

NO FEE DOCUMENT

**Recording requested by and  
When recorded, mail to:**

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

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**COUNTY HOME LOAN REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This County HOME Loan Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this \_\_\_\_ day of August, 2018 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and The Residences at Depot Street, L.P., a California limited partnership (the "Owner").

**RECITALS**

A. The Owner owns a parcel of real property located at 201 & 205 N. Depot Street in Santa Maria, California as more particularly described in Exhibit A (the "Property") upon which the Owner intends to construct eighty (80) units of permanent multi-family rental housing, of which two units are designated as a manager's units not subject to income and rent limits and seventy-eight (78) units are targeted to low- and very-low income households (the "Project").

B. The Lender has received HOME Investment Partnerships Program funds ("HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.

C. Lender has an additional amount of funds set aside from fees paid by developers in-lieu of including affordable units in for-sale developments, as required by the Santa Barbara County Code, which funds have been placed in a trust for the purpose of providing affordable housing within Santa Barbara County ("In-Lieu Funds").

D. Owner has received a loan from Lender in the amount of One Million Nine Hundred Ninety-Four Thousand Four Hundred Fifty-Nine Dollars (\$1,994,459) in HOME Funds, and One Million One Hundred Seventy-Eight Thousand Nine Hundred Seventy-Eight Dollars

(\$1,178,978) in In-Lieu Funds, for a total of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) to provide financing for the Project (the "County HOME Loan").

E. As further consideration for this funding and to further the interests of the Lender, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

### **1. DEFINITIONS**

All initially capitalized terms in this Agreement shall have the definition ascribed to such terms in the County HOME Loan Agreement. Some of the following terms are defined in the County HOME Loan Agreement and repeated here for convenience of reference. Where such terms are not defined in the County HOME Loan Agreement, the following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 "ANNUAL INCOME" means the definition of Annual Income as more particularly defined at 24 CFR 5.609.

1.2 "AREA MEDIAN INCOME" means the area median income for the Santa Maria-Santa Barbara Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.3 "COUNTY-ASSISTED UNIT" means any one of the seven (7) rental housing units on the Property designated by Owner as "floating" County-assisted units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement. A "floating" unit must have the County-assisted designation, must be occupied by income-eligible tenants, and must be at least comparable in terms of size, features and number of bedrooms to the units originally designated at initial occupancy, although the specific unit(s) so designated may vary with availability. A unit shall not be considered a County-Assisted Unit until the Unit has been constructed and made available for occupancy. Notwithstanding the above, a County-Assisted Unit may not also be a "HOME-Assisted Unit" as defined herein in Section 1.9.

1.4 "COUNTY HOME LOAN" means the loan of HOME Funds and In-Lieu Funds in the total amount of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437) made by the Lender to the Owner to finance certain

development costs of the Project pursuant to the County HOME Loan Agreement and the County HOME Loan Note.

1.5 **“COUNTY HOME LOAN AGREEMENT”** is the loan agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing the County HOME Loan.

1.6 **“COUNTY HOME LOAN DEED OF TRUST”** means that certain deed of trust, assignment of rents, and security agreement placed on the Property and the improvements to be constructed thereon as security for the County HOME Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.7 **“COUNTY HOME LOAN DOCUMENTS”** are collectively the County HOME Loan Agreement, the County HOME Loan Note evidencing the County HOME Loan, the County HOME Loan Deed of Trust securing the County HOME Loan Note, and this Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 **“COUNTY HOME LOAN NOTE”** means the promissory note executed by the Owner in favor of the Lender in the amount of Three Million One Hundred Seventy-Three Thousand Four Hundred Thirty-Seven Dollars (\$3,173,437), evidencing the County HOME Loan, which is secured by the County HOME Loan Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory note.

