrecipient perform additional DOB checks throughout the course of the Approved Project's period/performance, up to and through the closeout of each Approved Project, to ensure there is no duplicative assistance throughout the course of the Approved Project. Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

The Subrecipient agrees to repay to the Department any assistance later received for the same purpose as the CDBG–DR funds and that exceeds the total need for the particular recovery purpose.

5. Developer Responsibilities

A. Developer for the Approved Project shall be responsible for all project management functions of the Approved Project, including project design and development, construction and/or rehabilitation, maintenance, selection of tenants, annual recertification of Household income and size, and management of the Approved Project, including Project Units, in accordance with local requirements, the most recent version of the DR-MHP Policies and Procedures Manual, the requirements of the MSA, the Junior Regulatory Agreement, and the Senior Regulatory Agreement, for the duration of the Affordability Period.

B. Developer shall be responsible for all repair and maintenance functions of the Approved Project, including ordinary maintenance and repair, and replacement of capital items. "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 so that the Approved Project is in decent, safe, and sanitary condition at all times. Developer shall ensure maintenance of the Approved Project residential units, commercial space and common areas in accordance with all federal, state, and local health, building, and housing codes, and the Management Plan described below.

C. If Developer hires a separate entity to manage the Property and/or the Development after construction is complete, Developer for the Approved Project shall ensure that the Approved Project is managed by an entity approved by the Subrecipient that is actively in the business of managing affordable housing. Any property management contract entered into for this purpose shall be subject to Subrecipient's prior written approval, and must contain a provision allowing Developer to terminate the contract upon 30-days' notice. Developer shall terminate such property management contract as directed by Subrecipient upon a determination by Subrecipient that such

property management with respect to the Approved Project does not comply with DR-MHP requirements and/or the provisions of any recorded regulatory agreement for the Approved Project, such as the Senior Regulatory Agreement and the Junior Regulatory Agreement.

D. Developer for the Approved Project shall develop a management plan for the Approved Project ("Management Plan") subject to Subrecipient's prior written approval prior to the start of construction. Any change to the Management Plan shall be subject to the prior written approval of Subrecipient. The Management Plan shall be consistent with Program requirements and shall include provisions addressing the following:

- The role and responsibility of Developer and the delegation of its authority;
- Personnel policy and staffing arrangements including key personnel and lines of authority;
- Plans and procedures for publicizing and achieving early and continued occupancy by eligible low- to moderate-income tenants;
- Procedures for determining tenant eligibility and selecting tenants and for certifying and annually recertifying Household income and size;
- Plans for carrying out, and budgeting for, an effective maintenance and repair program including ordinary maintenance and repair, and a capital needs assessment prepared every 5 years, except that for newly constructed projects, this requirement shall apply beginning with year 10;
- Rent collection policies and procedures;
- Policies and Procedures for managing funds that meet generally accepted accounting principles;
- A program for maintaining adequate accounting records and handling necessary forms and vouchers;
- Plan for safeguarding all tenant personally identifiable information (PII) such as social security numbers, names and birthdates, against possible identity theft as applicable.
- Plans for enhancing tenant-management relations;
- The property management contract if any;
- Provisions for periodic update of the Management Plan;
- Appeal and grievance procedures;
- Policies and procedures for collections for tenant-caused damages, processing evictions and terminations; and
- A supportive services plan for Approved Projects serving Special Needs Populations, including Supportive Housing and/or providing supportive services to the general tenant population.

E. Annually, during the term of the MSA, Subrecipient shall perform monitoring of Developer and the Approved Project to ensure compliance with federal and state requirements, timely project completion, and compliance with the terms of the Junior Regulatory Agreement and the Senior Regulatory Agreement. Developer shall be required to resolve any monitoring findings to the Subrecipient's satisfaction by the deadlines set by the Subrecipient.

Developer shall retain all books, records, accounts, documentation, and all other materials relevant to this RIDER and the initial development phase of this Approved Project for a minimum period of five (5) years after the Department notifies the Subrecipient that the grant agreement between HUD and the State of California has been closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relevant to this RIDER and the operational phase of this Approved Project shall be retained for the most recent five (5) year period, until five years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to

inspection and audit by the Subrecipient, the Department, HUD, federal Office of the Inspector General or their respective representatives.

