CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership)

This Development Agreement (similar in form and function to a Loan Agreement), also called the **CDBG-DR MHP Development Agreement** ("**Agreement**"), is made effective on the 1st day of November, 2023 by and between the City of Chico, a municipal corporation of the State of California ("**City**"), and Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership, and its permitted successors and assigns ("**Developer**") (collectively, the **"Parties"**).

WHEREAS, the United States Congress passed the Appropriations Act of Public Laws 115-254 and 116-20, which appropriated disaster recovery funds to the State of California in response to wildfires that occurred in November 2018 and impacted Butte, Los Angeles, and Ventura Counties, identified by the Federal Emergency Management Agency as major disaster declaration DR-4407; and

WHEREAS, the State of California Department of Housing and Community Development **("HCD")** has received an allocation of Community Development Block Grant- Disaster Recovery funds ("**CDBG-DR**") from the United States Department of Housing and Urban Development ("**HUD**") to address the impacts of DR-4407; and

WHEREAS, the City has entered into a Master Standard Agreement with HCD, 21-DRMHP-21006 dated October 4, 2021 that governs the administrative, financial, and recordkeeping requirements related to the allocation of CDBG-DR funds to the City that are to be used for the purpose of increasing the supply of affordable housing units or rehabilitating or reconstructing disaster-impacted units through implementation of the Multifamily Housing Program ("**DR-MHP**"), as detailed in the HCD DR-MHP Policies and Procedures Manual; and

WHEREAS, Developer will purchase the real property located at 2324 Esplanade St., Chico, CA 95926, APN 006-100-049 ("**Property**"), in the City of Chico, State of California, legally described in **Exhibit A** attached hereto and incorporated herein by this reference, for the purpose of developing Oleander Community Housing, a 38-unit affordable apartment project including one manager unit (the "**Approved Project**"); and

WHEREAS, Developer's administrative general partner is TPC Holdings IX, LLC, an Idaho limited liability Company (**"Administrative General Partner"**), and the manager to the Administrative General Partner and developer on the Approved Project is Pacific West Communities, Inc. an Idaho corporation, and the managing general partner of the Developer is Butte County Affordable Housing Development Corporation, a California nonprofit public benefit corporation; and

WHEREAS, On February 2, 2021, the Chico City Council authorized the City Manager to implement the provisions of the Master Standard Agreement with HCD, including allocation of CDBG-DR MHP Program funds (the "Project Funds") to fund development of the Approved Project (the "**Loan**"), by way of Resolution No. 02-21; and

WHEREAS, as consideration for the Loan, Developer will cause the Property and the Approved Project to be held and used as a low income housing project available at affordable housing rents to Low and Moderate Income Households, as defined by 24 CFR Part 570.3 in CDBG Program regulations, for a period of at least twenty (20) years, and will also cause a deed of trust (the "**CDBG-DR MHP Deed of Trust**") to be recorded against the Property in favor of the City which will secure Developer's obligations under this CDBG-DR MHP Development Agreement; and

WHEREAS, the Parties desire to agree and memorialize the specific terms and conditions for the disbursement of the Project Funds in furtherance of the development and management of the Approved Project in compliance with the CDBG-DR MHP Program.

NOW THEREFORE, be it agreed between the Parties to this Agreement as follows:

1. Amount and Purpose of Loan

The City hereby agrees to loan Six Million Thirty-One Thousand Six Hundred Twenty-Six dollars ($6,031,626) in DR-MHP funds to Developer for the development of the Approved Project (the "**Project Funds**"). Per HCD DR-MHP Policies and Procedures, the Project Funds may not exceed forty percent (40%) of total Approved Project cost, or the per unit CDBG-DR funding limits set by HUD that are consistent with annual HOME limits. The Project Funds shall only be used for eligible costs identified in **Exhibit B**, attached hereto and incorporated herein by this reference.

The Loan shall be a non-recourse obligation of Developer. No judgment or execution thereon, entered in any action, legal or equitable, shall be personally enforced against Developer or any of its constituent partners, but shall be enforced only against the collateral described in the CDBG-DR MHP Deed of Trust.

2. Term of CDBG-DR MHP Development Agreement and Terms of Repayment

The term of this CDBG-DR MHP Development Agreement shall commence on the date it is fully executed by the Parties and shall terminate fifty-five (55) years from the date of the issuance of the final certificate of occupancy for the Approved Project ("Maturity Date"). The simple annual interest rate shall be three percent (3%).

Repayment of the principal balance of the Loan and any accrued interest will be due on the Maturity Date. This Loan may be prepaid at any time without premium or penalty. Prepayment of the loan does not forgive the affordability terms as recorded in the Senior Regulatory Agreement.

3. Loan Documents

In addition to this Agreement, the Parties agree to execute and be bound by the following agreements (the **"Loan Documents"**):

A. A Deed of Trust securing the CDBG-DR MHP Loan against the Property (**Exhibit C**);

B. An HCD DR-MHP Junior Regulatory Agreement that enforces occupancy and management requirements for the Approved Project (**Exhibit D**);

C. An HCD DR-MHP Senior Regulatory Agreement that **(Exhibit E);** and

D. An HCD DR-MHP Rider to the Development Agreement (**Exhibit F**).

4. Disbursement of Project Funds

Project Funds disbursed after the execution of this CDBG-DR MHP Development Agreement shall be subject to the disbursement conditions set forth in **Exhibit B** and to the following terms and conditions:

A. Execution and recording of the Deed of Trust securing the CDBG-DR MHP Loan;

B. Execution and recording of the HCD Regulatory Agreement(s);

C. Execution of the HCD CDBG-DR Rider to the Development Agreement;

D. Execution of the HCD Notice to Proceed; and

E. Submittal of all required HCD forms via Grants Network, as required in the HCD CDBG-DR Rider to the Development Agreement.

F. Project Financing. All other sources of funding (whether in the form of loans, grants, tax credits, or otherwise) that are needed to complete the Approved Project must remain fully committed, binding, and available to timely complete construction of the Approved Project as contemplated by the terms of this Agreement and HCD's Notice to Proceed (NTP) (and, in the case of tax credit financing, subject to adjustment as set forth in the Developer's Amended and Restated Agreement of Limited Partnership). The obligation of HCD to fund any amounts, whether in the form of reimbursements or otherwise, under this Agreement and the NTP is expressly conditioned on the continuing satisfaction of the foregoing financing condition. Any proposed changes to the terms, conditions, and/or amounts of the funding sources and/or the security of the Approved Project financing are subject to review and approval by the City and HCD in their reasonable discretion. Any such changes may require a re-review and reapproval of the funding Application by the HCD, which could result in delays.

G. City shall withhold as retainage 10% of the Project Funds. No retainage payments shall be released to Developer until receipt and approval by HCD of all required and Approved Project closeout documents identified in the HCD CDBG-DR Rider to this Agreement.

5. Use of Project Funds

Use of the Project Funds allocated hereunder to Developer shall be subject to the following express terms and conditions:

A. Developer shall use the Project Funds solely for the tasks set forth in Exhibit B.

B. Developer shall comply with all applicable uniform administrative requirements set forth in 2 CFR Part 200, which are expressly incorporated in their entirety into this CDBG-DR MHP Development Agreement, and to which Developer expressly acknowledges having read, agreed to, and understanding. All expenditures of City funds by Developer shall be made strictly within the limitations of the 2 CFR Part 200.

D. Developer shall use the Project Funds and carry out the Approved Project in compliance with all Federal laws and regulations described in subpart K of 24 CFR Part 570, which by this reference are expressly incorporated herein except for those requirements specifically excluded in 24 CFR Section 570.503(b)(5). Developer shall comply with mitigation measures stipulated within the National Environmental Policy Act (NEPA) Environmental Assessment prepared for this project and certified July 21, 2022 by the City of Chico.

E. In addition to Federal laws and regulations described in subpart K of 24 CFR Part 570, Developer shall use the Project Funds and carry out the Approved Project in compliance with the following State and Federal laws and regulations, to the extent applicable: Article XXXIV, Section 1 of the California Constitution, the prohibition against eminent domain (83 FRN 40314), installation of broadband infrastructure per 83 FRN 40314, and all other laws and regulations stipulated in the HCD CDBG-DR Rider to the Development Agreement (**Exhibit F**).

F. In addition to the State and Federal laws and regulations described in Section 5.E. above, Developer shall use the Project Funds and carry out the Approved Project in compliance with the following environmental laws and regulations: the California Environmental Quality Act, the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended), the Clean Air Act (42 U.S.C. 1857 et. seq., as amended), Environmental Protection Agency regulations pursuant to 40 CFR Parts 15 and 150 as amended, the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act of 1971, the HUD Lead-Based Paint Regulations at 24 CFR 570.608 and 24 CFR Part 35, Subpart B, the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470) and the Archeological and Historical Preservation Act of 1974 (Public Law 93-470, 36 CFR Part 800, Executive Order 11593).

6. Reversion of Assets / Program Income

A. Upon the expiration of this CDBG-DR MHP Development Agreement, Developer shall transfer to the City any Project Funds on hand at the time of expiration.

B. To the extent required by applicable law, any program income, as defined by 24 CFR Section 570.500(a) received by Developer shall be retained and used by Developer in compliance with the terms of this CDBG-DR MHP Development Agreement.

7. Deed of Trust

In order to secure Developer's obligations under the provisions of this CDBG-DR MHP Development Agreement, Developer shall execute a deed of trust in favor of the City and cause it to be recorded against the Developer's fee interest in the Property ("CDBG-DR MHP Deed of Trust").

The Deed of Trust shall contain all of the provisions and be substantially in the form of the Deed of Trust attached hereto as **Exhibit C** and shall be executed by Developer concurrently with the execution of this CDBG-DR MHP Development Agreement and the other Loan Documents, and recorded against the Developer's fee interest in the Property upon its execution and prior to the disbursement of any Project Funds under this CDBG-DR MHP Development Agreement.

8. Events of Default

Developer and City acknowledge that City has made a loan of CDBG-DR MHP Program funds in the amount of six million, thirty-one thousand, six hundred and twenty-six dollars ($6,031,626) to Developer for the purpose of facilitating Developer's development of the Property with housing affordable to Low and Moderate Income Households, and that the purpose of the Loan would be frustrated upon the occurrence of any of the following events, each of which is deemed to be an "Event of Default":

A. Failure by Developer to perform or observe any non-monetary covenant or condition set forth in this CDBG-DR MHP Development Agreement or any of the Loan Documents for a period of sixty (60) days after written notice thereof has been provided to Developer by City; provided, however, in the event there is any failure by Developer to perform or observe any covenant or condition of this CDBG-DR MHP Development Agreement which requires more than sixty (60) days to remedy, Developer shall not be deemed in default of this CDBG-DR MHP Development Agreement if corrective action is instituted by Developer within such sixty (60) day period and thereafter diligently pursued until the failure is corrected;

B. Failure of Developer to timely cure any default under a deed of trust which now or hereafter becomes senior to the Deed of Trust securing performance of this CDBG-DR MHP Development Agreement following service of notice of default and expiration of the cure period provided therein by the beneficiary or trustee under such senior deed of trust; and

C. Failure of Developer to provide the City of Chico Building Division with all items required in a timely manner, in order to issue a final unconditional Certificate of Occupancy for the Approved Project from the City of Chico Building Division by May 31, 2026 subject only to the force majeure delays described in Section 19, below.

Upon any of the above-described events, City hereby agrees to deliver a written notice of default to the Developer and to CREA Oleander Community Housing, LP, a Delaware limited partnership (the "Limited Partner") and to provide the Developer and the Limited Partner a reasonable time period to commence to cure the default (which may include the removal of one or more of the general partners of the Partnership) provided that the Developer or the Limited Partner commences the cure within thirty (30) days following the receipt of such notice. In addition, City hereby agrees to accept any cure of a default by Developer made by the Limited Partner of the Partnership in the same manner as if such cure had been made by the Developer.

9. Remedy Upon Default

Upon the occurrence of any Event of Default, City's remedies shall be as follows:

A. City shall be entitled to specifically enforce the covenants and conditions of this CDBG-DR MHP Development Agreement in an action filed in Butte County Superior Court or in any other Court of competent jurisdiction.

B. As an alternative to specific performance, at City's option, within 90 days after service of City's written demand, Developer shall repay to City, as liquidated damages for such default, that portion of the Project Funds disbursed to Developer as of the date of the written demand, plus interest thereon, calculated at the rate of three (3%) percent per annum, from the date of this CDBG-DR MHP Development Agreement to the date of payment of such amount in full by Developer to City. In providing for payment of liquidated damages in the amount set forth herein, City and Developer have agreed that it would be impracticable or extremely difficult to fix the actual amount of damages to City and the public interest which would result from Developer's default in the performance of the covenants and conditions of this CDBG-DR MHP Development Agreement and, by reason thereof, equity and the public interest would best be served by repayment of the Loan made by City to Developer together with a reasonable amount of interest thereon.

C. City may commence foreclosure proceedings, or assert and exercise any and all rights and remedies provided for herein or in the Deed of Trust securing the obligations herein or as otherwise may be provided by law.

In addition, Developer expressly acknowledges and agrees that all rights and remedies set forth herein are cumulative; and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default.

10. Insurance

A. Developer shall obtain and maintain throughout the duration of this CDBG-DR MHP Development Agreement, insurance of the types and terms stipulated in Section 22 of the HCD CDBG-DR Rider to the Development Agreement.

B. In addition to complying with insurance requirements stipulated in Section 22 of the HCD CDBG-DR Rider to the Development Agreement, City requires Developer and Developer's contractors and/or consultants performing work in connection with the construction of the Approved Project to carry insurance with the following coverages and terms.

1) Waiver of Subrogation: Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Developer, its employees, agents and subcontractors.

2) Self-Insured Retentions: Self-insured retentions must be declared to and approved by the City. The City may require Developer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

3) Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

4) Verification of Coverage: Developer shall furnish City with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5) Special Risks or Circumstances: City reserves the right to modify these requirements including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

6) Consultants and Subcontractors: Developer shall include all consultants and subcontractors as insured under its policies or require all consultants and

subcontractors to be insured under their own policies. If consultants or subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the City certificates of insurance and endorsements before beginning work under this contract.

7) Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Developer must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the City for review.

8) Minimum Scope and Limits of Insurance: Coverage shall be at least as broad as:

a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: ISO Form Number CA 0001 covering any auto (Code 1) for corporate/business owned vehicles, or if Developer has employees, but no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **$1,000,000** combined single limit per accident.

c. Workers' Compensation Insurance: If the applicable party has any employees, then as required by the State of California with Statutory Limits and Employer's Liability Insurance with limits of no less than **$1,000,000** per accident for bodily injury and disease.

d. Professional Liability: with limits no less than **$1,000,000** per occurrence or claim, and **$1,000,000** policy aggregate. (Required for any architect, engineer, or other licensed design professional engaged by Developer to perform design services in connection with the construction of the Project.)

d. If Developer maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

e. Application of Excess/Umbrella Liability Coverage: Developer may use a combination of primary and excess/umbrella insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the required insurance provisions.

9) Other insurance provisions: The Developer insurance policies are to contain, or be endorsed to contain, the following provisions:

a. The City of Chico, its officers, officials, employees and volunteers shall be the additional insureds on the CGL policy for liability arising out of Developer's operations under this agreement. (ISO Endorsement CG 20 26 or equivalent).

b. For any claims related to this agreement, Developer's insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the City its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Developer's insurance and shall not contribute with it.

c. Each insurance policy required shall provide that coverage shall not be canceled, except with not less than 30 days prior written notice to the City.

10) Insurance for the Developer's contractors and/or consultants are to contain, or be endorsed to contain, the following provisions:

a. The Developer and the City of Chico, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this agreement.

b. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

c. Each insurance policy required shall provide that coverage shall not be canceled, except with not less than 30 days prior written notice to the City.

C. Developer shall obtain, and maintain Builders Risk Insurance as follows:

1) During the period of construction of the Improvements, Developer shall, at its sole cost and expense, maintain in full force and effect property and casualty (builders risk/course of construction) insurance obtained from one or more insurance companies licensed to do business in the State of California and having a financial rating in Best's Insurance Guide of at least "B," or, in the alternative, one or more unlicensed U.S. domiciled insurance companies having a rating of at least "A," insuring all of the Improvements being constructed and installed on the property, and any facilities appurtenant thereto, against fire, extended coverage hazards, vandalism, and malicious mischief. All such insurance shall be in the form or forms approved by the City Risk Manager, shall insure all improvements located on the property and facilities appurtenant thereto in an amount equal to 100% of the full replacement value thereof, and shall provide that the insurer shall give City at least thirty (30) days' prior notice of cancellation or material change in coverage.