1.9 **“HOME-ASSISTED UNIT”** means any of the eleven (11) Units on the Property designated by the Owner as “floating” HOME units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement. A “floating” unit must have the HOME-assisted designation, must be occupied by HOME income-eligible tenants, and must be at least comparable in terms of size, features and number of bedrooms to the units originally designated at initial occupancy, although the specific unit(s) so designated may vary with availability. A unit shall not be considered a HOME-Assisted Unit until the Unit has been constructed and made available for occupancy. Notwithstanding the above, a HOME-Assisted Unit may not also be a “County-Assisted Unit” as defined herein in Section 1.3.

1.10 **“IN-LIEU FUNDS”** means funds set aside from fees paid by developers in-lieu of including affordable units in for-sale developments, as required by the Santa Barbara County Code, which funds have been placed in a trust for the purpose of providing affordable housing within Santa Barbara County.

1.11 **“LENDER”** is the County of Santa Barbara, a political subdivision of the State of California, and its authorized representatives, officers, officials, directors, employees, and agents.

1.12 **“LOW-INCOME HOUSEHOLD”** means a household, as defined in 24 CFR 92.2 and for the purposes of this Project, whose annual income does not exceed sixty percent (60%) of the Area Median Income with adjustments for household size.

1.13 **“OWNER”** means The Residences at Depot Street, L.P., a California limited partnership.

1.14 **“PROJECT”** means the construction, operation and management of the Property and the improvements to be constructed thereon according to the terms of the County HOME Loan Agreement.

1.15 **“PROPERTY”** means the real property located at 201 & 205 N. Depot Street in Santa Maria, California, as more particularly described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the County HOME Loan Agreement.

1.16 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as a Low-Income or Very Low-Income Household, as defined herein. A Qualifying Household who meets the definition of Veteran must be given a preference to be first considered for a vacancy or may be moved to the top of a waiting list, if applicable. “Veteran” is defined as the Head of Household or Spouse who has served in active duty in the United States Armed Forces for a minimum of six (6) continuous months, and if separated from military service, received other than dishonorable discharge. The veteran preference will also be given to a surviving spouse or registered domestic partner of a deceased veteran, as defined herein. Verification of veteran status will be by the submittal of a copy of the veteran's DD-214.

1.17 **“QUALIFYING RENT”** means the total monthly charges for rent, which shall not exceed

a) a “Low HOME” Rent that does not exceed 30 percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit and smaller and larger families, or

b) a “High HOME” Rent that does not exceed 30 percent (30%) of the adjusted income of a family whose annual income equals sixty-five percent (65%) of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit and smaller and larger families.

HOME rents are not required to be lower than the HOME rent limits for the project in effect on the date of this Agreement.

In accordance with 24 CFR 92.252(d), if the tenant pays for utilities and services (excluding telephone, television and Internet services), then the Qualifying Rent shall be reduced by the maximum monthly allowance for utilities and services using the annual HUD Utility Schedule Model or other annual utility schedule as determined by the County.

1.18 **“TAX CREDIT REGULATORY AGREEMENT”** means that regulatory agreement required by the California Tax Credit Allocation Committee that will be recorded after completion of the Project and that restricts the Tenant income and rents for all units in the Project, with the exception of the Project’s two (2) manager’s units which shall not be so restricted.

1.19 “**TENANT**” means a household occupying a Unit.

1.20 “**TERM**” means the period of time during which the HOME-Assisted Units and County-Assisted Units must meet the affordability requirements imposed under the HOME Program, commencing upon project completion in conformance with 24 CFR 92.2 and 24 CFR 92.252(e) and terminating twenty (20) years from the date of the issuance of a certificate of occupancy issued for the Project plus six months.

1.21 “**UNIT**” means a housing unit in the Project.

1.22 “**VERY LOW-INCOME HOUSEHOLD**” means a household, as defined in 24 CFR 92.2, whose annual income does not exceed fifty percent (50%) of the Area Median Income with adjustments for household size.

## **2. TERM AND COMPLIANCE**

**2.1 COMPLIANCE WITH COUNTY HOME LOAN DOCUMENTS.** The Owner’s actions with respect to the Property and the use of funds from the County HOME Loan shall at all times be in full conformity with all of the requirements of the County HOME Loan Documents, including but not limited to the insurance requirements contained therein.