Subrecipient may charge Developer a reasonable annual fee for compliance monitoring during the term of affordability period. The fee must be based upon the average actual cost of performing the monitoring of CDBG-DR-assisted Approved Projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project underwriting.

Should Developer fail to perform its duties as described above, including a failure constituting a material default pursuant to the Development Agreement, such that the Approved Project's ability to meet its stated goals under the Program is materially impaired or wholly prevented, or that materially impacts the delivery of an eligible and compliant project on a timely basis pursuant to the NTP, such failure shall constitute a default under this RIDER.

Subrecipient shall be responsible for curing such default, by way of corrective action or hiring a new Developer. The Developer shall not be removed or substituted with a new developer entity without the prior written consent of both the Department and Subrecipient, and the Development Agreement shall contain a provision to this effect. No Developer may be listed on any state or federal debarment list and must be in good standing with the Department and the State of California. Any proposed cure of such default must be provided to the Department in writing for written approval prior to implementation. If such default is not cured timely, Subrecipient will be responsible for repayment to the Department of the funding for the Approved Project.

6. Suspension and Debarment

By executing this RIDER, Developer verifies and affirms that it has not been suspended or debarred from participating in or receiving federal government contracts, subcontracts, loans, grants or other assistance programs. Developer further agrees to verify that its partners, contractors, and subcontractors have not been suspended or debarred from participating or receiving federal government contracts, subcontracts, loans, grants, or other assistance programs. Subrecipient and the Department each reserve the right to request documented confirmation that Developer and its partners, contractors and subcontractors have not been suspended or debarred from receiving federal government contracts, subcontracts, loans, grants or other assistance programs, and are in good standing with the Department and the State of California.

7. Compliance with State and Federal Laws and Regulations

Subrecipient and Developer shall comply with all local, state, and federal laws, statutes, and regulations, as well as the CDBG-DR Grant Administration Manual for 2017 and 2018 Disasters and the DR-MHP Policies and Procedures Manual, as the same may be amended from time to time.

8. Authority to Impose Additional Special Conditions

In accordance with 2 CFR 200.207, Department reserves the right and authority to impose additional special conditions within any NTP or NTP revision issued under the MSA under any of the following circumstances:

A. When, in the Department's sole discretion, Department finds that Subrecipient or Developer has a history of failure to comply with the general or specific terms and conditions applicable to the CDBG-DR funds allocated under the MSA, this RIDER, or to other awards of Federally-funded grant or

loan assistance passed through the Department.

B. When Subrecipient or Developer fails to meet expected performance goals under this RIDER.

C. When Subrecipient or Developer poses an increased risk for noncompliance based on factors including, but not limited to, financial stability, quality of management systems, history of performance under Federal awards, history of timeliness under Federal awards, history of conformance with terms and conditions of previous federal awards, and reports and findings from audits.

D. When, in the Department's sole discretion, such conditions are necessary to ensure timely and compliant performance under the Federal award.

Such specific special conditions, may include, withholding of reimbursement of project costs until receipt of evidence of acceptable performance within a given period of performance, requiring additional detailed financial reports, requiring additional project monitoring, requiring the Subrecipient or Developer to obtain technical or management assistance, establishing additional prior approvals, or any other condition the Department deems reasonable and necessary to safeguard Federal funds.

Such additional specific special conditions, shall be included in the NTP or NTP revision for the Approved Project and shall include the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the action needed to remove the additional requirement (if applicable), the time allowed for completion of the actions (if applicable), and the method for requesting reconsideration of the additional requirements imposed.