2) Prior to the issuance of a Building Permit by the City of Chico, a copy of the insurance policy or policies required herein or, in lieu thereof, the face page of such policy or policies and any endorsements which limit or otherwise affect the coverage provided shall be delivered by Developer to the City Risk Manager for approval as to form and sufficiency. When such insurance policy or policies has been so approved, Developer may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policy or policies is in full force and effect and all improvements located on the property and facilities appurtenant thereto are insured in the amount required herein.

3) In the event any dispute over whether the amount of such insurance complies with the requirements of this Section cannot be resolved by agreement, Risk Manager may request the carrier of the insurance then in force to determine the full

replacement value of the Improvements located on the Property and the resulting determination shall be conclusive between the parties for purposes of this section.

D. Developer shall secure payment and performance bonds from the Approved Project General Contractor, subject to review and approval by the City and HCD.

E. Developer shall obtain fire insurance in an amount equal to the full insurable value of the Property with the construction improvements, with extended coverage including vandalism, malicious mischief and a loss payable endorsement naming City as loss payee during the construction period and at all times during the term of this CDBG-DR MHP Development Agreement.

F. Developer shall maintain unemployment insurance, disability insurance, and liability insurance which is reasonable to compensate any person, firm, or corporation who may be injured or damaged during the performance of Approved Project activities.

G. Insurance coverage furnished by the Developer may be submitted as one or more policies or part of a blanket policy, but coverage shall conform to the requirements herein and shall pertain to all activities pursuant to this CDBG-DR MHP Development Agreement.

H. If Developer fails or refuses to procure or maintain insurance as required by this CDBG-DR MHP Development Agreement, City shall have the right, at City's election, and upon ten (10) business days prior written notice to Developer and all mortgagees entitled to notice, to procure and maintain such insurance or to cancel this CDBG-DR MHP Development Agreement. Any premiums paid by City shall be charged to the Developer.

11. Indemnification and Hold Harmless

Developer shall hold the City, its governing boards and members thereof, its officers, employees, and agents harmless and free from any and all liability arising out of or relating to this CDBG-DR MHP Development Agreement, except to the extent such liability results from the active negligence or willful misconduct of the City. Subject to the foregoing sentence, should the City, its governing boards and members thereof, its officers, employees, or agents be named in any suit, administrative proceeding, or should any claim of any nature be made against it or any of them by suit or otherwise, whether the same be groundless or not, arising out of or relating to this CDBG-DR MHP Development Agreement, Developer shall defend, and hold harmless City, its governing board and members thereof, its officers, employees, and agents, and shall indemnify them for and from any judgment rendered against them, or any sums paid out in settlement or otherwise, including reasonable attorneys' fees, expert witness fees, and consultants' fees.

12. Documents, Reports, and Records

A. Developer shall maintain and, at reasonable times and places and upon not less than 10 days advance written notice, make available to the City, such records and accounts, including property, personnel, financial records the City and/or state and/or federal agencies deem necessary to assure a proper accounting for all CDBG-DR MHP Program funds dispersed to Developer under this CDBG-DR MHP Development Agreement.

B. Developer shall retain all documents pertaining to this CDBG-DR MHP Development Agreement for a period of five (5) years after its expiration or termination (or for any further period that is required by law) and until all Federal or City audits are complete and exceptions resolved for this CDBG-DR MHP Development Agreement's funding period. Upon written request, Developer shall promptly make these records available to authorized representatives of the City and the United States Government.

13. On-Site Monitoring

Authorized representatives of HUD, HCD, and the City shall have the opportunity to monitor Developer's performance under this CDBG-DR MHP Development Agreement at the site where such performance is being conducted to ensure Developer's compliance with the requirements of this CDBG-DR MHP Development Agreement. On-site monitoring shall be subject to not less than twenty-four (24) hours' advance written notice. Such monitoring may include without limitation interviews with Developer's staff, consultants and contractors involved in the improvements and validation of source data used in the preparation of reports to City. City will advise Developer in writing of any monitoring concerns or findings within fifteen (15) days after a monitoring visit. Developer shall respond to the concerns/findings within ten (10) days from the date of City's notice.

14. Taxes, Assessments, Encumbrances and Liens

Developer shall pay when due any and all applicable real estate taxes and assessments levied and assessed on the Property and on any other property serving as security for the Loan. Other than security interests necessary for the development of the Approved Project, Developer shall not place or allow to be placed on the Property or any part thereof, any mortgage, trust deed, encumbrance or lien not authorized by this CDBG-DR MHP Development Agreement. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto.

15. Compliance With State Laws and Regulations

Developer shall at all times during the term of this CDBG-DR MHP Development Agreement comply with all legal requirements, including any applicable Federal, State, or City regulations, and shall secure at its full cost and expense any and all permits, applications, or other requirements in connection therewith.

16. Prohibition Against Change in Ownership

The qualifications and identity of Developer and its principals are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this CDBG-DR MHP Development Agreement with Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this CDBG-DR MHP Development Agreement, except as expressly set forth herein.

Developer shall not assign all or any part of this CDBG-DR MHP Development Agreement without prior written approval of the City. Assignment without prior written approval of City will be a default of this CDBG-DR MHP Development Agreement and shall be void and unenforceable. If Developer seeks an assignment, Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the parties thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. The City will have the option to approve any such changes in writing and the City will not unreasonably withhold such approval.

If not approved by the City, this CDBG-DR MHP Development Agreement may be terminated by the City in the event of significant change (voluntary or involuntary) in membership, management, or control of Developer. Nothing herein shall prohibit those certain transfers permitted pursuant to the HCD DR-MHP Junior Regulatory Agreement.

17. Non Discrimination; Equal Opportunity

A. Developer, for itself and its successors and assigns, agrees that during the term of this CDBG-DR MHP Development Agreement, will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, familial status, ancestry, national origin or disability. This requirement shall apply to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer shall comply with federal requirements including nondiscrimination and equal opportunity; disclosure requirements; and non-procurement of debarred, suspended or ineligible contractors.

B. No person shall, on the ground of race, sex, creed, color, national origin, age, marital status or disability, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this CDBG-DR MHP Development Agreement.

C. Developer shall not condition receipt of any of the services funded by the Loan made pursuant to this CDBG-DR MHP Development Agreement upon participation in any religious instruction or service.

18. Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this CDBG-DR MHP Development Agreement, nor shall any member, official or employee participate in any decision relating to the CDBG-DR MHP Development Agreement which affects their personal interests or the interests of any corporation, partnership or association in which they are directly or indirectly interested.

19. Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this CDBG-DR MHP Development Agreement, performance by either Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this CDBG-DR MHP Development Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics (including COVID-19 pandemic and any of its variants); quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions (other than restrictions of City) or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; acts of omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

Notwithstanding anything to the contrary in this CDBG-DR MHP Development Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, provided the party claiming such extension gives notice in writing to the other party within thirty (30) days of the commencement of the cause. Times of performance under this CDBG-DR MHP Development Agreement may also be extended in writing by the mutual agreement of the City and Developer.

20. Non-Liability of Officials and Employees of the City

No member, official or employee of the City shall be personally liable to the Developer or any successor in interest to Developer in the event of any default or breach by the City of any obligations under the terms of this CDBG-DR MHP Development Agreement.

21. Notices

All notices or demands of any kind that the Parties are required to or may serve under the terms of this CDBG-DR MHP Development Agreement shall be served by personal delivery or by mailing a copy thereof by first class mail, postage prepaid, to the other party at the addresses set forth below:

City of Chico
ATTN: City Manager/Housing
PO Box 3420
Chico, CA 95927

Chico PSH Pacific Associates
ATTN: Caleb Roope
430 E State St. Suite 100
Eagle, ID 83616

With a copy to:

McReynolds & McCormack, PLLC
430 E. State Street, Suite 140
Eagle, Idaho 83616
Attention: Sarah McCormack

Butte County Affordable Housing Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

CREA Oleander Community Housing, LP
c/o CREA,LLC
30 S. Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

Applegate & Thorne-Thomsen
425 S. Financial Place, Suite 1900
Chicago, IL 60605
Attn: Warren P. Wenzloff, Esq.

Either party may change the address to which notices shall be directed by sending the other party notice of the new address in the manner provided above.

22. Attorneys' Fees

If either Party hereto should retain legal counsel for the purpose of enforcing any term or condition of this CDBG-DR MHP Development Agreement, the prevailing Party shall be entitled to recover actual and reasonable costs and expenses, including but not limited to reasonable attorneys, fees, expert witness fees and consultants' fees. No payment of attorney fees by Developer to City pursuant to this section shall be made from CDBG-DR MHP Program funds.

23. Exhibits Incorporated

All CDBG-DR MHP Program regulations and circulars, exhibits, and attachments referred to in this CDBG-DR MHP Development Agreement are expressly incorporated herein in their entirety in effect on the date of signing this CDBG-DR MHP Development Agreement, as if set forth fully in this CDBG-DR MHP Development Agreement. In the event of an actual conflict between the terms and conditions in any exhibit or attachment, the terms of this CDBG-DR MHP Development Agreement shall govern. In the event of an actual conflict between the terms and conditions of this CDBG-DR MHP Development Agreement and the CDBG-DR MHP Program regulations or circulars in effect on the date of signing this CDBG-DR MHP Development Agreement, the latter shall govern.

24. Entire Agreement

This CDBG-DR MHP Development Agreement constitutes the entire understanding between the Parties as to the matters set forth herein and the Parties hereto shall not be bound by any terms, conditions, statements, or representations, oral or written, not contained herein.

25. Amendments

This CDBG-DR MHP Development Agreement may be modified or amended only in writing duly authorized and executed by the Parties. Any oral agreement or understanding between the Parties shall be of no effect unless the same shall be reduced to writing duly approved and executed by them.

26. Parties Bound

Except where expressly excepted herein, the covenants and conditions contained in this CDBG-DR MHP Development Agreement shall apply to and bind the legal representatives, successors, and assigns of all the Parties hereto, and all of the Parties hereto shall be jointly and severally liable hereunder.

27. Counterparts

This CDBG-DR MHP Development Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

28. Receipt of Federal Funds

HCD has committed the Project Funds to the City and confirms such Federal funds are available for the term of this CDBG-DR MHP Development Agreement.

29. Operating Reserve

Notwithstanding any provision in the HCD Regulatory Agreement to the contrary, the Developer's general partner or limited partner may make withdrawals from the Operating Reserve (as defined in the HCD Regulatory Agreement) with prior notification to the City or the Department in order to cure Operating Deficits occurring with respect to the Approved Project. For the purpose of this Agreement, Operating Deficits means the excess of (a) Operating Expenses, mandatory debt service plus any reserves required by any lender over (b) Operating Income (as such terms are defined in the HCD Regulatory Agreement).

Developer agrees to give the City a minimum notice of five (5) days prior to any distribution from the Operating Reserve, which will include the amount of the distribution, the reason for the distribution, and the plan to restore the Operating Reserve to at least the amount of its beginning balance.

IN WITNESS WHEREOF, City and Developer have caused this CDBG-DR MHP Development Agreement to be executed and attested by their respective officers thereunto duly authorized.

[Signatures on Following Pages]

CITY OF CHICO

_________________________________ *
Mark Sorensen, City Manager

Authorized pursuant to City of Chico Resolution No. 65-1, adopted February 2, 2021

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**

**Approved pursuant to The Charter of the City of Chico §906(D)

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)
) ss
COUNTY OF BUTTE)

On October 31, 2023, before me, Jamie N. Hernandez, Notary Public, personally appeared Mark Sorensen who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 ______________________

JAMIE N. HERNANDEZ
Notary Public - California
Butte County
Commission # 2367075
My Comm. Expires Aug 11, 2025

Developer
Chico PSH Pacific Associates, A California Limited Partnership,

By: TPC Holdings IX, LLC,
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its Manager

By: ______________________
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit corporation
Its: Managing General Partner

By: ______________________
Name: Hope Stone
Its: Chief Financial Officer

* Signatures to be notarized

Developer
Chico PSH Pacific Associates, A California Limited Partnership,

By: TPC Holdings IX, LLC,
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
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Its Manager

By: ______________________
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a California Nonprofit Public Benefit corporation
Its: Managing General Partner

By: ______________________
Name: Hope Stone
Its: Chief Financial Officer

* Signatures to be notarized

EXHIBIT A

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

LEGAL DESCRIPTION OF PROPERTY

APN: 006-100-049

Real property in the City of Chico, County of Butte, State of California, described as follows:

PARCEL I:

A PARCEL OF LAND IN RANCHO ARROYO CHICO, BUTTE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THE "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28, FROM WHICH POINT A CONCRETE MONUMENT STAMPED L.S. 2621 MARKING THE MOST SOUTHERLY CORNER OF SAID LINDO VIEW SUBDIVISION, BEARS SOUTH 36 DEG. 15' EAST, 174.0 FEET; THENCE FROM SAID POINT OF BEGINNING, SOUTH 52 DEG. 43' WEST 66.0 FEET; THENCE SOUTH 36 DEG. 15' EAST, 119.0 FEET; THENCE SOUTH 52 DEG. 43' WEST 36.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 5.0 FEET; THENCE SOUTH 52 DEG. 43' WEST, 118.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 65.0 FEET TO AN IRON PIPE; THENCE SOUTH 52 DEG. 43' WEST, 80.0 FEET TO AN IRON PIPE ON THE EASTERLY LINE OF U.S. HIGHWAY 99E NORTH (FORMERLY SHASTA ROAD); THENCE ALONG SAID LINE NORTH 36 DEG. 15' WEST, 174.22 FEET TO AN IRON PIPE MARKING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM RICHARD C. PETERSON, ET UX, TO FAZAL MOHAMED, ET AL, DATED DECEMBER 7, 1959 AND RECORDED DECEMBER 17, 1959, IN BOOK 1034, PAGE 372, OFFICIAL RECORDS; THENCE ALONG THE SOUTH LINE OF SAID MOHAMED, ET AL, PARCEL, THE FOLLOWING 3 COURSES AND DISTANCES: NORTH 53 DEG. 54' EAST, 164.5 FEET; SOUTH 36 DEG. 15' EAST, 19.38 FEET; NORTH 53 DEG. 45' EAST, 135.45 FEET TO AN IRON PIPE ON THE MOST EASTERLY CORNER OF SAID MOHAMED, ET AL, PARCEL, ON THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION; THENCE ALONG SAID LINE, SOUTH 36 DEG. 15' EAST, 100 FEET TO THE POINT OF BEGINNING.
EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS HERETOFORE RESERVED TO THE GRANTOR IN THAT CERTAIN DEED FROM BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A NATIONAL BANKING ASSOCIATION, TO JOSEPH KRIKAC, DATED APRIL 26, 1945 AND RECORDED MAY 5, 1945, IN BOOK 346, PAGE 146, OFFICIAL RECORDS, AND AS QUITCLAIMED TO A DEPTH OF 50 FEET BY INSTRUMENT EXECUTED BY CAPITAL COMPANY, A CORPORATION IN FAVOR OF G.D. BRANSON, ET AL, RECORDED MARCH 7, 1951, IN BOOK 567, PAGE 368, OFFICIAL RECORDS.