**2.2 TERM OF AGREEMENT.** This Agreement shall commence upon project completion in conformance with 24 CFR 92.2 and 24 CFR 92.252(e) and terminate twenty (20) years from the date of the issuance of a certificate of occupancy plus six months. The requirements of this Agreement shall apply throughout the Term without regard to the term of any loan or mortgage or any transfer of ownership of the Property. Upon termination of this Agreement, Owner shall be required to comply with the terms of the Tax Credit Regulatory Agreement to be recorded after completion of the Project for the duration of the County HOME Loan.

**2.3 COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME Program in effect on the date the County HOME Loan is executed by all parties, and as may be amended from time to time.

## **3. PROJECT OCCUPANCY AND RENTS**

**3.1 OCCUPANCY OF PROJECT.** A total of eleven (11) Unit(s) in the Project shall be designated as HOME-Assisted Units, and seven (7) Units in the Project shall be designated as County-Assisted Units, for a total of eighteen (18) Assisted-Units. Each HOME-Assisted Unit and County-Assisted Unit must be occupied, or reserved for occupancy by, Qualifying Household(s).

**3.2 HOME-ASSISTED AND COUNTY-ASSISTED UNITS.** The Owner shall limit for the full Term of this Agreement the rental of eleven (11) HOME-Assisted Unit(s) and seven (7) County-Assisted Unit(s), for a total of eighteen (18) Assisted-Units to Qualifying Households at Qualifying Rents that do not exceed the maximum rental charges for each HOME-Assisted Unit or County-Assisted Unit as set forth in Section 1.17 and 3.4 herein. Of the eleven (11) HOME-

Assisted Units, three (3) Units, consisting of one 1-bedroom Unit and two 2-bedroom Units must be occupied by Very Low-Income Households whose rents do not exceed "Low HOME" Rent limits, and the remaining eight (8) HOME-Assisted Units, consisting of two 0-bedroom Units, two 1-bedroom Units, two 2-bedroom Units and two 3-bedroom Units may be occupied by a Very Low-Income or Low-Income Household whose rent does not exceed "High HOME" Rent limits. Although the seven (7) County-Assisted Units are not subject to the federal HOME program occupancy and rent, the County will require compliance with the same occupancy and rent limits as the HOME program. Of the seven (7) County-Assisted Units, two (2) Units, consisting of one 1-bedroom Unit and one 2-bedroom Unit must be occupied by Very Low-Income Households whose rents do not exceed "Low HOME" Rent limits, and the remaining five (5) County-Assisted Units, consisting of three 1-bedroom Units and two 2-bedroom Units may be occupied by a Very Low-Income or Low-Income Household whose rent does not exceed "High HOME" Rent limits. The HOME-Assisted Unit(s) and County-Assisted Unit(s) shall be designated as "floating" so the HOME-Assisted Unit(s) and County-Assisted Unit(s) may change over time as long as the total number and type of HOME-Assisted Units County-Assisted Units in the Project remains constant.

The HOME-Assisted Unit(s) and County-Assisted Unit(s) shall meet the following standards:

- A. Be similarly constructed and of comparable quality to all other Units in the Project and be dispersed throughout the Project; and
- B. Provide Tenants of HOME-Assisted Units and County-Assisted Units access and enjoyment of all common areas and facilities of the Project on the same basis as Tenants of other Units.

**3.3 OTHER PROJECT UNITS.** The remaining non-HOME-Assisted and non-County-Assisted units of the Project, excluding any manager's unit(s), shall comply with the rent and income restrictions and other terms of the Tax Credit Regulatory Agreement. Non-compliance under the terms of the Tax Credit Regulatory Agreement shall constitute an event of default under the County HOME Loan Agreement, subject to applicable cure periods.