9. <u>The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3):</u>

Developer shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) ("Section 3") and implementing regulation at 24 CFR Part 75. The responsibilities outlined in 24 CFR Part 75.19 include:

A. Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

B. Notifying potential contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 Clause (set forth below) in all solicitations and contracts in excess of $100,000, as required at 24 CFR 75.27:

> **Section 3 Clause**
>
> The work to be performed under this contract is subject to the requirements of Section 2 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 parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this

contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every 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 subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

The contractor will certify that any vacant employment positions, including
training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

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.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

C. Facilitating the training and employment of Section 3 workers and the award

of contracts to Section 3 business concerns by undertaking activities such as described in Section 75.25(b), as appropriate, to reach the goals set forth in Section 75.23 and in Federal Register Vol. 85, No. 189, page 60909, until superseded by HUD in a subsequent publication. As of October 29, 2020, the minimum Section 3 benchmark is twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers; and five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

D. Documenting actions taken to comply with the requirements of this part, the results of those actions taken and impediments, if any.

10. <u>Assurance of Compliance with the "Violence Against Women Reauthorization Act of 2013" (VAWA) (S.47 - 113th Congress (2013-2014)) (as amended or reauthorized) Title VI - Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking – Sec. 601-603. See also 81 CFR 80724:</u>

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 now expands housing protections to HUD programs beyond HUD's public housing program and HUD's tenant-based and project-based Section 8 programs. VAWA now provides enhanced protections and options for victims of domestic violence, dating violence, sexual assault, and stalking.

During the performance of this Approved Project, Developer shall assure that all requirements of VAWA are complied with (including but not limited to):

A. 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.

B. It 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.

C. It 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."

D. It 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.

11. <u>Procurement of Recovered Materials</u>

In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Developer shall cause contractor to procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level

of competition. The Developer shall cause contractors to procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

This clause shall apply to items purchased under this RIDER where: (1) the contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

12. Construction Standards

The Subrecipient and Developer shall ensure that the Approved Project complies with the following requirements:

A. California Building Codes (CBC) (Cal. Code Regs., Title 24)

All residential construction projects shall comply with the housing construction codes of the State of California, including all units developed under DR-MHP.

B. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157)

The Architectural Barriers Act (ABA) stands as the first measure by Congress to ensure access to the built environment for people with disabilities. The law 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.

C. California Green Buildings Standards Code (CALGreen) (Title 24, Part 11 of the California Code of Regulations)

All new construction of residential buildings or reconstruction of substantially damaged buildings must incorporate California Green Buildings Standards Code (CALGreen).

D. Sustainability Requirements

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 Subrecipient, Subrecipient's Developers and contractors must follow best practices, such as those provided by the U.S. Department of Energy, Home Energy Professionals: Professional Certifications and Standard work specifications.

E. National Floodplain Elevation Standards

Subrecipient, Developer, and contractors must comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to residential structures in flood hazard areas. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of 83 FR 5850 and 83 FR 5861.

F. Wildland-Urban Interface building codes (WUI codes)

All Approved Projects under this program that are located in a CAL FIRE high fire zone must comply with applicable 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.

13. Federal Labor Standards Provisions

The Subrecipient and the Developer shall at all times comply, and cause all Approved Project contractors to comply, with applicable federal labor standards, including without limitation, the following:

A. Davis-Bacon Act (40 U.S.C. §§ 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over $2,000.

B. "Anti-Kickback Act of 1986" (41 U.S.C. §§ 51-58): The act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. § 3702) requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5, are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

Developer shall provide and Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this Section 13. Such documentation shall be made available to the Department for review upon request. Subrecipient shall be responsible for monitoring Developer, contractors, and subcontractors for compliance, as applicable.

14. State Prevailing Wages

A. Developer shall comply and Subrecipient shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [LC Section 1720-1743] pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met.

B. 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 Construction Contract will be between the Subrecipient and a licensed building contractor, the Subrecipient shall serve as the "awarding body" as that term is defined in the LC. Where the Subrecipient 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." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the

Department may require a certification from the awarding body that prevailing wages have been or will be paid.

C. 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.

15. Agreements with Developers and Contractors

A. The Subrecipient shall not enter into any agreement, written or oral, with any contractor, Developer or other party without the prior determination that the contractor, Developer or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

1) The terms “other party” is defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive Grant Funds from a Subrecipient to undertake Approved Projects.