PARCEL II:

AN EASEMENT FOR ROAD PURPOSES OVER THE NORTHWESTERLY 35 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:
BEGINNING AT A CONCRETE MONUMENT STAMPED L.L. 2621 MARKING THE MOST WESTERLY CORNER

OF LOT 8, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28; THENCE SOUTH 36 DEG. 15' EAST ALONG THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION, A DISTANCE OF 544.5 FEET TO THE MOST SOUTHERLY CORNER OF LOT 1 OF SAID LINDO VIEW SUBDIVISION, BEING A POINT ON THE NORTH LINE OF RIO LINDO AVENUE, AS SHOWN ON SAID MAP; THENCE SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 195.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 105.0 FEET TO THE EASTERLY LINE OF CALIFORNIA STATE HIGHWAY 99E (FORMALLY KNOWN AS THE SHASTA ROAD); THENCE NORTH 36 DEG. 15' WEST ALONG THE EASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY99E (FORMERLY KNOWN AS THE SHASTA ROAD), A DISTANCE OF 125.0 FEET; THENCE NORTH 52 DEG.
43' EAST 80.00 FEET; THENCE SOUTH 36 DEG. 15' EAST 65.0 FEET; THENCE NORTH 52 DEG. 43' EAST 25 FEET; THENCE SOUTH 36 DEG. 15' EAST, 60 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

ELIGIBLE COSTS/PAYMENT REQUEST

In compliance with 42 USC 5305(a)(4), the Project Funds provided for pursuant to this CDBG-DR MHP Development Agreement shall be limited in their use to the following expenses associated with the Approved Project.

Eligible Costs:

Property acquisition

Demolition and removal of debris, environmental mitigation

Site clearing and grading

Site assessment

Surveying

Utility connections

Site improvements

Off-site improvements required by City

Unit construction

Permits and fees

Financing costs

Architecture and engineering

Disbursement Conditions:

Payment shall be on a reimbursement basis for actual approved costs. Developer shall submit the Approved Project Payment Request form which follows, not more often than monthly. Requests for payment shall include documentation evidencing the cost of the service.

APPROVED PROJECT PAYMENT REQUEST

Account Numbers:
(203-000-8905/66009-203-4610)

PAYMENT REQUEST SUMMARY

Approved Project Draw Number___________ Draw Period (from)_______________
(to)_____________

ARCHITECTURE AND ENGINEERING	$_________
FEES AND PERMITS	$_________
FINANCING COSTS	$_________
CONSTRUCTION EXPENSES	$_________
TOTAL PAYMENT REQUESTED THIS PERIOD	**$___________**

REQUIRED DOCUMENTATION

___Copies of invoices with summary request for non-construction costs.

___Construction draw summary by trade (work in place, stored and cumulative) including construction retention log. Use AIA G702/G703 payment format.

___Copies of all signed Change Orders along with Change Order disbursement summary.

Pursuant to the CDBG-DR MHP Development Agreement between City of Chico and **Chico PSH Pacific Associates**, we are hereby requesting a progress payment of $____________________ for the Approved Project.

____

____
Date

Approved:

____ _____________________
Marie Demers, Housing Manager Date

EXHIBIT C

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

DEED OF TRUST

This document was electronically submitted to Butte County for recording

2023-0029456
Keaton Denlay
Butte - County Clerk-Recorder
Cindi Wilde - Assistant
11/03/2023 09:13 AM

Titles: 2	Pages: 13
Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

Exempt from filing fees pursuant
to Govt. Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF CHICO
PO Box 3420
Chico, CA 95927
ATTN: CITY MANAGER/HOUSING

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership)

DEED OF TRUST WITH ASSIGNMENT OF RENTS TO THE CITY OF CHICO, CALIFORNIA

("PROPERTY DEED OF TRUST")

This Deed of Trust, made effective on the 1st day of November, 2023 by Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership ("Trustor"), whose address is 430 E State St. Suite 100 Eagle, ID 83616 with a copy to 2039 Forest Avenue, Chico, California 95928, Attention: President, to Mid Valley Title & Escrow ("Trustee"), whose business address is 601 Main Street, Chico, CA 95928, in favor of the City of Chico ("Beneficiary"), whose business address is 411 Main Street, Chico, CA 95928.

W I T N E S S E T H:

Trustor irrevocably grants, transfers, and assigns to Trustee in trust, with power of sale, all that property in the City of Chico, Butte County, California, described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"), together with the rents, issues and profits therefrom, subject, however, to the right reserved by Trustor pursuant to paragraph 13 hereof to collect and apply such rents, issues and profits, prior to any default hereunder, for the purpose of securing Trustor's performance of Trustor's duty and obligation to pay to Beneficiary, any sums due including the original principal of Six Million Thirty-One Thousand Six Hundred Twenty-Six dollars ($6,031,626) provided for under the "CDBG-DR MHP Development Agreement" executed by Trustor, and Beneficiary made effective November 1, 2023 ("Development Agreement"), which is incorporated fully herein by this reference and a true and correct copy of which is available at the City of Chico, in the event of a default of Trustor in the performance of the covenants and conditions of such Development Agreement.

To protect the security of this Deed of Trust, Trustor agrees as follows:

1. To maintain the Property in good condition and repair, ordinary wear and tear excepted; not to remove or demolish any building or improvement thereon, except as may be necessary or incidental to the construction of the Project; to complete promptly in workmanlike manner any improvement hereafter constructed thereon and to restore promptly in workmanlike manner any improvement thereon that is damaged or destroyed by fire or other casualty at a cost not in excess of the proceeds of any fire insurance required herein or otherwise acquired therefor; to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property; not to commit or permit any waste thereof or any act upon the Property in violation of law or of covenants, conditions, or restrictions affecting the Property.

2. To provide, maintain and deliver to Beneficiary a certificate evidencing Builder's Risk insurance during the course of construction and upon completion of construction to provide, maintain, and deliver to Beneficiary a certificate evidencing insurance in accordance with the requirements of the Development Agreement. The amount collected under any insurance policy and all insurance premiums may be applied by Trustor in accordance with that certain Rider executed by Beneficiary Trustor in connection with the Development Agreement. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered thereby at any trustee's sale held hereunder, or at any foreclosure sale of such property. Beneficiary will not have the right to elect not to rebuild the Project to the extent that the insurance proceeds realized from a fire, casualty or other insurance policy are sufficient therefor.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and also, if at any time Beneficiary or Trustee is a party to or appears in any such action or proceeding, or in any action or proceeding to enforce any obligation hereby secured, to pay all costs and expenses paid or incurred by them or either of them in connection therewith, including attorneys' fees in a reasonable sum.

4. To pay, prior to delinquency, all taxes and assessments which affect the Property; all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; and all costs, fees, and expenses of this Deed of Trust.

5. To pay, immediately and without demand, all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from the date of expenditure at five percent (5%) per annum.

6. In the event Trustor fails to make any payment or to do any act as herein provided, then Beneficiary or Trustee may, but without obligation so to do, and with or

without notice or demand upon Trustor, and without releasing Trustor from any obligation hereof: (i) make payment or take such action in a manner and to such extent as either deems necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purpose; (ii) appear in or commence any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; or (iii) pay, purchase, contest, or compromise any encumbrance, charge or lien that, in the judgment of either, appears to be superior hereto. In exercising any such power, Beneficiary or Trustee may incur necessary expenses, including reasonable attorneys' fees.

7. In the event an award of damages is made in connection with the condemnation for public use of or injury to the Property or any part thereof, such award is hereby assigned and shall be paid to Beneficiary, who shall apply or release such monies received therefor in the same manner and with the same effect as above provided for the disposition of proceeds of fire or other insurance.

8. The acceptance by Beneficiary of any payment less than the amount then due shall be deemed an acceptance on account only and shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due or of Beneficiary's right either to require prompt payment of all sums then due or to declare default. The acceptance of payment of any sum secured hereby after its due date will not waive the right of Beneficiary either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. No waiver of any default shall be a waiver of any preceding or succeeding default of any kind.

9. At any time, or from time to time, without liability therefore and with or without notice, upon written request of Beneficiary and presentation of this Deed of Trust, the Development Agreement secured hereby for endorsement, and without affecting the personal liability of any person (if any) for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement, or join in any extension agreement or any agreement subordinating the lien or charge thereof.

10. Upon written request of Beneficiary stating that all sums secured hereby have been paid or that the term of the Development Agreement secured hereby has expired, and upon surrender of this Deed of Trust and payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance shall be conclusive proof of the truthfulness thereof. The Trustor may be designated in such reconveyance as "the person or persons legally entitled thereto."

11. Upon the occurrence of any "Event of Default," whether such be in the nature of a failure to pay any indebtedness or in the performance of any other provision of any agreements secured hereby, then Beneficiary may, with or without notice to Trustor, declare all sums secured hereby immediately due and payable by instituting suit for the recovery thereof or for the foreclosure of this Deed of Trust, or by delivering to Trustee a written declaration of default and demand of sale, as well as a written notice of

default and of election to cause the Property to be sold, which notice Trustee shall cause to be filed for record. If such declaration is delivered to Trustee, Beneficiary also shall deposit with Trustee this Deed of Trust and the Development Agreement secured hereby. For purposes of this Deed of Trust, an "Event of Default" shall be any default by Trustor in the performance of any obligation, whether monetary or non-monetary, of any provision of any agreement secured hereby, which default is not cured by Trustor within sixty (60) days of receipt of written notice, or if the nature of the default is such that it cannot be cured within sixty (60) days, such other reasonable time period provided that cure is commenced within sixty (60) days of the notice and thereafter diligently prosecuted to completion. The Trustor's limited partner shall have the opportunity, but not the obligation, to cure in the Event of Default, prior to any remedies being undertaken hereunder.

When the time then required by law has elapsed after recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, with or without demand on Trustor, shall sell the Property at the time and place fixed in the notice of sale, either as a whole or in separate parcels and in such order as Trustee determines, at public auction, to the highest bidder, for cash in lawful money of the United States, payable at time of sale. Trustee may postpone from time to time the sale of all or any portion of the Property by public announcement at the time and place of sale originally fixed or at the last preceding postponed time. Trustee shall deliver to the purchaser its deed conveying the Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor, Trustee, Beneficiary, or any other person may purchase at the sale.

After deducting all costs, fees, and expenses of Trustee and of this Deed of Trust, including cost of evidence of title and reasonable attorney's fees in connection with sale, Trustee shall apply the proceeds of the sale to payment of all sums expended under the terms hereof and not theretofore repaid, with accrued interest at the amount allowed by law in effect at the date hereof, and all other sums then secured hereby in such order as Beneficiary in the exercise of its sole discretion, directs. The remainder, if any, shall be paid to the person or persons legally entitled thereto.

Before the Trustee's sale, Beneficiary may rescind such notices of default and of election to cause the Property to be sold by delivering to Trustee a written notice of rescission, which notice, when recorded, shall cancel any prior declaration of default, demand for sale, and acceleration of maturity. The exercise of such right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, or impair the right of Beneficiary to deliver to Trustee other declarations of default and demands for sale or notices of default and of election to cause the Property to be sold, or otherwise affect any provision of the Development Agreement or this Deed of Trust or any of the rights, obligations, or remedies of Beneficiary or Trustee hereunder.

12. Beneficiary may from time to time, as provided by statute, or by a writing signed and acknowledged by it and recorded in the Office of the Recorder of the County of Butte, appoint another trustee in place and instead of Trustee herein named; and

thereupon, the Trustee herein named shall be discharged, and the trustee so appointed shall be substituted as trustee hereunder with the same effect as if originally named trustee herein.

13. Trustor reserves the right, prior to any Event of Default in payment of any indebtedness or performance of any obligation secured hereby, to collect all such rents, royalties, issues, and profits of the Property as and when they become due. However, upon any such Event of Default, Trustor's right to collect such monies shall cease, not only as to amounts accruing thereafter, but also as to amounts then accrued and unpaid. In the event of such default, Beneficiary, with or without notice and without regard to the adequacy of any security for the indebtedness hereby secured, may enter upon and take possession of the Property at any time and manage and control it in Beneficiary's discretion, and, with or without taking possession, may sue for or otherwise collect all rents, issues, and profits thereof, whether past due or coming due thereafter and apply the same, less costs and expenses of operation and collecting, including reasonable attorney's fees, upon any obligation secured hereby and in such order as Beneficiary determines. None of the aforesaid acts shall cure or waive any default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall not be required to act diligently in the care or management of the Property or in collecting any rents, royalties, or other profits that it is hereby authorized to collect, and shall be accountable only for sums actually received.

14. Beneficiary may, without affecting the liability of Trustor or of any other party now or hereafter bound by the terms hereof for any obligation secured hereby, from time to time and with or without notice, release any person now or hereafter liable for performance of such obligation, and may extend the time for payment or performance, accept additional security, and alter, substitute, or release any security.

15. In any action brought to foreclose under this Deed of Trust or to enforce any right of Beneficiary or of Trustee hereunder, Trustor shall pay to Beneficiary and to Trustee attorney's fees in a reasonable sum to be fixed by the Court.

16. No remedy hereby given to Beneficiary or Trustee is exclusive of any other remedy hereunder or under any present or future law.

17. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

18. In the event of default in the payment of any indebtedness secured hereby and if such indebtedness is secured at any time by any other instrument, Beneficiary shall not be obligated to resort to any security in any particular order; and the exercise by Beneficiary of any right or remedy with respect to any security shall not be a waiver of or limitation on the right of Beneficiary to exercise, at any time or from time to time thereafter, any right or remedy with respect to this Deed of Trust.

19. Trustor shall, upon request made by Beneficiary, furnish the Beneficiary with annual statements governing the operations of the Property.

20. This Deed of Trust applies to, inures to the benefit of, and binds, all parties hereto, their heirs, legatees, devises, administrators, executors, successors, successors in interest and assigns. Trustor may assign this Deed of Trust to the City of Chico, in accordance with the Development Agreement.

21. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee is a party unless brought by Trustee.

22. Beneficiary hereby agrees to the subordination of this Deed of Trust to deeds of trust, or similar security agreements, in favor of lenders providing construction financing for the housing project more particularly described in the Development Agreement, and to be recorded against the Property.

23. Beneficiary acknowledges that Trustor and California Tax Credit Allocation Committee ("CTCAC") intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code ("IRC") (26 U.S.C. §42(h)(6)(B)"), as amended. As of the date hereof, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for the period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure. In the event the regulatory agreement required by CTCAC is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in IRC Section 42(h)(6)(E)(ii).

Made effective on the date first above written.

TRUSTOR

CHICO PSH PACIFIC ASSOCIATES, A California Limited Partnership,

By: **TPC HOLDINGS IX, LLC**
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: ______________________________
Name: Caleb Roope
Its: President and CEO

By: **BUTTE COUNTY AFFORDABLE HOUSING DEVELOPMENT CORPORATION**
a California nonprofit public benefit corporation,
its Managing General Partner

By: ______________________________*
Name: Hope Stone
Its: Chief Financial Officer

*Signature to be notarized

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**
**Approved pursuant to The Charter of the City of Chico §906(D)

THIS DOCUMENT MUST BE PROPERLY NOTARIZED
(to be indexed as Trust Deed with Assignment of Rent)

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~~ Idaho }
County of Ada }

On October 30th, 2023 before me, Stacey Aparicio, a Notary Public, personally appeared Caleb Roope, who proved to me 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 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~~ Idaho that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Stacey Aparicio

STACEY APARICIO
COMMISSION #20212548
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 05/24/2027

(SEAL)

TRUSTOR

CHICO PSH PACIFIC ASSOCIATES, A California Limited Partnership,

By: **TPC HOLDINGS IX, LLC**
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: ___________________________
Name: Caleb Roope
Its: President and CEO

By: **BUTTE COUNTY AFFORDABLE HOUSING DEVELOPMENT CORPORATION**
a California nonprofit public benefit corporation,
its Managing General Partner

By: ___________________________*
Name: Hope Stone
Its: Chief Financial Officer

*Signature to be notarized

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**
**Approved pursuant to The Charter of the City of Chico §906(D)

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State of California }
County of BUTTE }

On 10/30/, 2023 before me, LISA SALDANO, a Notary Public, personally appeared HOPE STONE, who proved to me 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 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____________________ (SEAL)

LISA SALDANO
Notary Public - California
Butte County
Commission # 2400963
My Comm. Expires Apr 15, 2026

TRUSTOR

CHICO PSH PACIFIC ASSOCIATES, A California Limited Partnership,

By: **TPC HOLDINGS IX, LLC**
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: ______________________________
Name: Caleb Roope
Its: President and CEO

By: **BUTTE COUNTY AFFORDABLE HOUSING DEVELOPMENT CORPORATION**
a California nonprofit public benefit corporation,
its Managing General Partner

By: ______________________________*
Name: Hope Stone
Its: Chief Financial Officer

*Signature to be notarized

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**
**Approved pursuant to The Charter of the City of Chico §906(D)

THIS DOCUMENT MUST BE PROPERLY NOTARIZED
(to be indexed as Trust Deed with Assignment of Rent)