The Project shall be maintained and operated to comply with all applicable federal, state, and local requirements for access for disabled persons, including but not limited to Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as amended, and with implementing regulations at 24 CFR, Part 8, and the Fair Housing Act (42 USC 3601-3619), implemented at 24 CFR Part 100, Subpart D. Within thirty (30) days after Owner has completed the construction of the Project, Owner shall submit satisfactory documentation of compliance with these requirements, including, but not limited to, a certification from the Project architect documenting the unit numbers and type of accessibility features of no less than two (2) units accessible for mobility impairments and one (1) unit accessible for either hearing or visual impairments.

### **3.4 MAXIMUM RENTAL CHARGES.**

A. Maximum rental charges for the HOME-Assisted Units and County-Assisted Units shall not exceed the Qualifying Rent as defined above in Section 1.17 and Section 3.2.

B. The Qualifying Rent for each HOME-Assisted Unit and County-Assisted Unit shall be set by the Lender at the time of initial occupancy of the Project. Annual increases in Qualifying Rents shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing Qualifying Rents on any HOME-Assisted Unit or County-Assisted Unit on the Project, Owner shall submit to the Lender for review and approval a written request for such increase. Tenants of Home-Assisted Units and County-Assisted Units shall be given at least thirty (30) days written notice prior to any increase in Qualifying Rents, consistent with state law. Lender shall approve such request if the increased Qualifying Rents will comply with all applicable HOME Program requirements.

3.4.1 OCCUPANCY DEADLINES. Owner shall ensure that each HOME-Assisted Unit and County-Assisted Unit is occupied by an eligible tenant in accordance with the deadlines for occupancy set forth at 24 CFR 92.252. Eligible tenants shall occupy each HOME-Assisted Unit and County-Assisted Unit within eighteen (18) months from the completion of construction of the Project, evidenced by the recording of a notice of completion and securing Certificate(s) of Occupancy. In the event that any HOME-Assisted Unit or County-Assisted Unit is not occupied by an eligible tenant five (5) months after the date of the issuance of a certificate of occupancy, Owner shall submit to Lender within ten (10) days a detailed record of its marketing efforts and comply with Lender's requests for additional information pertaining to the marketing efforts. In the event any HOME-Assisted Unit or County-Assisted Unit is not occupied by eligible tenants within seventeen (17) months after the date of the issuance of a certificate of occupancy, then this shall constitute an Event of Default. On or before the last day of the seventeenth (17th) month after the date of the issuance of a certificate of occupancy, Lender shall give written notice to Owner in accordance with Section 6.2 herein. Owner shall have thirty (30) days from receipt of such notice to cure the breach, but in any event shall cure the breach before the end of the eighteenth (18th) month after the date of the issuance of a certificate of occupancy.

### 3.5 INCOME CERTIFICATION.

The Annual Income levels and other qualifications of applicants for HOME-Assisted Units and County-Assisted Units shall be certified by Owner no earlier than six (6) months prior to the Qualifying Household's expected occupancy of a HOME-Assisted Unit or County-Assisted Unit, and recertified annually thereafter by the Owner, in compliance with 24 CFR 92.203.

A. Initial Annual Income Verification. Before the Qualifying Household occupies a HOME-Assisted Unit or County-Assisted Unit, the Owner shall verify that the Annual Income calculated in an Annual Income certification is accurate by taking both of the following steps as a part of the verification process:

- (1) Third Party Verification: All third parties (e.g., employer, Social Security Administration, public assistance agency, etc.) are contacted in writing to obtain written verification of Annual Income; and
- (2) Review of Documents: The Qualifying Household provides documents verifying their Annual Income (e.g., pay stubs, tax returns, etc.), which are to then be retained in the Project files.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Owner shall recertify the Annual Income of each Tenant occupying a HOME-Assisted Unit or County-Assisted Unit using the method as described in Section 3.5.A, above.