B. An agreement between the Subrecipient and any contractor, Developer or other party shall require:

1) Compliance with all State and federal requirements described in this RIDER including without limitation those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace, and prevailing wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.

2) Maintenance of at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the Approved Project activities.

3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the Approved Project activities.

4) Compliance with the applicable Equal Opportunity Requirements described in Section 16 of this Rider.

C. Developer, contractors, and subcontractors shall:

1) Perform the Approved Project activities in accordance with federal, state and local housing and building codes, as are applicable.

2) Provide security to assure completion of the Approved Project(s) by furnishing the Subrecipient with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual project will be required.

D. Developer, contractors and subcontractors: Drug-Free Workplace Act of 1988

1) 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.

2) 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.

3) 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) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.

4) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.

5) 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.

6) Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the act.

16. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

A. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, Developer shall ensure the contractor observes all local, state and federal laws in purchasing and handling explosives. Developer shall ensure contractors take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats.

The Developer shall notify or cause contractors to notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Developer or contractors or their Surety for damages that may be caused by such use.

B. Danger Signals and Safety Devices: Developer shall cause contractors to make all necessary precautions to guard against damages to property and injury to persons. Contractors shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case contractors fail or neglect to take such precautions, the Developer may have such lights and barricades installed and charge the cost of this work to the contractor. Such action by the Developer does not relieve the contractor of any liability incurred under these specifications or contract.

C. Protection of Lives and Health: The Developer shall exercise proper precautions and cause contractors to exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Developer and its contractors and their subcontractors shall take or cause to be taken, such additional safety and health measures as the Developer may determine to be reasonably necessary.

17. Equal Opportunity Requirements and Responsibilities

The obligations undertaken by Subrecipient and Developer include, but are not limited to, the obligation to comply with all federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

A. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.

B. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.

C. **Restoration Act of 1987:** This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal 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.

D. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]:** This section of Title 1 provides that 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.

E. **The Fair Housing Amendment Act of 1988:** This act 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.

F. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. 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.

G. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. 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. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

H. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. 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.

I. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

J. **Executive Order 12259:** This executive order 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.

K. **The Equal Employment Opportunity Act:** This 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.

L. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual 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.

M. **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.

N. **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

18. Affirmatively Furthering Fair Housing

The Subrecipient and Developer shall affirmatively further fair housing, in accordance with the Civil Rights Act of 1964 (42 U.S.C 2000a, et seq.), and the Fair Housing Act (42 U.S.C. 3601, et seq.), according to 42 U.S.C. 5306, et seq. and in compliance with California Gov. Code sections 65583, et seq. and 8899.5, et seq.), as each may be amended from time to time. Subrecipient shall also comply with the Fair Housing Amendment Act of 1988 (Public Law 100-430), as may be amended from time to time.

19. Reporting Requirements

A. Developer shall timely provide information and data for required reports, including, but not limited to, the reports specified below, as requested by Subrecipient. Subrecipient must timely submit the reports prescribed below. The Department reserves the right to request additional detail and support for any report made. Reports must be made according to the dates identified, in the formats provided by the Department, and via the Department's Grants Network unless otherwise specified at the discretion of the Department. The Subrecipient's performance under the MSA will be assessed based in part on whether it has submitted the reports on a timely basis.

i. Monthly Activity Report: Developer shall provide Subrecipient with information sufficient for Subrecipient to submit a Monthly Activity Report to Department that addresses the following, at a minimum: (1) a description of the current status of the Approved Project,

including number of units leased, and Households assisted; (2) a description of activities to be undertaken in the next reporting period; (3) a description of problems or delays encountered with the Approved Project and course of action taken to address them; (4) a description of actions taken to achieve MSA expenditure deadlines; and (5) a summary of the MSA fiscal status, including allocation amount, funds drawn, and remaining balance. Unless otherwise waived in writing by the Department, Monthly Activity Reports must begin on the 10th calendar day of the second month following execution of the MSA and must continue through the receipt and approval by the Department of the Project Completion Report, detailed below.