EXHIBIT A

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

LEGAL DESCRIPTION

Real property in the City of Chico, County of Butte, State of California, described as follows:

PARCEL I:

A PARCEL OF LAND IN RANCHO ARROYO CHICO, BUTTE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THE "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28, FROM WHICH POINT A CONCRETE MONUMENT STAMPED L.S. 2621 MARKING THE MOST SOUTHERLY CORNER OF SAID LINDO VIEW SUBDIVISION, BEARS SOUTH 36 DEG. 15' EAST, 174.0 FEET; THENCE FROM SAID POINT OF BEGINNING, SOUTH 52 DEG. 43' WEST 66.0 FEET; THENCE SOUTH 36 DEG. 15' EAST, 119.0 FEET; THENCE SOUTH 52 DEG. 43' WEST 36.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 5.0 FEET; THENCE SOUTH 52 DEG. 43' WEST, 118.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 65.0 FEET TO AN IRON PIPE; THENCE SOUTH 52 DEG. 43' WEST, 80.0 FEET TO AN IRON PIPE ON THE EASTERLY LINE OF U.S. HIGHWAY 99E NORTH (FORMERLY SHASTA ROAD); THENCE ALONG SAID LINE NORTH 36 DEG. 15' WEST, 174.22 FEET TO AN IRON PIPE MARKING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM RICHARD C. PETERSON, ET UX, TO FAZAL MOHAMED, ET AL, DATED DECEMBER 7, 1959 AND RECORDED DECEMBER 17, 1959, IN BOOK 1034, PAGE 372, OFFICIAL RECORDS; THENCE ALONG THE SOUTH LINE OF SAID MOHAMED, ET AL, PARCEL, THE FOLLOWING 3 COURSES AND DISTANCES: NORTH 53 DEG. 54' EAST, 164.5 FEET; SOUTH 36 DEG. 15' EAST, 19.38 FEET; NORTH 53 DEG. 45' EAST, 135.45 FEET TO AN IRON PIPE ON THE MOST EASTERLY CORNER OF SAID MOHAMED, ET AL, PARCEL, ON THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION; THENCE ALONG SAID LINE, SOUTH 36 DEG. 15' EAST, 100 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS HERETOFORE RESERVED TO THE GRANTOR IN THAT CERTAIN DEED FROM BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A NATIONAL BANKING ASSOCIATION, TO JOSEPH KRIKAC, DATED APRIL 26, 1945 AND RECORDED MAY 5, 1945, IN BOOK 346, PAGE 146, OFFICIAL RECORDS, AND AS QUITCLAIMED TO A DEPTH OF 50 FEET BY INSTRUMENT EXECUTED BY CAPITAL COMPANY, A CORPORATION IN FAVOR OF G.D. BRANSON, ET AL, RECORDED MARCH 7, 1951, IN BOOK 567, PAGE 368, OFFICIAL RECORDS.

PARCEL II:

AN EASEMENT FOR ROAD PURPOSES OVER THE NORTHWESTERLY 35 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT A CONCRETE MONUMENT STAMPED L.L. 2621 MARKING THE MOST WESTERLY CORNER OF LOT 8, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28; THENCE SOUTH 36 DEG. 15' EAST ALONG THE

SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION, A DISTANCE OF 544.5 FEET TO THE MOST SOUTHERLY CORNER OF LOT 1 OF SAID LINDO VIEW SUBDIVISION, BEING A POINT ON THE NORTH LINE OF RIO LINDO AVENUE, AS SHOWN ON SAID MAP; THENCE SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 195.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 105.0 FEET TO THE EASTERLY LINE OF CALIFORNIA STATE HIGHWAY 99E (FORMALLY KNOWN AS THE SHASTA ROAD); THENCE NORTH 36 DEG. 15' WEST ALONG THE EASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY99E (FORMERLY KNOWN AS THE SHASTA ROAD), A DISTANCE OF 125.0 FEET; THENCE NORTH 52 DEG. 43' EAST 80.00 FEET; THENCE SOUTH 36 DEG. 15' EAST 65.0 FEET; THENCE NORTH 52 DEG. 43' EAST 25 FEET; THENCE SOUTH 36 DEG. 15' EAST, 60 FEET TO THE TRUE POINT OF BEGINNING.

APN: 006-100-049

EXHIBIT D

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

HCD JUNIOR REGULATORY AGREEMENT

This document was electronically submitted to Butte County for recording

2023-0029455

Keaton Denlay
Butte - County Clerk-Recorder
Cindi Wilde - Assistant
11/03/2023 09:13 AM

Titles: 1	Pages: 42
Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Chico
PO Box 3420
Chico, CA 95927
Attn: City Manager/Housing

APN: 006-100-049

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY MULTIFAMILY HOUSING PROGRAM

JUNIOR REGULATORY AGREEMENT

CONTRACT NUMBER 21-DRMHP-21006-NTP-2

This Regulatory Agreement (this "Agreement") dated November 1, 2023 for reference purposes only, is made and entered into by and between Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership (the "Developer"), and City of Chico, a municipal corporation of the State of California, (the "Subrecipient"), pursuant to the requirements of the Community Development Block Grant – Disaster Recovery Multifamily Housing Program administered by the Department of Housing and Community Development, a public agency of the State of California (the "Department").

<u>RECITALS</u>:

A. Developer has applied to Subrecipient for Community Development Block Grant – Disaster Recovery Multifamily Housing Program financial assistance (the "Assistance") for the development of a rental housing development referred to as Oleander Community Housing located at 2324 Esplanade St, Chico, California, consisting of a total of 38 Housing Units (the "Development"), of which 37 DR-MHP Assisted Units are to be occupied by eligible Households as provided in this Agreement. The Development is located on the real property described in <u>Exhibit A</u> hereto (the "Property"). The Subrecipient, with Department's approval, has agreed to provide the Assistance under the Community Development Block Grant - Disaster Recovery Multifamily Housing Program (the "Program") and the DR-MHP Policies and Procedures Manual (the "DR-MHP Policies and Procedures").

The obligations imposed on the Developer by the Program and the Program policies and procedures are collectively referred to herein as the "Program Requirements."

B. Community Development Block Grant Disaster Recovery (CDBG-DR) funding was appropriated under Public Laws 115-254 and 116-20, and awarded by the U.S. Department of Housing and Urban Development (HUD) to the Department via Federal Register Notice 83 FR 4681. The Department serves as the lead agency and responsible entity for administering CDBG-DR funds. CDBG-DR supports the State of California's unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4407 and DR-4382 in August 2018. HCD performed an unmet needs assessment that covered the areas affected by DR 4407 and DR 4382, and included data from FEMA, Small Business Administration (SBA), California's Department of Forestry and Fire Protection (CAL FIRE), and California Department of Insurance (CDI). The Department developed the Disaster Recovery Multifamily Housing Program (DR-MHP). DR-MHP projects are funded to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.

C. As required by the Program, Subrecipient and the Department have entered into a Master Standard Agreement, numbered 21-DRMHP-21006, and date October 4, 2021, which provides the overarching terms and conditions for implementing the Program and the terms of the Assistance common to all projects to be completed by the Subrecipient (the "Master Standard Agreement").

D. As required by the Program and the Master Standard Agreement, Department has issued to Subrecipient a Notice to Proceed for the Development, dated 11/1/2023, which provides the specific terms and conditions for the Development (the "Notice to Proceed").

E. As required by the Program, Developer and the Subrecipient have entered into that certain Development Agreement dated November 1, 2023 governing the terms and conditions of the Development and governing the terms of the Assistance for the Development (the "Development Agreement"). As required by the Program, Subrecipient has made a part of the Development Agreement the DR-MHP Development Agreement Rider (the "Development Agreement Rider") to include terms required by the Department for the Development.

F. The Master Standard Agreement, the Notice to Proceed, the Development Agreement, the Development Agreement Rider, Ground Lease Rider (as applicable), a Senior Regulatory Agreement, this Agreement and such other documents which govern and secure the Development as are reasonably required by the Subrecipient and Department are collectively referred to herein as the "Program Legal Documents."

G. As further consideration for the Assistance and in furtherance of the purposes of the Program, Developer has agreed to enter into this Agreement and consent to its recordation against the Development. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program Requirements and put such regulations and restrictions on title for the term of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement and are incorporated herein by reference as if fully stated herein.

2. Property. Developer is the owner in fee of the Property and all improvements now and hereafter located thereon.

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program policies and procedures. The following terms shall have the respective meanings assigned to them in this paragraph unless the context in which they are used clearly requires otherwise:

   a. Affordable Rents: means rents that are at or below the “High” HOME Program rents published by HUD for different metropolitan areas.

   b. Affordable Units: means a “dwelling” that is rented at an Affordable Rent to a household that earns less than 80 percent of Area Median Income adjusted for household size as calculated by HUD for different metropolitan areas within the State and published annually by the Department and HUD.

   c. Area Median Income (AMI): means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD for the CDBG program.

   d. Commercial Space: any nonresidential space located in or on the property of the Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income, as applicable, which ensures the fiscal integrity of the Development.

   e. Developer Fee: All Funds paid at any time as compensation for developing the Development, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.

   f. Distributions: the amount of cash or other benefits received from the operation of Development and available to be distributed to the Developer or any party having a beneficial interest in the Development after payment of all due and outstanding obligations incurred in connection with the Development.

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

h. Elderly Person: A person at least 62 years of age (24 CFR Part 5.100).

i. Extremely Low Income (ELI): ELI individuals or families whose income is at or below 30% of the area median income (AMI) or the federal poverty level, whichever is higher for the area of the Development.

j. Fiscal Year: the Fiscal Year for the Development shall mean the annual period commencing on January 1 and concluding on December 31 each year.

k. Household: One or more persons occupying a housing unit.

l. Initial Operating Year: the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed project and ending on the last day of the Fiscal Year for the Development.

m. Low- to Moderate-Income (LMI): Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.

n. Operating Expenses: the amount approved by the Subrecipient that is necessary to pay for the recurring expenses of the Development, such as utilities, maintenance, management, taxes, licenses, and Supportive Services costs, but not including debt service or required reserve account deposits.

o. Operating Income: all income generated in connection with operation of the Development including rental income for DR-MHP Assisted Units and non-DR-MHP Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Development. "Operating Income" does not include security and equipment deposits, payments to the Developer for Supportive Services not included in the operating budget, cash contributed by the Developer, or tax benefits received by the Developer.

p. Ordinary Maintenance and Repair: means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a decent, safe, sanitary condition.

q. Project Closeout Documentation: required documentation to be submitted to the Department by the Subrecipient and includes, but may not be limited to: project completion report, final activity report, recorded notice of completion, relocation report (if applicable) and a resolution from the governing body.

r. Reconstruction: Demolishing and re-building a housing unit on the same lot in substantially the same manner. Reconstruction is rehabilitation for purposes of DR-MHP.

s. Rehabilitation: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.

t. Rent: means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of a DR-MHP Assisted Unit, plus a utility allowance established in accordance with HOME Regulations at 24 CFR 92.252(a).

u. Restricted Unit: DR-MHP Assisted Units and any units that are subject to Rent and occupancy restrictions that are comparable to those applicable to DR-MHP Assisted Units. Restricted Units include units subject to a TCAC regulatory agreement, and all units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.

v. Special Needs or Special Needs Populations: means agricultural workers, individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental disabilities, serious mental illness or substance abuse disorders; individuals who are survivors of domestic violence, sexual assault, and human trafficking; individuals who are experiencing Homelessness; individuals with HIV; homeless youth as defined in Government Code (GC) Section 12957(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; frequent users of public health or mental health services, as identified by a public health or mental health agency; Frail Elderly Persons; or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.

w. Substantial Rehabilitation: Rehabilitation as defined in 24 CFR 5.100.

x. Supportive Housing: means housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

y. Supportive Services: social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.

z. TCAC: means the California Tax Credit Allocation Committee.

aa. Uniform Relocation Assistance and Real Property Acquisition Act (URA) (42 U.S.C. Chapter 61): A federal law that establishes minimum standards for federally funded programs and Projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.

4. Compliance with Program Requirements. The Developer agrees that at all times its actions regarding the Development and the use of funds provided under the Master Standard Agreement and the Notice to Proceed shall be in conformity with all Program Requirements, including the requirements of this Agreement and the Program Legal Documents. The Developer acknowledges that it is familiar with the Program Requirements, the requirements imposed on the Developer in the Program Legal Documents and has access to professional advice to the extent necessary to enable the Developer to fully comply with the Program Requirements and the applicable provisions of the Program Legal Documents.

5. Term of Agreement. This Agreement shall commence on the date set forth above and remain in full force and effect and shall apply to the Development through and including the twentieth (20^{th}) anniversary of the date of Department acceptance of the Project Closeout Documentation hereof regardless of any prepayment of the Assistance or sale, assignment, transfer or conveyance of the Development, unless terminated earlier by the Department or Subrecipient or extended by the mutual consent of the Parties.

6. DR-MHP Assisted Units, Restricted Units, Special Needs Populations Units and Supportive Housing Units.

   a. For the full term of this Agreement, Developer shall provide within the Development, the number, type and size of DR-MHP Assisted Units set forth in Exhibit B, Part I, attached hereto and incorporated herein.

   b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.

   c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Developer may change the designation of a particular Unit from DR-MHP Assisted Unit to non-DR-MHP Assisted Unit, and vice versa, over time, only to address situations when a tenant in a DR-MHP Assisted Unit is no longer qualified to reside in that unit or if the unit is no longer habitable. Any other proposed changes to the unit designation must be approved in writing in advance by the Subrecipient.

7. Affirmative Marketing and Tenant Selection Procedures. Affirmative Marketing involves special outreach and advertising efforts designed to communicate the availability of DR-MHP assisted housing to those groups or individuals who might

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

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

a. detail actions to be taken by Developer to affirmatively market all Housing Units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor;

b. specify reasonable criteria for determination of tenant eligibility, including Household size;

c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Subrecipient;

d. require eligible applicants to be notified of eligibility and, based on turnover history, when a DR-MHP Assisted Unit may be available;

e. require ineligible applicants to be notified of the reason for their ineligibility;

f. specify procedures through which applicants deemed to be ineligible may appeal this determination;

g. require maintenance of a waiting list of eligible applicants;

h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations; and

i. be made available to prospective tenants upon request.

8. Non-Discrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920 and United States Code 42 U.S.C section 3601 – 3019, including: race, color, religion, sex, gender, gender identity, gender expression,

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

9. Rental Agreement and Occupancy Procedures.

a. Each eligible Household selected to occupy a DR-MHP Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Developer, the form of which shall be subject to approval by the Subrecipient and be consistent with the Program Requirements. Such rental agreement shall provide for, inter alia, good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.

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

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

a. For the Initial Operating Year, Developer shall charge Rents for the DR-MHP Assisted Units in the Development in accordance with Exhibit B hereto.

b. After the Initial Operating Year, Rents for DR-MHP Assisted Units may be adjusted no more often than every twelve (12) months. Developer shall provide tenants of DR-MHP Assisted Units not less than 30 days prior written notice, or a longer period as required by state or local law, before implementing any increase in rents. In no event shall the rents exceed the High HOME Rents as designated for the area and published by HUD. If the Project is assisted with tax credits, the amount and method of rent adjustment for DR-MHP Assisted Units shall be in accordance with the Tax Credit Allocation Committee (TCAC) policy or a longer period as required by state or local law.

c. Notwithstanding the previous subparagraph, Rents for DR-MHP Assisted Units subsidized under Section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the DR-MHP Assisted Units continue to receive the rental assistance.

d. The maximum income of a Household occupying a DR-MHP Assisted Unit shall not exceed 80% of the Area Median Income at initial Household income certification, consistent with Section 4.11 of the DR-MHP Policies and Procedures.

11. Certification of Tenant Income and Household Size.

a. The income and Household size of all Households occupying DR-MHP Assisted Units shall be certified by the Developer prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the Program.

b. If, at the time of tenant recertification, the income of a Household occupying a DR-MHP Assisted Unit exceeds the income level applicable to new tenants for respective DR-MHP Assisted Units, the Developer shall:

1) increase the tenant's rent to the lesser of 30 percent of adjusted income, fair market rent, or the rent limitations of other funding programs governing the unit; and

2) to the extent another non-DR-MHP Assisted Unit becomes available within the Development, designate the next available comparable non-DR-MHP Assisted Unit as a DR-MHP Assisted Unit at the income level originally applicable to the Household until the unit mix required by this Agreement is achieved. A Housing Unit shall be deemed "comparable" if it has the same number of bedrooms, the same or similar features, and is similar in size to the original DR-MHP Assisted Unit.