**3.6 INCREASES IN QUALIFYING HOUSEHOLD INCOMES.** In the event that recertification of a previously-Qualifying Household's Annual Income indicates that the Annual Income exceeds the maximum designated for a Unit reserved for a Low-Income or Very Low-Income Household, the Owner may increase rents on such Unit only as permitted by HUD in accordance with regulations regarding "over-income tenants" at 24 CFR 92.252(i). If the previously-Qualifying Household's income exceeds eighty-percent (80%) of AMI, then the unit occupied by the previously-Qualifying Household no longer qualifies as a HOME-Assisted Unit and the next available unit of comparable size and amenities or larger must be designated as the replacement HOME-Assisted Unit.

#### **4. LEASING THE PROJECT**

**4.1 TENANT LEASES.** The Owner shall execute a written lease with Tenants of HOME-Assisted Units and County-Assisted Units for a term of at least one year, unless the Owner and the Tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The Tenant lease and any changes thereto must be approved by Lender.

A. The Owner shall include in leases for all HOME-Assisted Units and County-Assisted Units provisions which provide that a Qualifying Household is subject to annual certification of Annual Income and that the tenancy of the Qualifying Household shall be terminated as soon as possible in accordance with state law should one or more of the Qualifying Household's members misrepresent any material fact regarding the Qualifying Household's qualification as a Low-Income or Very Low-Income Household. The Owner shall include in all leases for HOME-Assisted Units and County-Assisted Units provisions which prohibit the Qualifying Household from subleasing the HOME-Assisted Unit or County-Assisted Unit.

B. In addition to executing a lease for a HOME-Assisted Unit or County-Assisted Unit, the Owner shall require that each Qualifying Household leasing a HOME-Assisted Unit or County-Assisted Unit execute a declaration of intent to occupy which shall require the Qualifying Household to occupy the HOME-Assisted Unit or County-Assisted Unit as the Qualifying Household's primary residence.

C. The lease for each HOME-Assisted Unit and County-Assisted Unit shall not contain any of the prohibited provisions identified at 24 CFR §92.253(b) including the following:

1. *Agreement to be sued.* Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;



2. *Treatment of property.* Agreement by the Tenant that the Owner may take, hold or sell personal property of Qualifying Household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the HOME-Assisted Unit or County-Assisted Unit after the Tenant has moved out of the HOME-Assisted Unit or County-Assisted Unit. The Owner may dispose of this personal property in accordance with State law;

3. *Excusing Owner from responsibility.* Agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

4. *Waiver of notice.* Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

5. *Waiver of legal proceedings.* Agreement by the Tenant that the Owner may evict the Tenant or Qualifying Household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6. *Waiver of a jury trial.* Agreement by the Tenant to waive any right to a trial by jury;

7. *Waiver of right to appeal court decision.* Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

9. *Mandatory support services.* Agreement by the Tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a Tenant of a HOME-Assisted Unit or County-Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the Owner shall serve written notice upon the Tenant specifying the grounds for the action at least thirty (30) days prior to termination of tenancy.

E. Owner shall comply with all requirements of the Violence Against Women Act (VAWA) set forth in 24 CFR part 5, subpart L. Owner shall provide the notice and certification form described in 24 CFR 5.2005(a) to an applicant for a HOME-Assisted Unit or County-Assisted Unit at the time the applicant is admitted to a HOME-Assisted Unit or County-Assisted Unit, or denied admission to a HOME-Assisted Unit or County-Assisted Unit based on the Owner's tenant selection policies and criteria. Owner shall further provide the notice and certification form described in 24 CFR 5.2005 with any notification of eviction from a HOME-Assisted Unit or County-Assisted Unit. If a family living in a HOME-Assisted Unit or County-Assisted Unit separates under 24 CFR 5.2009(a), the remaining tenant(s) may remain in the Unit. All leases for HOME-Assisted Units and County-Assisted Units must include a VAWA lease term/addendum to incorporate all requirements that apply to the Owner or lease under 24 CFR

part 5, subpart L, and 24 CFR 92.359, including the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if it is determined that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). The lease term/addendum must require the Owner to notify the participating jurisdiction before the owner bifurcates the lease or provides notification of eviction to the tenant. Owner shall comply with all other VAWA requirements applicable to the HOME program not specified herein.