ii. Monthly Program Income Report: Program Income, if identified as a funding source for any Approved Project, must be included in the project budget and must be substantially expended prior to drawing Grant Funds. During the term of this RIDER, if Program Income is generated, the Subrecipient must submit a Monthly Program Income Report certifying the amount of Program Income generated, retained and expended. Program Income remaining at the end of each quarter and at the expiration of the MSA in excess of $35,000.00 must be remitted to the Department.

iii. Semi-Annual Labor Standards Report: Each April 1st and October 1st during the term of construction for the Approved Project, the Subrecipient must submit the Labor Standards Cover Memo, the HUD Form 4710, and the Davis Bacon Labor Standards Report 5.7 (if applicable). These forms are located on the Department's website and are also available upon request.

iv. Project Completion Report: At the completion of construction and once an Approved Project is placed in service, the Subrecipient must submit a Project Completion Report that includes the total number of units built and leased, affordable units built and leased, DR-MHP units built and leased, an accomplishment narrative, and the tenants' names, demographics and income for each DR-MHP unit.

v. Annual Beneficiary Report: Once an Approved Project is placed in service and through the Affordability Period described in Exhibit D, Section 4 of the MSA, the Subrecipient must submit an Annual Beneficiary Report providing the tenants names, demographics, and income for each DR-MHP unit. Information shall be derived from documentation submitted by Developer to Subrecipient for review and approval.

20. Monitoring Requirements

During the term of the MSA, the Department shall perform program and/or fiscal monitoring of the Subrecipient and Approved Projects to ensure compliance with federal and state requirements and timely project completion. The Subrecipient shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. In the event Subrecipient disagrees with a finding and/or any accompanying corrective actions or sanction(s) that are associated with such finding, Subrecipient shall follow the Department's appeals process and rights contained as an exhibit within the Department's CDBG-DR Monitoring Plan located on the Department's CDBG-DR website at https://www.hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/cdbg-dr-2017/index.shtml.

Subrecipient shall ensure the Developer and the Approved Project are in compliance with CDBG-DR requirements and shall perform regular, ongoing monitoring of the Developer and Approved Project for the term of this RIDER and the affordability period defined in the DR-MHP Regulatory Agreement. Subrecipient shall ensure their Developers resolve any monitoring findings to the Subrecipient's satisfaction by the deadlines set by the Subrecipient. Subrecipients

may charge Developers a reasonable annual fee for compliance monitoring during the term of affordability period. The fee must be based upon the average actual cost of performing the monitoring of CDBG-DR-assisted Approved Projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project. If a monitoring fee is charged, Subrecipient shall remit 10% of the monitoring fee collected from each Approved Project to the Department not less than annually and within 90 days of receipt of the fees.

21. Inspections of Project Activities

The Department reserves the right to inspect any Approved Project activities performed hereunder to verify that the Approved Project activities are being and/or have been performed in accordance with the applicable federal, state and/or local requirements and this RIDER.

A. The Subrecipient shall inspect any Approved Project activity performed by Developers, contractors and subcontractors hereunder to ensure that the Approved Project activities are being and have been performed in accordance with the applicable federal, State and/or local requirements and the MSA.

B. The Subrecipient shall require that all Approved Project activities found by such inspections that do not conform to the applicable requirements be promptly corrected, and shall withhold payment to its Developer, contractor or subcontractor, respectively, until it is so corrected.

C. Access by the Subrecipient, the federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Subrecipient, Developer, contractors or subcontractors which are directly pertinent to that specific contract for the purpose of monitoring, making audit, examination, excerpts, and transcriptions pursuant to 2 CFR 200.336 shall be permitted. Developer shall include in its agreements with contractors, or subcontractors, as applicable, provisions requiring such parties to provide access to its records for the purposes specified above.

22. Signs

If the Subrecipient or Developer places signs stating that the Approved Project is funded with private or public dollars and the Department is also providing financing, it shall indicate in a typeface and size commensurate with the Department's funding portion of the Approved Project that the Department is a source of financing through the CDBG-DR Program.