12. Management and Maintenance.

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

b. Developer is responsible for operating the Development in accordance with the Management Plan. All amendments to this plan require prior written approval of the Subrecipient.

c. Developer may, with the prior written approval of the Subrecipient, contract with a management agent for the performance of the services or duties required in subparagraphs a. and b. of this paragraph 13. However, such an arrangement does not relieve the Developer of responsibility for proper performance of these duties. Such contract shall be subject to prior written approval by the Subrecipient and shall contain a provision allowing the

Developer to terminate the contract without penalty upon no more than thirty (30) days' notice. Upon a determination by the Subrecipient, and notice to the Developer thereof, that the contractor performing the functions required in subparagraphs a. and b. has failed to operate the Development in accordance with this Agreement and the approved Management Plan, the Developer shall exercise such right of termination forthwith and make immediate arrangements, which shall be subject to Subrecipient approval, for continuing performance of the functions required in subparagraphs a. and b.

d. Upon a determination by the Subrecipient, and written notice to the Developer thereof, that the Developer has failed to operate the Development in accordance with this Agreement, the Subrecipient may require the Developer to contract with a qualified management agent to operate the Development, or to make such other arrangements as the Subrecipient deems necessary to ensure performance of the functions required in_subparagraphs a. and b.

e. Developer shall operate, maintain and repair both Restricted and non-Restricted Units equally without regard to their designation as Restricted Units or non-Restricted Units.

13. Insurance.

Subrecipient, its Developers and Contractors shall comply with all requirements outlined in the (A) General Provisions section and (B) Project Insurance Requirements outlined herein. These requirements are in addition to, and not in lieu of, any other insurance coverages required elsewhere in the Development Agreement and elsewhere in the Master Standard Agreement. The Department reserves the right to waive or adjust required insurance coverages from time to time in its sole discretion.

a. General Provisions Applying to All Policies

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

2) Policy Cancellation or Termination & Notice of Non-Renewal – Subrecipient is responsible to notify the Department within fifteen (15) business days prior to any actual or proposed cancellation, non-renewal or material change that affects required insurance coverage. No policy may be

cancelled upon less than thirty (30) days' prior written notice from the insurer to the insured and the Department. New certificates of insurance are subject to the approval of the Department and the Subrecipient agrees no services will be commenced or performed prior to obtaining such approval. In the event Subrecipient and Developer fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement and/or Approved Project upon the occurrence of such event, subject to the provisions of this Agreement.

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

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

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

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

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

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

9) Satisfying an SIR - All insurance required by this Agreement and any required by the terms specific to the relevant Approved Project must allow the Department to pay and/or act as the Subrecipient's, Developer's, or

contractor's agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the Subrecipient's, Developer's, or contractor's agent in satisfying any SIR is at the Department's discretion.

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

b. Project Insurance Requirements

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

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

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

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

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

3) Workers' Compensation and Employer's Liability – Subrecipient and Developer or Contractor shall maintain statutory worker's compensation

and employer's liability coverage for all its employees who will be engaged in the performance of this Agreement and the relevant Approved Project. In addition, employer's liability limits of $1,000,000 are required. By signing this Agreement, Subrecipient acknowledges compliance with these regulations. A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.

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

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

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

14. 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.

15. Annual Operating Budget.

a. For the Initial Operating Year, Developer shall operate the Development and expend Operating Income in accordance with the initial operating budget approved by and on file with the Subrecipient. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year.

b. No later than sixty (60) days prior to the beginning of each subsequent Fiscal Year of the Development, the Developer shall submit to the Subrecipient a proposed annual operating budget on a form provided by the Subrecipient. The proposed annual operating budget shall set forth the Developer's estimate of Operating Income, Operating Expenses and debt service for the upcoming year, amounts payable to reserves, and proposed Rent adjustments.

c. If the Development contains either non-Restricted Units or Commercial Space, or both, each annual operating budget shall show amounts, sources and uses of income allocated between DR-MHP Assisted Units, Restricted Units, non-

Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Subrecipient approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Development.

16. Periodic Reports. Developer shall submit to the Subrecipient such periodic reports as deemed necessary by the Subrecipient to monitor the Developer's compliance with this Agreement. The reports may include, but are not limited to:

a. an income and expense statement for the reporting period;

b. a summary of the occupancy of the Development, indicating the number and type of Units reserved for eligible Households, the number of vacant Units, and the number of evictions completed or in process;

c. a report on maintenance or other issues anticipated to impact the current budget needs of the Development;

d. information on the status of waiting lists for the DR-MHP Assisted Units, including the number of households on lists for different Unit sizes and by income group, as well as evidence of compliance with Project's Affirmative Marketing Plan; and

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

If, after the Initial Operating Year, the Subrecipient determines that such periodic reports continue to be necessary, the Subrecipient shall so notify the Developer as part of the annual budget approval process. Upon such notification, Developer shall submit the requested reports.

17. Annual Report and Audit.

a. Developer shall file an annual report with the Subrecipient no later than ninety (90) days after the end of each Fiscal Year for the Development. The report shall be in such form and contain such information as required by the Subrecipient.

b. As part of the annual report, the Developer shall submit an audit of the Development prepared by an independent certified public accountant in accordance with Subrecipient audit requirements, and as specified in the Department's Audit Handbook, titled "Audited Financial Statements for Multifamily Rental Housing", published April 2018, as periodically updated, located on the Department's website here: https://www.hcd.ca.gov/grants-funding/already-have-funding/docs/hcdcalhfaaudithandbook.pdf

18. Required Reserves. Developer shall establish, fund and maintain reserve accounts for the term of this Agreement as listed below. All such accounts shall be in the

name of the Developer, earn interest, and, unless otherwise approved in writing by the Subrecipient, be insured by an agency of the federal government or other comparable federal insurance program. All interest earned on a reserve account shall become a part of the account. Withdrawals from the reserve accounts shall require prior written approval of the Subrecipient, except as specifically noted in Exhibit C. Should the Subrecipient fail to take action on a request for a withdrawal from a reserve account within thirty (30) days of documented receipt of the request, that request will be deemed approved.

a. Replacement Reserve Account. Commencing no later than the date of permanent loan conversion, Developer shall establish a segregated replacement reserve account. Developer shall make annual deposits from Operating Income to the replacement reserve account in the amount set forth in Exhibit C, unless the Subrecipient determines, in its sole discretion, that more frequent deposits are required. Developer shall also deposit any Development funds designated for replacement reserves into this account, including those identified in Exhibit C. The amount of the minimum annual deposit may be adjusted, as determined by the Subrecipient, in its sole discretion, based on the results of reserve studies, performed by an independent third party at the Developer's expense as requested by the Subrecipient or as based on other reliable indicators of the need for reserve funds over time.

b. Operating Reserve Account. Developer shall establish an operating reserve account or sub-account within the Development's general operating account no later than the date of permanent loan conversion. Developer shall fund the operating reserve account with an initial deposit in an amount as specified in Exhibit C, and through monthly deposits from Operating Income in amounts as specified in Exhibit C or in approved annual operating budgets. Developer shall fully replace any withdrawals from the operating reserve account using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.

c. Other Reserve Accounts. Developer certifies that Exhibit C hereto contains a complete listing of all reserve accounts established or to be established for the Development. All withdrawals from these accounts shall require prior written Subrecipient approval, except as specifically noted in Exhibit C.

19. Accounting System. In a manner subject to Subrecipient approval, Developer shall maintain an accrual or modified accrual basis general ledger accounting system that is posted monthly and that accurately and fully shows all assets, liabilities, income and expenses of the Development.

20. Records Retention. All records and books relating to the initial development phase of the Development (application through project completion) shall be retained for a minimum period of five (5) years after the Department notifies the Subrecipient that the grant agreement between HUD and the State of California has been

closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relating to the operational phase of the Development shall be retained for the most recent five (5) year period, until five years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. All records shall be subject to inspection and audit by the Subrecipient, the Department, HUD, or its representative.

21. Use of Income from Operations.

a. The Developer, or Developer's management agent, shall promptly deposit all Operating Income in a segregated account established in the Developer's name exclusively for the Development and insured by an agency of the federal government or other comparable federal insurance program.

b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement, and the approved annual operating budget, and shall be disbursed, applied, or reserved and set aside for payment when due, in the following priority, to the extent available:

1) salaries, wages, and any other compensation due and payable to the employees or agents of the Developer employed on site in connection with the maintenance, administration or operation of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;

2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums;

3) regularly scheduled non-contingent payments of interest, principal, impounds, fees and charges, if any, required on loans, including the Assistance when such Assistance is provided as a loan, which are secured by liens on the Property, which have been approved by the Subrecipient, payments on which are to be made prior to the determination of net cash flow, as specified in Exhibit C, hereto;

4) all other incurred Operating Expenses, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by the Subrecipient;

5) any amounts owing to the Developer's limited partner as provided in the Amended and Restated Agreement of Limited Partnership of Developer;

6) deposits to required reserve accounts;

7) deferred Developer Fee;

8) asset management, partnership management and similar fees, to the extent such fees are specified under the terms of financing from a public entity and approved by the Subrecipient, or if there is no public entity financing, asset management, partnership management and similar fees, in accordance with the UMR Section 8314(a).

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

The withdrawals permitted under subparagraph 22 (b) [(7), (8) and (9)] shall also be subject to the restrictions of paragraph 19 (b) above.

The Developer may depart from the foregoing priorities of payment only upon the express written approval of the Subrecipient or as permitted by the Developer's partnership agreement. Net Cash Flow shall be distributed in accordance with paragraph 24 hereto and the Developer's partnership agreement.

22. <u>Distributions</u>.

a. Developer shall be limited to annual Distributions of the annual Operating Income remaining after payment of the items allowed in clauses (1) through (8) of subparagraph b of paragraph 22 above. If the Development generates insufficient cash flow to permit payment of Distributions in a particular year, Distributions in future years shall not be increased to cover the lack of Distributions in prior years.

b. Developer may deposit all or a portion of the amount permitted for Distributions into a Development account for distribution in subsequent years. Such future Distributions shall not reduce the otherwise permitted Distributions in those subsequent years.

c. Distributions shall be permitted for a particular Fiscal Year, including Distributions from an accumulated Distributions account, only after the Developer submits a complete annual report and operating budget and the Subrecipient determines that the report and budget demonstrate compliance with all Program Requirements.

d. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, partnership management fees, and/or similar fees pursuant to clause (8) of subparagraph b of paragraph 22 above shall be made or paid include:

1) when written notice of default has been issued by any entity, (including the Subrecipient) with an equitable or beneficial interest in the Development or which has a contractual relationship with the Developer regarding the Development which has not been cured with any

applicable notice or cure period;

2) when the Developer is in default under the terms of this Agreement, the Development Agreement, the Development Agreement Rider, or the Policies and Procedures as they may be amended from time to time, which has not been cured with any applicable notice or cure period;

3) when the Subrecipient determines that the Developer or Developer's management agent has failed to comply with the Subrecipient's written notice of any reasonable requirement for proper maintenance or operation of the Development, which has not been cured with any applicable notice or cure period;

4) if all currently required debt service, including mandatory payments on the Assistance, and Operating Expenses have not been paid; or

5) if the replacement reserve account, operating reserve account or any other required reserve account has not been funded in accordance with this Agreement.

23. Use of Net Cash Flow.

Net Cash Flow shall be applied to payment of interest, principal, impound fees and charges, if any, on loans which are secured by liens on the Property, including the Assistance (if made as a loan), which have been approved by the Subrecipient and which are to be paid from Net Cash Flow in the amounts, proportion and in accordance with the terms specified in Exhibit C hereto. Upon payment in full of the loans payable from Net Cash Flow as set forth in Exhibit C, all Net Cash Flow shall be used to make a Distribution to Developer in accordance with 23.a above.

24. Department or Subrecipient Review and Inspections.

a. At any time during the term of this Agreement, the Department, the Subrecipient, or their designee may enter and inspect the physical premises and inspect all accounting records pertaining to the construction, development or operation of the entire Development. Upon request by the Department or Subrecipient, the Developer shall notify occupants of upcoming inspections of their Units in accordance with state law.

b. In addition to the annual audit required in paragraph 18 above, and at the Department's or Subrecipient's request, the Developer shall provide, at Developer's expense, a special audit of the Development certified by an independent certified public accountant. The Department or Subrecipient may also perform or cause to be performed audits of any and all phases of the Developer's activities related to the Development.

c. The Department or Subrecipient may request any other information that it deems necessary to monitor compliance with the Program Requirements and the requirements set forth in this Agreement and the Program Legal Documents. The Developer shall promptly provide such information.

25. Restrictions on Sale, Encumbrance, and Other Acts.

Prior to making any of the below changes or entering into any of the below agreements, Developer shall give written notice to Subrecipient and the Department no less than 60 days of its intention to take such action.

a. Except with the Subrecipient's prior written approval, and Department's prior written approval at the Department's sole discretion, Developer shall not:

1) make any direct or indirect sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or Development or of any of Developer's interest in either of them;

2) substantially add to, remodel, remove, reconstruct, or demolish any part of the Development;

3) permit the use of the Development for any purpose other than that permitted by this Agreement;

4) incur any liability or obligation in connection with the Property or Development, other than for current Operating Expenses, nor incur any liability, charge, assessment, or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Property provided that the Subrecipient may permit refinancing or additional financing secured by the Property to the extent necessary to maintain or improve the Development's fiscal integrity, or to maintain Affordable Rents;

5) enter into any contract relating to rehabilitating or managing the Development;

6) enter into any lease for more than a single rental Unit, a ground lease of the Property or any interest therein, except for the rental of Commercial Space in the Development; or

7) if the Developer or its successor in interest is a limited partnership, discharge or replace any general partner or amend, modify or add to its partnership agreement, or amend, modify or add to the organizational documents of the general partner; except that it may transfer limited partner interests without such approval. The withdrawal, removal, and/or replacement of a general partner of the partnership pursuant to the terms of the partnership agreement shall not constitute a default under any of the Program Legal Documents, and any such actions shall not accelerate the maturity of the Assistance, provided that any required

substitute general partner is reasonably acceptable to the Subrecipient and the Department, and is selected with reasonable promptness.

b. Any and all proposed sale, transfer, conveyance of the Property or Development, or proposed refinancing of any loans for the Development, must be approved in writing by both the Subrecipient and the Department, in the Department's sole discretion. In evaluating such requests, the Department will consider, among other factors, the following: The transferor Developer (or Developer, as applicable) is in compliance with this Agreement, or the sale, transfer, conveyance or refinance will result in the cure of any existing violations of this Agreement.

1) The transferee Developer agrees to assume all obligations of the transferor Developer pursuant to this Agreement, the other Program Legal Documents and the Program Requirements.

2) The transferee Developer demonstrates to the Subrecipient's satisfaction that it has the ability and capacity to own and operate the Development in full compliance with this Agreement and the Program Requirements for the duration of this Agreement.

3) Any terms of the sale, transfer, conveyance or refinance shall not jeopardize the Subrecipient's security or the transferee Developer's (or Developer's, as applicable) ability to comply with all Program Requirements.