F. Owner and Lender shall work together to comply with the requirements of the Coordinated Entry System under the Continuum of Care program, as set forth at 24 CFR Part 578, PIH Notice 2013-15 and other guidance from HUD on CoC and PHA collaboration.

**4.2 TENANT SELECTION.** Before leasing the Project, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan. Tenant selection must, at a minimum, meet the requirements for tenant selection set out in 24 C.F.R. 92.253(d) and any modifications thereto. A Veteran's preference must be applied pursuant to amended Section 1.16 as described above. Any changes to the tenant selection plan require prior written approval from Lender, which shall not be unreasonably conditioned, delayed or withheld.

**4.3 SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

**4.4 CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the Term of Agreement.

**4.5 NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, gender, gender identity or expression, sexual preference, age, marital status, family status, source of income, military or veteran status, physical or mental disability, medical condition, genetic information, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any basis prohibited by law. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

**4.6 MARKETING PLAN.** Prior to occupancy, Owner shall submit to the Lender for approval its plan for marketing the Units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the marketing plan and shall approve or disapprove it within thirty (30) days after submission. If the marketing plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised

marketing plan within thirty (30) days of Lender's notice of disapproval. The Lender's disapproval of the revised marketing plan shall constitute an Event of Default under Sections 8.1.D, 8.1.E, and/or 8.1.I of the County HOME Loan Agreement.

## **5. PROPERTY MANAGEMENT**

**5.1 MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of Tenants, certification and recertification of Qualifying Household size and Annual Income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Project. The Owner shall submit to the Lender for its approval its proposed Property manager. Lender hereby preapproves the Housing Authority of the County of Santa Barbara as the Property manager. The Owner may only remove and/or replace the Property manager with the prior written consent of the Lender which consent shall not be unreasonably withheld. Upon completion of the Project, as defined in Section 4.2 of the County HOME Loan Agreement, Owner shall submit to Lender a Management Plan for the Project pursuant to Section 5.2 of the County HOME Loan Agreement.

**5.2 APPROVAL OF MANAGEMENT POLICIES.** The Owner shall submit its written management policies with respect to the Project to the Lender for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement, the requirements of the existing HOME Program, as may be amended from time to time, and the requirements of all lenders providing financing for the Project.

**5.3 INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit all requested records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Property for compliance with Owner's obligations under this Agreement at all reasonable times upon twenty-four (24) hours advance notice of such visit by the Lender to the Owner or the Owner's Property manager and to Tenants of any Units. Owner must include provisions in Tenant leases that allow for County inspections of Units.

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement and the HOME Program regulations at 24 CFR Part 92 in effect on the date the County HOME Loan is executed by all parties, and as may be amended from time to time, and shall remain in compliance therewith throughout the Term of this Agreement. The Owner shall permit the Lender to conduct annual compliance monitoring, including performing on-site records review and inspections of the Property, as required by regulation or reasonably requested by Lender.

**5.5 ANNUAL REPORT.** Following recordation of a notice of completion issued for the Project, the Owner shall annually submit to the Lender a report in a form approved by Lender for the preceding period of January 1st through December 31<sup>st</sup> or portion thereof, containing the information requested by Lender so as to allow the Lender to determine the Owner's compliance with this Agreement. The report shall be submitted annually no later than March 1<sup>st</sup>, and shall

include, at a minimum: (i) an Annual Financial Statement as defined in Section 1.2 of the County HOME Loan Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, (v) for each HOME-Assisted Unit or County-Assisted Unit, the rent, Annual Income, and household size of the household in occupancy. The report shall also state the date the tenancy commenced for each HOME-Assisted Unit or County-Assisted Unit and such other information as the Lender may be request.

Within thirty (30) days after receipt of a written request, Owner shall submit any other information or completed forms requested by the Lender in order to comply with reporting requirements of the United States Department of Housing and Urban Development, or the State of California, or the Lender. The Lender shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to the Project or any Unit to determine compliance with this Agreement.