23. Insurance

Subrecipient, Developer, and Contractors shall comply with all requirements outlined in the (A) General Provisions section and (B) Project Insurance Requirements outlined in this Section 21. These requirements are in addition to, and not in lieu of, any other insurance coverages required elsewhere in the Development Agreement and elsewhere in the MSA. No payments will be made under the terms of any Approved Project until the Subrecipient confirms to the Department that Developer and all contractors on the specified Approved Project fully comply with all requirements. The Department reserves the right to waive or adjust required insurance coverages from time to time in its sole discretion.

A. General Provisions Applying to All Policies

1) Coverage Term – Subrecipient’s coverage needs to be in force for the complete term of the Agreement. The Developer’s coverage needs to be in force for the complete affordability period of each Approved Project. The Developer’s coverage needs to be in force

until a certificate of occupancy is issued for each Approved Project. No work may be performed by Subrecipient, Developer, or a contractor until and unless all insurances required by this Agreement are in full force and effect. If insurance expires during the term of the Agreement/affordability period/certificate of occupancy issuance, as applicable, a new certificate must be received by the Department at least thirty (30) days prior to the expiration of said insurance. Any new insurance must comply with the original terms of this Agreement.

2) Policy Cancellation or Termination & Notice of Non-Renewal – Subrecipient is responsible to notify the Department within fifteen (15) business days prior to any actual or proposed cancellation, non-renewal or material change that affects required insurance coverage. No policy may be cancelled upon less than thirty (30) days' prior written notice from the insurer to the insured and the Department. New certificates of insurance are subject to the approval of the Department and the Subrecipient agrees no services will be commenced or performed prior to obtaining such approval. In the event Subrecipient and Developer fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Agreement.

3) Premiums, Assessments and Deductibles – Subrecipient, Developer and contractors for each Approved Project are responsible for the payment of all premiums, policy assessments, deductibles or self-insured retentions associated with their respective insurance programs.

4) Primary Clause – Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the Department.

5) Insurance Carrier Required Rating – All insurance companies must carry an AM Best rating of at least "A–" with a financial category rating of no lower than VII. If the Subrecipient, Developer and/or contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Acceptance of self-insurance is within the sole discretion of the Department, and the Department reserves the right to require insurance from third-party commercial insurers.

6) Endorsements – Any required endorsements requested by the Department must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

7) Inadequate Insurance – Inadequate or lack of insurance does not negate the Subrecipient's, Developer's, or contractor's obligations under this Agreement or the terms specific to the relevant Approved Project, nor does the availability or limits of any insurance policies required herein in any way limit the liability of Subrecipient, or any Developer or contractor, to the Department hereunder, nor does it in any way limit the liability of such parties to the Department in regards to any indemnification obligations of such parties herein.

8) Available Coverages/Limits – All coverage and limits available to the Subrecipient, Developer, or contractor shall also be available and applicable to the Department.

9) Satisfying an SIR - All insurance required by this Agreement and any required by the terms specific to the relevant Approved Project must allow the Department to pay and/or act as the Subrecipient's, Developer's, or contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Subrecipient's, Developer's, or contractor's agent in satisfying any SIR is at the Department's discretion.

10) Use of Subcontractors - In the case of Developer or contractor's utilization of subcontractors to complete the contracted scope of work for the relevant Approved Project, Developer or contractor shall include all subcontractors as insureds under Developer's or contractor's insurance or supply evidence of subcontractor's insurance to the Department equal to policies, coverages, and limits required of Developer and contractor.

B. Project Insurance Requirements

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

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

The policy must name The State of California, its officers, agents, and employees as additional insureds.

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

The policy must name The State of California, its officers, agents, and employees as additional insured.