4) The Subrecipient and Department will not approve any cash payment to the selling party, or to any party related to or affiliated with the selling party. The Developer may not cash out its equity. Deferred developer fee, and seller carry back loans, cannot be cashed out from the proceeds of a sale, transfer, conveyance or refinance.

c. The Subrecipient and Department may grant its approval for a sale, transfer, conveyance or refinance of the Property or Development subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the Development or to ensure compliance with the Program Requirements. Such conditions may include, but are not limited to, the deposit of sales proceeds, or a portion thereof, to maintain required reserves or to offset negative cash flow.

d. If Developer or its successor in interest is a limited partnership, the execution and delivery of the purchase option and right of first refusal agreement described in the partnership agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. Any requisite consent of the Subrecipient and Department to (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and to

(b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the Subrecipient. Subject to any such consent requirement, the exercise of rights under the partnership agreement shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.

e. If the Developer or its successor in interest is a limited liability company, the execution and delivery of the purchase option and right of first refusal agreement described in the operating agreement, if any, shall not constitute a default under the Program Legal Documents or accelerate the maturity of the Assistance thereunder, provided that such purchase option is and remains subordinate to the documents securing the Assistance. Any requisite consent of the Subrecipient and Department to (a) the exercise of said purchase option and right of first refusal agreement by the Developer identified therein, and to (b) the assumption without penalty of Assistance obligations by the Developer and the release of Developer from such obligations shall not be unreasonably withheld, but may be conditioned upon the execution of an operating guaranty from the Developer in form provided by the Subrecipient. Subject to any such consent requirement, the exercise of rights under such the operating agreement shall not constitute a default under the Program Legal Documents or accelerate maturity of the Assistance.

f. If Developer or its successor in interest is a limited partnership or limited liability company and the purchase option and right of first refusal agreement described in the partnership or operating agreement, if any, is not exercised and the Development is sold subject to low-income housing use restrictions contained in this Agreement, the requisite consent of the Subrecipient and Department to said sale, and to the assumption without penalty of Assistance obligations by the purchaser and the release of Developer from such obligations, shall not be unreasonably withheld, but may be conditioned upon, among other requirements, the execution of an operating guaranty from the Developer in form provided by the Subrecipient.

g. The Developer agrees that if it is organized as a partnership or limited liability company, Developer shall not dissolve the partnership or limited liability company prior to the expiration of the term of this Agreement, without the prior written approval of the Subrecipient and the Department.

26. <u>Breach of Agreement by Developer</u>.

a. In the event of the Developer's breach, violation or default in the performance of any covenant, agreement or obligation of the Developer set forth in this Agreement including, but not limited to, Developer's covenant to perform its obligations under the Program Legal Documents, the Subrecipient shall give the Developer written notice in the manner specified in paragraph 42 of this

Agreement, specifying the nature of the violation, breach or default and the action needed to cure. If the default, breach or violation is not cured to the satisfaction of the Subrecipient within the time period specified in the notice, which shall not be less than the applicable time to cure as stated in paragraph 28 of this Agreement, the Subrecipient may declare a default hereunder and may take any one or more of the following actions:

1) Collect all Rents and income in connection with the operation of the Development and use the same and the reserve funds for the operation and maintenance of the Development.

2) Take possession of the Development and bring any action necessary to enforce any rights of the Developer growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the Subrecipient, in its sole discretion, shall determine that the Developer is again in a position to operate the Development in accordance with the terms of this Agreement.

3) Apply to any court, state or federal, for specific performance of this Agreement or for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. It is agreed by the Developer that the injury to the Subrecipient arising from a default under any of the terms of this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Subrecipient, in light of the purposes and requirements of the Program, would be impossible to ascertain.

4) Accelerate all amounts including outstanding principal and interest, due under the terms of the Program Legal Documents and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the Subrecipient may proceed with a foreclosure or sale under the power of sale in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

5) Seek such other appropriate remedies as may be available under the law.

b. In the event that the breach or violation involves charging tenants Rent or other charges in excess of those permitted under this Agreement, the Subrecipient may demand that Developer immediately return all such excess Rents or other charges to the affected households. If legal action is necessary to enforce the provisions of this Agreement, the Subrecipient may seek the return of such overcharges to the affected households.

c. The remedies of the Subrecipient hereunder and under the other Program

Legal Documents are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Subrecipient of any one or more of its other remedies.

d. The tenants of the DR-MHP Assisted Units shall be considered third party beneficiaries of this Agreement, all shall have such rights and remedies to enforce the Program Requirements of this Agreement as may be available to third party beneficiaries under the law.

27. Time To Cure.

a. If a monetary event of default occurs under the terms of any of the Program Legal Documents, prior to exercising any remedies thereunder the Subrecipient shall give Developer written notice of such default. Developer shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by the Subrecipient under the Program Legal Documents, or such longer period of time as may be specified in the Program Legal Documents.

b. If a non-monetary event of default occurs under the terms of any of the Program Legal Documents, prior to exercising any remedies thereunder, the Subrecipient shall give Developer written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, as determined by the Subrecipient in its sole discretion, Developer shall have such period to effect a cure prior to exercise of remedies by the Subrecipient under the Program Legal Documents, or such longer period of time as may be specified in the Program Legal Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Subrecipient in its sole discretion, or such longer period if so specified, and if Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is determined by the Subrecipient, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by the Subrecipient. If Developer or its successor in interest is a limited partnership, if Developer fails to take corrective action or to cure the default within such a specified time, the Subrecipient shall give Developer's limited partner written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall the Subrecipient be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in the Program Legal Documents.

c. In the event of either a monetary or non-monetary default under the Program

Legal Documents by the Developer, Subrecipient shall provide notice of such default to Developer's senior lender and the Department simultaneously with the giving of notice to the Developer.

28. Property Tax Exemption.

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

a. Modify, add to or delete from the articles of incorporation, bylaws or other organizational documents of Developer or of the managing general partner of Developer;

b. Apply for nonprofit, tax-exempt status to the appropriate state or federal agency;

c. Provide the certifications and assurances required by section 214 of the Revenue and Taxation Code; and

d. Comply with the procedures and requirements imposed by local government agencies as a condition of receiving the property tax exemption.

e. Developer's failure to qualify the Development for the maximum exemption from property taxes as described in this Section 29 shall constitute a default under the terms of this Agreement, and may also constitute a default under the Program Legal Documents, subject to applicable notices and cure periods.

29. Controlling Agreement.

a. Developer specifically agrees and acknowledges that, notwithstanding any internal accounting procedures or provision pertaining to the use of receipts, payments, reserves and distributions contained in its partnership or other organizational documents or agreements, the terms of this Agreement, the Notice to Proceed and the Program Requirements shall control as to the use of the funds provided under the Development Agreement and all Operating Income from the Development.

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

30. Assignment of Subrecipient Rights.

The Subrecipient retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder to a Subrecipient-owned or controlled entity such as its Housing Authority. In addition, the Subrecipient may designate or hire an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof. In the event Subrecipient assigns all or part of its rights for the purpose of ensuring compliance and enforcement, or designates or hires an agent to act on its behalf with respect to monitoring and enforcement as described in this paragraph, Subrecipient shall remain obligated under, and ultimately responsible for fulfilling, the terms of this Agreement.

31. Amendment.

This Agreement shall not be altered or amended except in writing, executed by all of the parties hereto, with prior written approval by the Department.

32. Partial Invalidity.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

33. Binding on Successors.

This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transfers, successors in interest and assigns, provided, however, that the Developer may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Subrecipient. The term "Developer" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary or possessory interest of Developer in the Development.

34. Recording of Agreement.

This Agreement, and all amendments hereto, shall be executed by each of the parties and their respective signatures acknowledged. This Agreement shall be recorded against the Property in the official records of the county(ies) in which the Development is situated before construction begins, but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department and shall have priority over other liens, encumbrances and other matters of record except as may be approved by the Department. Exceptions to the position of this Agreement must be approved in writing and in advance by the Department.

35. Indemnification of Department; Waiver.

a. Developer agrees to indemnify and defend the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any and all costs, losses, damages, liabilities, claims, demands, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of any of the following: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Developer's duty to indemnify and defend the Department shall survive the term of this Agreement. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.

c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: "**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**".

36. Indemnification of Subrecipient; Waiver.

a. Developer agrees to indemnify the Subrecipient and its agents, employees and officers against, and holds the Subrecipient and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorney's fees) of every name, kind and description, which the Subrecipient may incur as a direct or indirect consequence of: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Subrecipient's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Subrecipient and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Subrecipient. Developer's duty to indemnify the Subrecipient shall survive the term of this Agreement. In the event HUD acquires title to the Development, this indemnification provision will not apply to HUD.

b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Subrecipient or its agents, officers or employees.

c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**

37. No Waiver.

No waiver by the Department or Subrecipient of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation hereof or default hereunder. All waivers must be in a writing signed by the party making the waiver in order for such waiver to be effective.

38. Third-Party Beneficiaries.

The Developer and Subrecipient expressly agree and acknowledge that the Department is an intended third-party beneficiary to the provisions of this Agreement. Among other things, the performance of this Agreement benefits the Department by creating, rehabilitating, or otherwise making available, affordable housing units within the State of California, and allows the Department to ensure compliance with applicable program requirements governing the Development. The Department is the sole third-party beneficiary and no other parties are intended or should be deemed as such.

39. Captions.

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.

40. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of California and the United States of America. All code references herein refer to the California state statutes, unless specifically indicated otherwise.

41. Notice.

Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

42. Attorneys' Fees.

The prevailing party in any action to enforce this Agreement, including residents of DR-MHP Assisted Units, shall be entitled to reasonable attorneys' fees and costs as determined by the trier of fact in that forum.

43. Subrecipient's Approval, Etc.

Whenever this Agreement or any of the other Program Legal Documents requires the approval, consent, or other determination by the Subrecipient, the Subrecipient shall act reasonably and in good faith.

44. Counterparts

This Agreement may be executed in counterparts each of which shall be an original and all of which shall constitute the same instrument.

45. Compliance with IRC Section 42(h)(6)(E)(ii).

In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department and Subrecipient agree to comply with the provisions set forth in Internal Revenue Code ("IRC") Section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.

46. Special Conditions.

The Developer agrees to comply with and be bound by the special conditions, if any, set forth in Exhibit C hereto.

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

Exhibit A:	Legal Description of the Property
Exhibit B:	Unit Designation and Rent Schedule and requirements for Supportive Housing Units or Special Needs Population Units; and
Exhibit C:	Special Conditions.

[Signatures of the Developer and the Subrecipient follow on pages 31 and 32 of this Regulatory Agreement. The remainder of this page is intentionally left blank.]

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

<u>SUBRECIPIENT</u>:

By: ______________________
Name: Mark Sorensen*
Title: City Manager
Date: 10-31-2023

<u>Mailing Address</u>:

City of Chico
Attn: Housing Division
PO Box 3420
Chico, CA 95927

*Authorized pursuant to City of Chico Resolution No. 02-21, adopted February 2, 2021.

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**
**Approved pursuant to The Charter of the City of Chico §906(D)

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)
) ss
COUNTY OF BUTTE)

On October 31, 2023, before me, Jamie N. Hernandez, Notary Public, personally appeared Mark Sorensen who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 ______________________

JAMIE N. HERNANDEZ
Notary Public - California
Butte County
Commission # 2367075
My Comm. Expires Aug 11, 2025

DEVELOPER:

Chico PSH Pacific Associates,
A California Limited Partnership

By: TPC Holdings IX,LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.
an Idaho corporation
Its Manager

By: ______________________________ *
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit Corporation
Its: Managing General Partner

By: ______________________________ *
Name: Hope Stone
Its: Chief Financial Officer

Mailing Address:

Chico PSH Pacific Associates
430 E State St. Suite 100
Eagle, ID 83616
Attn: President

With a copy to:

Butte County Affordable Housing
Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

DEVELOPER AND SUBRECIPIENT SIGNATURES MUST BE ACKNOWLEDGED

NOTARY ACKNOWLEDGMENT STATEMENT

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~~ Idaho

County of Ada)

On 10/30/23, before me, Stacey Aparicio, a Notary Public, personally appeared Caleb Roope, 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 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~~ Idaho that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Stacey Aparicio [SEAL]

STACEY APARICIO
COMMISSION #20212548
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 05/24/2027

DEVELOPER:

Chico PSH Pacific Associates,
A California Limited Partnership

By: TPC Holdings IX,LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.
an Idaho corporation
Its Manager

By: ______________________________ *
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit Corporation
Its: Managing General Partner

By: ______________________________ *
Name: Hope Stone
Its: Chief Financial Officer

Mailing Address:

Chico PSH Pacific Associates
430 E State St. Suite 100
Eagle, ID 83616
Attn: President

With a copy to:

Butte County Affordable Housing
Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

DEVELOPER AND SUBRECIPIENT SIGNATURES MUST BE ACKNOWLEDGED

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 BUTTE }

On 10/30/, 2023 before me, LISA SALDANO, a Notary Public, personally appeared HOPE STONE, who proved to me 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 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____________________ (SEAL)

LISA SALDANO
Notary Public - California
Butte County
Commission # 2400963
My Comm. Expires Apr 15, 2026

EXHIBIT A TO REGULATORY AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Chico, County of Butte, State of California, described as follows:

PARCEL I:

A PARCEL OF LAND IN RANCHO ARROYO CHICO, BUTTE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THE "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28, FROM WHICH POINT A CONCRETE MONUMENT STAMPED L.S. 2621 MARKING THE MOST SOUTHERLY CORNER OF SAID LINDO VIEW SUBDIVISION, BEARS SOUTH 36 DEG. 15' EAST, 174.0 FEET; THENCE FROM SAID POINT OF BEGINNING, SOUTH 52 DEG. 43' WEST 66.0 FEET; THENCE SOUTH 36 DEG. 15' EAST, 119.0 FEET; THENCE SOUTH 52 DEG. 43' WEST 36.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 5.0 FEET; THENCE SOUTH 52 DEG. 43' WEST, 118.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 65.0 FEET TO AN IRON PIPE; THENCE SOUTH 52 DEG. 43' WEST, 80.0 FEET TO AN IRON PIPE ON THE EASTERLY LINE OF U.S. HIGHWAY 99E NORTH (FORMERLY SHASTA ROAD); THENCE ALONG SAID LINE NORTH 36 DEG. 15' WEST, 174.22 FEET TO AN IRON PIPE MARKING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM RICHARD C. PETERSON, ET UX, TO FAZAL MOHAMED, ET AL, DATED DECEMBER 7, 1959 AND RECORDED DECEMBER 17, 1959, IN BOOK 1034, PAGE 372, OFFICIAL RECORDS; THENCE ALONG THE SOUTH LINE OF SAID MOHAMED, ET AL, PARCEL, THE FOLLOWING 3 COURSES AND DISTANCES: NORTH 53 DEG. 54' EAST, 164.5 FEET; SOUTH 36 DEG. 15' EAST, 19.38 FEET; NORTH 53 DEG. 45' EAST, 135.45 FEET TO AN IRON PIPE ON THE MOST EASTERLY CORNER OF SAID MOHAMED, ET AL, PARCEL, ON THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION; THENCE ALONG SAID LINE, SOUTH 36 DEG. 15' EAST, 100 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS HERETOFORE RESERVED TO THE GRANTOR IN THAT CERTAIN DEED FROM BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A NATIONAL BANKING ASSOCIATION, TO JOSEPH KRIKAC, DATED APRIL 26, 1945 AND RECORDED MAY 5, 1945, IN BOOK 346, PAGE 146, OFFICIAL RECORDS, AND AS QUITCLAIMED TO A DEPTH OF 50 FEET BY INSTRUMENT EXECUTED BY CAPITAL COMPANY, A CORPORATION IN FAVOR OF G.D. BRANSON, ET AL, RECORDED MARCH 7, 1951, IN BOOK 567, PAGE 368, OFFICIAL RECORDS.

PARCEL II:

AN EASEMENT FOR ROAD PURPOSES OVER THE NORTHWESTERLY 35 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT A CONCRETE MONUMENT STAMPED L.L. 2621 MARKING THE MOST WESTERLY CORNER OF LOT 8, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28; THENCE SOUTH 36 DEG. 15' EAST ALONG THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION, A DISTANCE OF 544.5 FEET TO THE MOST SOUTHERLY CORNER OF LOT 1 OF SAID LINDO VIEW SUBDIVISION, BEING A POINT ON THE NORTH LINE OF RIO LINDO AVENUE, AS SHOWN ON SAID MAP; THENCE SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 195.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 105.0 FEET TO THE EASTERLY LINE OF CALIFORNIA STATE HIGHWAY 99E (FORMALLY KNOWN AS THE SHASTA ROAD); THENCE NORTH 36 DEG. 15' WEST ALONG THE EASTERLY LINE OF SAID CALIFORNIA

STATE HIGHWAY99E (FORMERLY KNOWN AS THE SHASTA ROAD), A DISTANCE OF 125.0 FEET; THENCE NORTH 52 DEG. 43' EAST 80.00 FEET; THENCE SOUTH 36 DEG. 15' EAST 65.0 FEET; THENCE NORTH 52 DEG. 43' EAST 25 FEET; THENCE SOUTH 36 DEG. 15' EAST, 60 FEET TO THE TRUE POINT OF BEGINNING.