**5.6 FEES, TAXES, AND OTHER LEVIES.** The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

**5.7 PROPERTY TAX EXEMPTION.** The Owner shall not apply for a property tax exemption for the Property under any provision of law other than California Revenue and Taxation Code Section 214(g) without the Lender's prior written consent. Lender acknowledges Owner will be applying for a property tax exemption for the property and hereby provides its consent.

**5.8 MAINTENANCE OF EXISTING STRUCTURES.** Owner shall maintain all buildings on the Property in good condition, in good repair, ordinary wear and tear excepted, and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet the standards set out in 24 CFR 92.251(f)(2) throughout the Term of this Agreement. In the event that Lender establishes property standards in accordance with 24 CFR 92.251(f)(1) and determines in its sole discretion that these standards are applicable to the Project, Lender shall send written notice of this determination to Owner. Upon Owner's receipt of such written notice, the property standards established by Lender pursuant to 24 CFR 92.251(f)(1) shall apply to all Units in the Project throughout the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. Lender shall have no responsibility over maintenance of the Property.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be senior and not be subordinate to any deed of trust, note, agreement and/or to any other obligations of Lender concerning the Property and may be subordinated in priority only as to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

**6.2 DEFAULT AND REMEDIES** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the

Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. Notwithstanding anything to the contrary contained in this Agreement, Lender hereby agrees that any cure of any default made or tendered by Owner's Limited Partner shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner. Copies of all notices which are sent to Owner under the terms of this Agreement shall also be sent to Owner's Limited Partner as set forth in Section 6.10 below. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof; or

D. Pursue any other remedy provided under the County HOME Loan Documents or allowed at law or in equity.

**6.3 EVENT OF DEFAULT.** In the event that the Project fails to meet the HOME affordability requirements included in this Agreement for the Term of the Agreement, subject to applicable notice and cure periods contained herein, this shall constitute an Event of Default under Sections 8.1.D, 8.1.E, and/or 8.1.I of the County HOME Loan Agreement. In the event that the Project fails to meet the terms of the Tax Credit Regulatory Agreement, this shall constitute an Event of Default under Sections 8.1.D, 8.1.E, 8.1.I and/or 8.1.J of the County HOME Loan Agreement.

**6.4 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No official elected or appointed, officer, director, employee or agent of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

**6.5 INSURANCE AND INDEMNITY.** Owner shall comply with the insurance and indemnification provisions set forth in Exhibit B and incorporated herein by this reference.

**6.6 GOVERNING LAW.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**6.7 AGREEMENT CONTROLS.** In the event that any provision of this Agreement and that contained in any other Loan Document conflict, the terms of this Agreement shall control.

6.8 **TIME.** Time is of the essence in this Agreement.

6.9 **CONSENTS AND APPROVALS.** Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

6.10 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

**Lender:** County of Santa Barbara  
Housing and Community Development  
123 E Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

With copy to: Office of County Counsel  
County of Santa Barbara  
105 E Anapamu Street, Room 201  
Santa Barbara, CA 93101

**Owner:** The Residences at Depot Street, L.P.  
c/o Surf Development Company  
815 West Ocean Avenue  
Lompoc, CA 93436  
Attn: President

With copy to: Mark S. Manion  
Price, Postel & Parma, LLP  
200 E. Carrillo St., Suite 400  
Santa Barbara, CA 93101

With copy to: Wells Fargo Affordable Housing Community Development  
Corporation  
301 S. College Street  
MAC D1053-170, Charlotte, NC 28288  
Attn: Director of Tax Credit Asset Management.

6.11 **BINDING UPON SUCCESSORS.** This Agreement shall be recorded and all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of the Owner, and the Lender, and shall run with the land for the full Term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the County HOME Loan or County HOME Loan Note, any reconveyance of the County HOME Loan Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

**6.12 RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower and shall not be construed as a joint venture, equity venture, or partnership.