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

4) **Flood Insurance** – The Subrecipient shall ensure that Developer complies with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). Subrecipient shall ensure flood insurance coverage is provided by the Developer for the Approved Project if required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

5) **Builders Risk insurance** – Developer or Developer's contractor on an Approved Project shall maintain builders risk coverage prior to or upon commencement of construction of the Approved Project, including any delivery and storage of materials to be incorporated into the Approved Project. This coverage must cover all risk of physical damage or risk of loss for an amount equal to the full amount of the construction contract. This coverage must include coverage for flood if the Property is located in a Special Flood Hazard Area as determined by the Federal Emergency Management Agency. Additionally, Developer or Developer's general contractor must obtain a builder's risk installation floater for coverage of the contractor's labor, materials, and equipment to be used for completion of work performed under the construction contract. The minimum amount of coverage to be carried must be equal to the full amount of the construction contract.

6) **Property Insurance –** Developer on an Approved Project shall maintain including all risk coverage or standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of full replacement value of the Approved Project for the duration of the term of the Affordability Period. Coverage amount may be adjusted for fluctuation in replacement values. This coverage is required upon completion of construction of the Approved Project, or upon closing of the financing for the Approved Project if it is a rehabilitation project.

24. Condemnation

A. The Developer shall at all times keep the Development insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Subrecipient. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Subrecipient.

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

may be used for partial rebuilding and partial repayment of the Assistance in a manner that provides adequate security to the Subrecipient for repayment of the remaining balance of the Assistance.

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

25. Anti-Lobbying Certification

The Subrecipient shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with the Approved Project(s) and shall certify and disclose accordingly. 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 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.

A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, 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.

B. 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, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26. Conflict of Interest

Pursuant to 24 CFR § 570.489(h), no member, officer, or employee of the Developer, or its designees or agents, no member of the governing body of the locality in which the Approved 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 activities assisted under this part, 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-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-DR-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter.

27. Energy Policy and Conservation Act

This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the federal Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

28. State Contract Manual Requirements (Section 3.11, Federally Funded

Contracts (Rev. 3/03):

A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:

1) It is mutually understood between the parties that this contract may have 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 contract were executed after that determination was made.

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

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

4) The Department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.

B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.

C. Gov. Code § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

29. Indemnification

Subrecipient and Developer, at their sole cost and expense, shall jointly and severally indemnify, defend, and hold harmless the Department, its employees, representatives, attorneys, agents, and their respective successors, heirs, and assigns (collectively, the "Department Indemnified Parties") from and against any and all claims, demands, actions, costs, losses, damages, and liabilities, whether direct or indirect (collectively, "Damages"), and regardless of their nature or source, which in any way relate to or arise from the actions or inactions of Subrecipient, Developer, or its contractors, subcontractors, agents, or representatives (collectively, the "Developer Parties") in connection with this RIDER and any agreement or instruments executed in connection herewith. The obligations of the Developer Parties under this Section 26 shall apply to all actions or omissions of Developer Parties as described above which cause or are alleged to have caused Damages in connection with the Project. Further, the obligations of the Developer Parties under this Section 26 shall survive the expiration or earlier termination of the Development Agreement or this RIDER.

30. Conflicting Provisions

Should any of the provisions of this RIDER be found to be in conflict with any other provision of the Development Agreement to which this RIDER is attached, the terms of this RIDER shall prevail.

31. Third Party Beneficiaries

The Developer and Subrecipient expressly agree and acknowledge that the Department is an intended third-party beneficiary to the provisions of the Development Agreement and this RIDER. Among other things, the performance of the Development Agreement and this RIDER benefit the Department by creating, rehabilitating, or otherwise making available, affordable housing units within the State of California. The Department is the sole third-party beneficiary under Section 28 and no other parties are intended or should be deemed as such.

IN WITNESS WHEREOF, Subrecipient and Developer have caused this RIDER to be executed by their respective duly authorized officers.

ATTEST:
_____
MONA MIYASATO
Clerk of the Board

By: _____
Deputy Clerk of the Board

SUBRECIPIENT:
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

COUNTY COUNSEL

By:_____
Deputy County Counsel _____

DEVELOPER

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

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

APPROVED AS TO FORM:
RISK MANAGEMENT

By: _____

By: _____
Raymond F. Down,
Vice President

Greg Milligan
Risk Manager

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