APN: 006-100-049

EXHIBIT B TO REGULATORY AGREEMENT

I. UNIT DESIGNATIONS AND RENT SCHEDULE

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

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

December 31st

During the Initial Operating Year:

A. Developer shall charge Rents for DR-MHP Assisted Units that do not exceed Rents set forth in the schedule below; and

B. Developer shall charge Rents for Units other than Assisted Units in amounts not less than the amounts shown herein.

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

II. UNIT MIX [UNDER REVIEW BY UMPQUA]

No. of Bedrooms	DR-MHP Assisted Units	Restricted Units (including DR-MHP Assisted Units)	Non-Restricted Units	Total Units	Rent	Utility Allowance	Net Rent	Annual Net Rent	Income Limit	
Efficiency	21	21	0	21	$433	0	$433	$103,068	30%	AMI
1	16	16	0	16	$464	0	$464	$84,096	30%	AMI
2	0	0	1	1	$0	$0	$0	$0	MNGR.	
Totals	37	37	1	38				$187,164		

The above Unit Mix chart is based on the following:

2023 High HOME Program Rents and CDBG-DR Income Limits for the City of Chico in Butte County, California

III. COMMERCIAL SPACE RENTS

N/A

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

N/A

EXHIBIT C TO REGULATORY AGREEMENT
Special Conditions

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

I. Required Reserves (paragraph 19).

A. Replacement Reserves (paragraph 19.a).

Annual Deposit Amount:	$19,000
Initial Capitalization Amount:	$1,583.33 (monthly deposit amount)
Date of Deposit:	Perm Loan Conversion
Withdrawals Require Prior Subrecipient Approval?	YES

B. Operating Reserve (paragraph 19.b).

Initial Capitalization Amount:	$92,946
Date of Deposit:	Perm Loan Conversion
Withdrawals Require Prior Subrecipient Approval?	YES, subject to the terms and conditions set forth in the Development Agreement

C. Other Reserves (paragraph 19.c). N/A

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

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

Name	
Deposit Amount:	$ per

Initial Capitalization Amount:	
Withdrawals Require Prior Subrecipient Approval?	

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

Lender:	Umpqua Bank
Initial Principal Amount:	[$7,800,000]
Payment Amount	Monthly interest only payments
Term to Maturity:	24 months from closing, subject to one 6-month extension
Lien Position:	1st (Construction)
Interest Rate and Type:	1 month term Secured Overnight Financing Rate ("SOFR") plus a tax-exempt credit spread of 1.36%, full floating.

Lender:	HCD
Initial Principal Amount:	$3,471,998
Payment Amount	Mandatory annual debt service of $[14,582]
Term to Maturity:	55 years
Lien Position:	2nd
Interest Rate and Type:	3% fixed simple interest

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

The Subrecipient approved Deferred Developer Fee from paragraph 22.b.(6) is projected to be $ 1,783,273

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

Net Cash Flow shall be applied towards payment of the following loans, in the percentages noted: Add soft repayment of NPLH loan?

Lender:	NPLH
Initial Principal Amount:	$3,471,998
Payment Amount	Soft payment from available cash flow
Term to Maturity:	55 years
Lien Position:	2nd
Interest Rate and Type:	3% fixed simple interest
Lender:	
Initial Principal Amount:	$
Percentage of Net Cash Flow:	%
Term to Maturity:	__ years
Lien Position:	
Interest Rate:	%

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

CREA Oleander Community Housing, LP
30 S. Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

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

EXHIBIT E

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

HCD SENIOR REGULATORY AGREEMENT

This document was electronically submitted to Butte County for recording

2023-0029451
Keaton Denlay
Butte - County Clerk-Recorder
Cindi Wilde - Assistant
11/03/2023 09:13 AM

Titles: 1	Pages: 28
Fees:	$0.00
Taxes:	$0.00
CA SB2 Fee:	$0.00
Total:	$0.00

FREE RECORDING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Chico
PO Box 3420
Chico, CA 95927
Attn: City Manager/Housing

APN: 006-100-049

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY MULTIFAMILY HOUSING PROGRAM

SENIOR REGULATORY AGREEMENT (Affordability Restrictions)

CONTRACT NUMBER 21-DRMHP-21006-NTP-2

This Senior Regulatory Agreement (Affordability Restrictions) (this **"Agreement"**) dated November 1, 2023, for reference purposes only, is made and entered into by and between Chico PSH Pacific Associates, A California Limited Partnership, a California limited partnership (the "**Developer**"), and the City of Chico, a political subdivision of the State of California(the **"Subrecipient" or "City")**, pursuant to the requirements of the Community Development Block Grant - Disaster Recovery Multifamily Housing Program administered by the Department of Housing and Community Development, a public agency of the State of California (the "**Department**").

RECITALS:

A. Developer has applied to the Subrecipient's Community Development Block Grant – Disaster Recovery Multifamily Housing Program for financial assistance (the **"Assistance"**) for the development of a rental housing development located at 2324 Esplanade St. Chico, California, consisting of a total of 38 Housing Units (the **"Development"**), of which 37 DR-MHP Assisted Units (the **"DR-MHP Assisted Units"**) will be occupied by eligible Households as provided in this Agreement. The Development is located on the real property described in Exhibit A hereto (the **"Property"**). The Subrecipient, with the Department's approval, has agreed to provide the Assistance under the Community Development Block Grant – Disaster Recovery Multifamily Housing Program (the "**Program**") and the Program Policies and Procedures Manual (the "**DR-MHP Policies and Procedures**"). The obligations imposed on the Developer by the Program and the DR-MHP Policies and Procedures are collectively referred to herein as the "**Program Requirements.**"

B. Community Development Block Grant Disaster Recovery (CDBG-DR) funding was appropriated under Public Laws 115-254 and 116-20 and awarded by the U.S. Department of Housing and Urban Development (HUD) to the Department via Federal Register Notice 83 FR 4681. The Department serves as the lead agency and responsible entity for administering CDBG-DR funds. CDBG-DR supports the State of California's unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4407 and DR- 4382 in August 2018. HCD performed an unmet needs assessment that covered the areas affected by DR 4407 and DR 4382, and included data from FEMA, Small Business Administration (SBA), California's Department of Forestry and Fire Protection (CAL FIRE), and California Department of Insurance (CDI). The Department developed the DR-MHP Program. DR-MHP projects are funded to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters.

C. As required by the Program, Subrecipient and the Department have entered into that certain Master Standard Agreement, numbered 21-DRMHP-21006, and dated October 4, 2021[Note: please provide copy], which provides the overarching terms and conditions for implementing the Program and the terms of Assistance common to all projects to be completed by the Subrecipient (the **"Master Standard Agreement"**).

D. As required by the Program and the Master Standard Agreement, Department has issued to Subrecipient a Notice to Proceed for the Development, dated November 1, 2023 which provides the specific terms and conditions for the Development (the "**Notice to Proceed**").

E. As required by the Program, Developer and the Subrecipient have entered into that certain Development Agreement dated November 1, 2023, governing the terms and conditions of the Development and governing the terms of the Assistance for the Development (the "**Development Agreement**"). As required by the Program, Subrecipient has made a part of the Development Agreement the DR-MHP Rider to Development Agreement (the "**Development Agreement Rider**") to include terms required by the Department for the Development.

F. In addition to this Agreement and the Master Standard Agreement, Developer has executed or will execute each of the following documents in form approved by the Subrecipient:

1. A Development Agreement evidencing the Loan specifying, <u>inter</u> <u>alia</u>, the principal amount thereof, the interest accruing thereon, and the terms of repayment thereof (the **"Development Agreement"**).

2. A deed of trust, assignment of rents, security agreement, and fixture filing securing the Note and naming the Subrecipient as beneficiary and the Developer as trustor and recorded or to be recorded against the Property (the **"Deed of Trust"**). The Deed of Trust shall have such priority and be subject only to such matters of record as may be approved in writing by the Department; provided, however, this

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

3. The Department's customary regulatory agreement regulating and restricting the occupancy, rents, operation, ownership and management of the Development and Property in compliance with Program Requirements and recorded or to be recorded against the Property (the **"Junior Regulatory Agreement"**).

4. Such other documents and instruments as the Subrecipient and Department may reasonably require, including but not limited to, a Development Agreement Rider.

G. The Master Standard Agreement, the Notice to Proceed, the Development Agreement, the Development Agreement Rider, Ground Lease Rider (as applicable), the Junior Regulatory Agreement, this Agreement and such other documents and instruments as are reasonably required by the Subrecipient and Department are collectively referred to herein as the **"Program Legal Documents."**

H. The senior construction loan encumbering the Property (**"Senior Loan"**) is from Umpqua Bank, an Oregon state-chartered bank (the "**Senior Lender**"), in the amount of $7,800,000, which will be repaid in full at permanent-conversion. The Senior Loan is evidenced by that certain Promissory Note ("**Senior Note**") and secured by that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing to be recorded against the Property ("**Senior Deed of Trust**"). The construction term of the loan is for twenty-four (24) months, with certain extension rights as further described in the Senior Lender's Construction Loan Agreement with Developer ("**Senior Loan Agreement**"). The Senior Note requires interest only payments during construction, with the principal due on the maturity date. Pursuant to applicable authority, the affordability restrictions of the Junior Regulatory Agreement being executed and recorded against the Property must be senior to the Senior Loan, the Senior Deed of Trust, and the Deed of Trust. Accordingly, this Agreement, which repeats and contains such affordability restrictions, and the Junior Regulatory Agreement shall both be executed in connection with the closing of the Loan and recorded in a manner which ensures that this Agreement shall be prior and senior to the Senior Loan, the Senior Deed of Trust, the Deed of Trust, and the Junior Regulatory Agreement.

I. As further consideration for the Assistance and in furtherance of the purposes of the Program, Developer has agreed to enter into this Agreement and consent to its recordation against the Development. The purpose and intent of this Agreement is to regulate and restrict the occupancy and rents of the Development in compliance with the Program Requirements and put such regulations on title for the term of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and made a part of this Agreement.

2. Property. Developer is the owner in fee of the Property and all improvements now and hereafter located thereon.

3. Definitions. Unless the context requires otherwise, or the terms are defined herein, the terms used in this Agreement shall be governed by the definitions set forth in the Program Policies and Procedures and Master Standard Agreement. The following terms shall have the respective meanings assigned to them in this paragraph unless the context in which they are used clearly requires otherwise:

a. Affordable Rents: means rents that are at or below the "High" HOME Program rents published by HUD for different metropolitan areas.

b. Affordable Units: means a "dwelling" that is rented at an Affordable Rent to a household that earns less than 80 percent of Area Median Income adjusted for household size as calculated by HUD for different metropolitan areas within the State and published annually by the Department or HUD.

c. Area Median Income (AMI): means the median family income for specific geographic areas, adjusted for household size, as calculated by HUD, and published annually by HCD for the CDBG program.

d. Commercial Space: any nonresidential space located in or on the property of the Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income, as applicable, which ensures the fiscal integrity of the Development.

e. Developer Fee: All Funds paid at any time as compensation for developing the Development, to include all development consultant fees, processing agent fees, developer overhead and profit, construction management oversight fees if provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.

f. Distributions: the amount of cash or other benefits received from the operation of Development and available to be distributed to the Developer or any party having a beneficial interest in the Development, after payment of all due and outstanding obligations incurred in connection with the Development.

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

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

i. Elderly Person: A person at least 62 years of age (24 CFR Part 5.100).

j. Extremely Low Income (ELI): ELI individuals or families whose income is at or below 30% of the area median income (AMI) or the federal poverty level, whichever is higher for the area of the Development.

k. Fiscal Year: the Fiscal Year for the Development shall mean the annual period commencing on January 1 and concluding on December 31 each year.

l. Household: One or more persons occupying a housing unit.

m. Initial Operating Year: the initial period of operation of the Development, beginning at the time of the initial occupancy of the completed project and ending on the last day of the Fiscal Year for the Development.

n. Low- to Moderate-Income (LMI): Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted Housing Programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.

o. Operating Expenses: the amount approved by the Subrecipient that is necessary to pay for the recurring expenses of the Development, such as utilities, maintenance, management, taxes, licenses, and Supportive Services costs, but not including debt service or required reserve account deposits.

p. Operating Income: all income generated in connection with operation of the Development including rental income for DR-MHP Assisted Units and non-DR-MHP Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Development. "Operating Income" does not include security and equipment deposits, payments to the Developer for Supportive Services not included in the operating budget, cash contributed by the Developer, or tax benefits received by the Developer.

q. Ordinary Maintenance and Repair: means regular or usual care, upkeep or replacement of any part, or putting back together that which is deteriorated or broken, of an existing property, building or structure to effect the maintenance of a decent, safe, sanitary condition.

r. Project Closeout Documentation: required documentation to be submitted to the Department by the Subrecipient and includes, but is not limited to: project completion report, final activity report, recorded notice of completion, relocation report (if applicable) and a resolution from the governing body.

s. Reconstruction: Demolishing and re-building a housing unit on the same lot in substantially the same manner. Reconstruction is rehabilitation for purposes of DR-MHP.

t. Rehabilitation: Repair or restoration of housing units in the disaster-impacted areas to applicable construction codes and standards.

u. Rent: means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of a DR-MHP Assisted Unit, plus a utility allowance established in accordance with HOME Regulations at 24 CFR 92.252(a).

v. Restricted Unit: DR-MHP Assisted Units and any units that are subject to Rent and occupancy restrictions that are comparable to those applicable to DR-MHP Assisted Units. Restricted Units include units subject to a TCAC regulatory agreement, and all units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.

w. Special Needs or Special Needs Populations: means agricultural workers, individuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental disabilities, serious mental illness or substance abuse disorders; individuals who are survivors of domestic violence, sexual assault, and human trafficking; individuals who are experiencing Homelessness; individuals with HIV; homeless youth as defined in Government Code (GC) Section 12957(e)(2); families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; frequent users of public health or mental health services, as identified by a public health or mental health agency; Frail Elderly Persons; or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors unless they otherwise qualify as a Special Needs Population.

x. Substantial Rehabilitation: Rehabilitation as defined in 24 CFR 5.100.

y. Supportive Housing: means housing with no limit on length of stay, that is occupied by the target population and that is linked to onsite or offsite services that assist the Supportive Housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

z. Supportive Services: social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.

aa. TCAC: means the California Tax Credit Allocation Committee.

bb. Uniform Relocation Assistance and Real Property Acquisition Act (URA) (42 U.S.C. Chapter 61): A federal law that establishes minimum standards for federally funded programs and Projects that require the acquisition of real property (real estate) or the displacement of persons from their homes, businesses, or farms.

cc. Unit: A residential unit that is used as a primary residence by its occupant.

4. Compliance with Program Requirements. The Developer agrees that at all times its actions regarding the Development and the use of funds provided under the Master Standard Agreement and the Notice to Proceed shall be in conformity with all Program Requirements, including the requirements of this Agreement and the Program Legal Documents. The Developer acknowledges that it is familiar with the Program Requirements, the requirements imposed on the Developer in the Program Legal Documents, and has access to professional advice to the extent necessary to enable the Developer to fully comply with the Program Requirements and the applicable provisions of the Program Legal Documents.

   Notwithstanding anything to the contrary set forth herein, following any foreclosure or deed in lieu of foreclosure by Senior Lender (or its nominee), in no event shall Senior Lender (or its nominee) or its successors in interest to the Property following such foreclosure or deed in lieu of foreclosure be obligated (i) to comply with any Program Legal Documents (and excluding specifically this Agreement) which have been expressly subordinated by the Subrecipient pursuant to a subordination agreement among Developer, Subrecipient and Senior Lender, or (ii) to repay (or monitor the use of) the Assistance.

5. Term of Agreement. This Agreement shall commence on the date hereof and remain in full force and effect and shall apply to the Development through and including the twentieth (20^{th}) anniversary of the date of Department acceptance of the Project Closeout Documentation hereof regardless of any prepayment of the Loan or sale, assignment, transfer, or conveyance of the Development or the Property, unless terminated earlier by the Department or extended by the mutual consent of the parties.