**6.13 WAIVER.** Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the County HOME Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of Owner's obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**6.14 AMENDMENTS AND MODIFICATIONS.** Any amendment to or modification of this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

**6.15 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

*Signatures appear on following page. No further text appears here.*

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

**ATTEST:**

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

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

\_\_\_\_\_  
Deputy Clerk of the Board

**APPROVED AS TO ACCOUNTING FORM:**

THEODORE FALLATI, CPA, CPFO  
AUDITOR-CONTROLLER

By: C. E. Price, Jr.

C. E. PRICE, JR.  
Deputy

**APPROVED AS TO FORM:**

COUNTY COUNSEL

By: Scott Greenwood

Scott Greenwood  
Deputy County Counsel

**APPROVED AS TO FORM:**

RISK MANAGEMENT

By: Ray Aromatorio

Ray Aromatorio, ARM, AIC  
Risk Manager

**COUNTY:**

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

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

Das Williams, Chair  
Board of Supervisors

By: George Chapjian

George Chapjian, Director  
Community Services Dept.

**OWNER:**

THE RESIDENCES AT DEPOT STREET, L.P.

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

Raymond F. Down  
Raymond F. Down, President

By: RDSGP LLC,  
a California limited liability company,  
its administrative general partner

By: Housing Authority of the County of Santa  
Barbara, a public body, corporate and politic, its  
managing member

Robert P. Havlicek Jr.

Robert P. Havlicek Jr., Executive Director



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

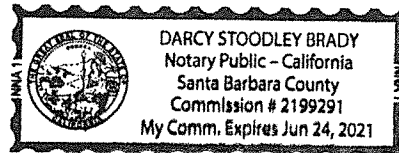
State of California  
County of Santa Barbara

On August 6, 2018, before me, Darcy Stoodley Brady,  
a Notary Public, personally appeared Robert P. Haulicok Jr., who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or  
the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Darcy S. Brady  
Signature of Notary Public



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Barbara

On August 7, 2018, before me, Darcy Stodley Brady,  
a Notary Public, personally appeared Raymond F. Down, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or  
the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Darcy S. Brady  
Signature of Notary Public

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

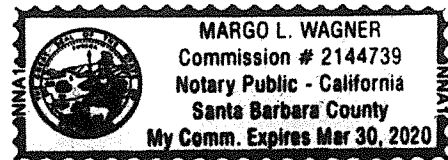
State of California  
County of Santa Barbara

On 8-9-18, 2018, before me, Margo L. Wagner  
a Notary Public, personally appeared George Chappian, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~  
authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or  
the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Margo L. Wagner  
Signature of Notary Public



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Barbara

On \_\_\_\_\_, 2018, before me, \_\_\_\_\_,  
a Notary Public, personally appeared \_\_\_\_\_, who proved to me on  
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her their  
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or  
the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

# EXHIBIT A

## LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_ TO \_\_\_\_\_, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

NON-EXCLUSIVE AND EXCLUSIVE EASEMENTS APPURTENANT TO PARCELS 1 AND 2 OF PARCEL MAP 6009, IN THE CITY OF SANTA MARIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_ TO \_\_\_\_\_, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ABOVE, OVER AND ACROSS PARCELS 3 OF PARCEL MAP 6009 AND PARCEL 1 OF PARCEL MAP 5967, FOR PURPOSES OF VEHICULAR AND PEDESTRIAN ACCESS, INGRESS, EGRESS, PARKING, DRAINAGE, UTILITIES AND OTHER EASEMENTS AS SET FORTH IN THAT CERTAIN GREAT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS AND MAINTENANCE DATED \_\_\_\_\_, 2018 AND RECORDED IN THE OFFICIAL RECORDS ON \_\_\_\_\_, 2018 AS INSTRUMENT NO. 2018-\_\_\_\_\_.

APN: \_\_\_\_\_

Exhibit B  
Standard Indemnification and Insurance Provisions  
*See Attached*

## EXHIBIT B

### Indemnification and Insurance Requirements (For Service Contracts Not Requiring Professional Liability Insurance)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

##### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

##### B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to



provide evidence of renewal may be treated by COUNTY as a material breach of contract.

9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.