6. DR-MHP Assisted Units, Restricted Units, Special Needs Populations Units, and Supportive Housing Units.

   a. For the full term of this Agreement, Developer shall provide within the Development, the number, type, and size of DR-MHP Assisted Units set forth in Exhibit B, Part II, attached hereto and incorporated herein.

   b. Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units within the Development with the same number of bedrooms, and Restricted Units shall not be segregated from non-Restricted Units.

   c. Within the limits of subparagraph b. above, and subject to the requirements of subparagraph a. above, Developer may change the designation of a particular Unit from DR-MHP Assisted Unit to non-Assisted Unit, and vice versa, over time, only to address situations when a tenant in a DR-MHP Assisted Unit is no longer qualified to reside in that unit or if the unit is no longer habitable. Any other proposed changes to the unit designation must be approved in writing in advance by the Subrecipient.

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

Developer shall rent DR-MHP Assisted Units in the Development to Eligible Households and otherwise operate the Property in accordance with the Management Plan developed by the Developer and approved by and on file with the Subrecipient and Department (the **"Management Plan"**) pursuant to paragraph 13 of this Agreement. The Management Plan shall, at minimum:

a. detail actions to be taken by Developer to affirmatively market all Units in a manner that ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination and without regard to any arbitrary factor;

b. specify reasonable criteria for determination of tenant eligibility, including household size;

c. require that eligible tenants be selected based on order of application, lottery, or other reasonable method approved by the Subrecipient;

d. require eligible applicants to be notified of eligibility and, based on turnover history, when a Unit may be available;

e. require ineligible applicants to be notified of the reason for their ineligibility;

f. specify procedures through which applicants deemed to be ineligible may appeal this determination;

g. require maintenance of a waiting list of eligible applicants;

h. specify procedures for obtaining information regarding prospective tenants' incomes as necessary to certify that such income does not exceed the income limit limitations; and

i. be made available to prospective tenants upon request.

8. Non-Discrimination. Developer shall not discriminate against any tenant or prospective tenant on the basis of any class or status prohibited by Government Code section 12920

and United States Code 42 U.S.C section 3601 – 3019, including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other arbitrary factor in violation of any federal, state, or local law governing discrimination in rental housing. The restriction of housing to elderly and Special Needs Populations is permitted where the housing is intended to benefit those targeted groups in compliance with applicable law and only with prior approval of the selection criteria by the Subrecipient.

9. Rental Agreement and Occupancy Procedures.

a. Each Eligible Household selected to occupy a DR-MHP Assisted Unit in the Development shall enter into a written rental or occupancy agreement with the Developer, the form of which shall be subject to approval by the Subrecipient and be consistent with the Program Requirements. Such rental agreement shall, inter alia, provide for good cause eviction, reference the appeal and grievance procedures set forth in the Management Plan, and require the tenant annually recertify household income and size.

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

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

a. For the Initial Operating Year, Developer shall charge Rents for the DR-MHP Assisted Units in the Development in accordance with Exhibit B hereto.

b. After the Initial Operating Year, Rents for DR-MHP Assisted Units may be adjusted no more often than every twelve (12) months. Developer shall provide tenants of DR-MHP Assisted Units not less than 30 days prior written notice, or a longer period as required by state or local law, before implementing any increase in rents. In no event shall the rents exceed the High HOME Rents as designated for the area and published by HUD. If the Project is assisted with tax credits, the amount and method of rent adjustment for DR-MHP Assisted Units shall be in accordance with the Tax Credit Allocation Committee (TCAC) policy or a longer period as required by state or local law.

c. Notwithstanding the previous subparagraph, Rents for DR-MHP Assisted Units subsidized under section 8 of the Housing Act of 1937 or any comparable federal or state rental assistance program may be adjusted as required by the respective rental assistance program, for as long as the DR-MHP Assisted Units continue to receive the rental assistance.

d. For DR-MHP Assisted Units in the Development that are covered by approved project-based rental assistance (if applicable), the Developer shall:

(1) In good faith timely apply for and accept all available renewals of project-based rental assistance; and

(2) If the project-based rental assistance is terminated, Rents for DR-MHP Assisted Units previously covered by such project-based rental assistance, with written permission from the Department, may be increased, but only to the minimum extent required for project feasibility, as determined by the Subrecipient and Department in their discretion. In addition, Rents for DR-MHP Assisted Units designated in Exhibit B, shall not in any event be increased to an amount in excess of the high HOME rent limit for the county, as published by the Department.

e. The maximum income of a Household occupying a DR-MHP Assisted Unit shall not exceed eighty percent (80%) of the Area Median Income at initial Household income certification, consistent with Section 4.11 of the DR-MHP Policies and Procedures.

11. Certification of Tenant Income and Household Size.

a. The income and household size of all households occupying DR-MHP Assisted Units shall be certified by the Developer prior to occupancy and recertified annually thereafter in the manner specified in the Development's approved Management Plan and in accordance with applicable rules, regulations, and procedures governing the Program.

b. If, at the time of tenant recertification, the income of a household occupying a DR-MHP Assisted Unit exceeds the income level applicable to new tenants for respective DR-MHP Assisted Units, and, to the extent a rent increase for the household is permitted by statutes and regulations, the Developer shall:

(1) Increase the tenant's rent to the lesser of 30 percent of adjusted income, fair market rent, or the rent limitations of other funding programs governing the unit; and

(2) To the extent another non-DR-MHP Assisted Unit becomes available within the Development, designate the next available comparable non-DR-MHP Assisted Unit as a DR-MHP Assisted Unit at the income level originally applicable to the Household until the unit mix required by this Agreement is achieved. A Housing Unit shall be deemed "comparable" if it has the same number of bedrooms, the same or similar features, and is similar in size to the original DR-MHP Assisted Unit.

c. At any time, and from time to time during the term of this Agreement, the Department or Subrecipient or their designee(s) may, upon reasonable notice to Developer and accompanied by a representative of Developer, enter and inspect the physical premises of the Development and the Property and inspect and copy all accounting records pertaining to the Development's or Property's compliance with the covenants and agreements set forth in this Agreement and other Program Legal Documents. Upon request by the Department or Subrecipient, the Developer shall notify occupants of upcoming inspections of their Units in accordance with state law.

12. Management and Maintenance.

Developer shall be responsible for the operation and maintenance of the Development and the Property in a manner consistent with this Agreement.

13. Periodic Reports.

Developer shall submit to the Subrecipient such periodic reports as deemed necessary by the Subrecipient and the Department to monitor the Developer's compliance with the affordability provisions of this Agreement.

14. Violation of Agreement by Developer.

a. In the event of the Developer's breach, violation, or default in the performance of any covenant, agreement, or obligation of the Developer set forth in this Agreement, the Subrecipient shall give the Developer written notice in the manner specified in this Agreement, specifying the nature of the violation, breach, or default and the action needed to cure. If the default, breach, or violation is not cured to the reasonable satisfaction of the Subrecipient pursuant to paragraph 15 below, the Subrecipient may declare a default hereunder and may, as its exclusive remedy pursuant to this Agreement or applicable law, apply to a court of applicable jurisdiction to seek Equitable Relief (as defined below). As defined herein, "Equitable Relief" shall mean seeking, applying for, pursuing, and obtaining any one or more of the following:

(1) An order for specific performance enforcing the covenants, agreements, and obligations of the Developer set forth herein, and in connection therewith, Developer acknowledges and agrees that the injury to the Subrecipient or Department arising from a failure or default under this Agreement would be irreparable and that the amount of compensation, which would provide adequate relief to the Subrecipient or Department, in light of the purposes and requirements of the Program, would be impossible to ascertain;

(2) A temporary restraining order, preliminary injunction, or permanent injunction with respect to or against the breach or violation of the covenants, agreements, and obligations set forth herein;

(3) Declaratory Relief;

(4) Conducting a Subrecipient or Department investigation or holding a Subrecipient or Department hearing to determine whether or what action, if any, is appropriate with respect to the project; and/or

(5) Seeking the payment and/or reimbursement of any and all court costs, attorneys' fees, witness fees, and the like incurred by the Subrecipient or Department in pursuing any or all of the foregoing.

(6) Seek such other appropriate remedies as may be available under the law.

b. The Equitable Relief remedies of the Subrecipient or Department referenced above are cumulative and non-exclusive, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Subrecipient or Department of any one or more of its other remedies hereunder. The Subrecipient or Department hereby waives the right to seek any other remedy here under for breach, violation, or default of any of the covenants set forth in this Agreement, provided, however, notwithstanding the foregoing or any other provision of this Agreement:

(1) The limitations of rights to Equitable Relief as provided above shall apply solely and exclusively to breaches, defaults, and violations of this Agreement only;

(2) The limitations on remedies set forth herein shall not limit what causes of action may be plead but shall circumscribe the relief available thereunder;

(3) The limitations set forth herein do not apply to the Junior Regulatory Agreement, or any of the other Loan Documents, or other actions at law that are not brought as a contract cause of action premised on this Agreement;

(4) Nothing contained herein shall restrict a court of competent jurisdiction from providing, on its own motion, any other remedial relief or orders with respect to any breach, violation, or default of the terms of this Agreement in addition to that contemplated by subsections (1),(2),(3),(4) and (5) of subparagraph a. of this paragraph.

(5) The tenants of the Assisted Units shall be considered third party beneficiaries of this Agreement and shall have such rights to seek Equitable Relief as set forth above as may be available to third party beneficiaries under the law.

15. Time to Cure. If a breach, violation, or default occurs with respect to the covenants set forth in this Agreement, prior to exercising the exclusive remedy described in paragraph 14 hereunder, the Subrecipient shall give Developer and its limited partner (at the address in Section 25 hereof), and Developer's senior lender (at the address in Section 25 hereof)

written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer and its limited partner shall have such period to effect a cure prior to exercise of the Subrecipient's remedy. If the default is such that it is not reasonably capable of being cured within such 30-day period and if Developer or its limited partner (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer or its limited partner shall have such additional time, not to exceed an additional 180 days, to cure the default prior to exercise of the remedy by the Subrecipient. If Developer or its successor in interest is a limited partnership, if Developer fails to take corrective action or to cure the default within such a specified time, the Subrecipient shall give Developer and its limited partner written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.

16. Assignment of Subrecipient Rights. The Subrecipient retains the right at its sole discretion to assign all or part of its rights under this Agreement to another governmental entity or agency for the purpose of ensuring compliance and enforcement of Developer's duties and obligations hereunder. In addition, the Subrecipient may designate or hire an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof. In the event Subrecipient assigns all or part of its rights for the purpose of ensuring compliance and enforcement, or designates or hires an agent to act on its behalf with respect to monitoring and enforcement as described in this paragraph, Subrecipient shall remain obligated under, and ultimately responsible for fulfilling, the terms of this Agreement, and no such assignment shall relieve Developer of any of its duties or obligations under this Agreement or any of the other Program Legal Documents.

17. Amendment. This Agreement shall not be altered or amended except in writing, executed between or among all the parties hereto, with prior written approval by the Department.

18. Partial Invalidity. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

19. Binding on Successors. This Agreement shall bind, and the benefits hereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, transferees, successors in interest and assigns, provided, however, that the Developer may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior written approval of the Subrecipient. The term "Developer" as used herein shall include and apply to any person or entity succeeding to the legal, equitable, proprietary, or possessory interest of Developer in the Development.

20. Recording Agreement. This Agreement, and all amendments hereto, shall be executed by each of the parties and their respective signatures acknowledged. This Agreement shall be recorded against the Property in the official records of the county(ies) in which the Development is situated, prior and superior to the lien of the Senior Lender, the Senior Deed of Trust, and all other matters of record except as may be approved by the Department, before construction begins, but not more than 180 days subsequent to the issuance of a Notice to Proceed by the Department.

21. Indemnification of Department; Civil Code §1542 Waiver.

a. Developer agrees to indemnify and defend the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any and all costs, losses, damages, liabilities, claims, demands, actions, judgments, court costs and legal or other expenses (including attorneys' fees) of every name, kind and description, which the Department may incur as a direct or indirect consequence of any of the following: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department, the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Department. Developer's duty to indemnify and defend the Department shall survive the term of this Agreement. In the event the United States Department of Housing and Urban Development ("HUD") acquires title to the Development, this indemnification provision will not apply to HUD.

b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers, or employees.

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

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

a. Developer agrees to indemnify the Subrecipient and its agents, employees and officers against, and holds the Subrecipient and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorney's fees) of every name, kind and description, which the Subrecipient may incur as a direct or indirect consequence of: (1) the making of the Assistance to the Developer; (2) Developer's failure to perform any obligations as and when required by this Agreement or any of the other Program Legal Documents; (3) any failure at any time of any of Developer's representations or warranties to be materially true and correct; (4) any act or omission by Developer, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or the construction, management, maintenance or operation of the Development; or (5) the presence of any recognized environmental conditions at the Development or on the Property. Developer shall pay immediately upon the Subrecipient's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. Developer's duty to indemnify and hold harmless includes the duties to defend as set forth in section 2778 of the Civil Code. Developer shall indemnify and hold harmless the Subrecipient and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Subrecipient, or their respective agents, officers, employees, contractors or subcontractor; provided, however, that Developer's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the gross negligence or willful misconduct of the Subrecipient. Developer's duty to indemnify the Subrecipient shall survive the term of this Agreement. In the event HUD acquires title to the Development, this indemnification provision will not apply to HUD.

b. The Developer waives and releases any and all rights to any types of express or implied indemnity against the Subrecipient or its agents, officers or employees.

c. The Developer expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows:
"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.".

22. No Waiver. No waiver by the Department or Subrecipient of any breach or violation of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or violation thereof or default thereunder. All waivers must be in writing and signed by the party making the waiver in order for such waiver to be effective.

23. Captions. The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or the intent of this Agreement.

24. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.

25. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands, or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or delivered by express delivery service with delivery receipt, to the address of the respective party as set forth below or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

Address for Notice:
City of Chico
411 Main Street
Chico, CA 95928
Attn: Housing Division, CDBG-DR MHP Program

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

Chico PSH Pacific Associates, A California Limited Partnership
430 E. State Street, Suite 100
Eagle, Idaho 83616
Attention: President and General Counsel
Telephone: (208) 461-0022

With a copy to:

McReynolds & McCormack, PLLC
430 E. State Street, Suite 140
Eagle, Idaho 83616

Butte County Affordable Housing Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

CREA Oleander Community Housing, LP
30 S. Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management
Facsimile: (312) 577-8751

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

CREA Oleander Community Housing Development Corporation, LP
30 S. Meridian Street, Suite 400
Indianapolis, Indiana 46204
Attention: Asset Management

With a copy to:

Applegate & Thorne-Thomsen, P.C.
425 S. LaSalle Street, Suite 1900
Chicago, IL 60605
Attention: Warren Wenzloff, Esq.
Telephone: (312) 491-3321
Facsimile: (312) 491-4411

So long as the Senior Deed of Trust is a lien on the Property, copies of any and all notices of default and any and all other notices that may be given by the Department or Subrecipient to Developer shall be sent, in the same manner as the notice is given to Developer, to the Senior Lender at the following address:

Umpqua Bank
P.O. Box 1580
Roseburg, Oregon 97470
Attention: Commercial Real Estate – Affordable Housing

26. Attorneys' Fees. The prevailing party in any action to enforce this Agreement, including residents of Assisted Units, shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.

27. Subrecipient's Approval, etc. Whenever this Agreement or any of the other Program Legal Documents requires the approval, consent, or other determination by the Subrecipient or Department, the Subrecipient or Department shall act reasonably and in good faith.

28. Compliance with IRC section 42(h)(6)(E)(ii). In the event a regulatory agreement required by TCAC is recorded against the Property as a condition of the award of federal tax credits, the Department agrees to comply with the provisions set forth in Internal Revenue Code ("IRC") section 42(h)(6)(E)(ii). As of the date of this Agreement, IRC section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42 for a period of three (3)

years after the date the building is acquired by foreclosure or instrument in lieu of foreclosure.

29. Construction. Each party hereto acknowledges and agrees that it has had independent counsel review and participate in the drafting of this Agreement, and it hereby fully waives the application of any law, statute, or rule of construction or interpretation, including without limitation California Civil Code section 1654, to the effect that any ambiguities are to be construed against the drafting party.

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

Exhibit A: Legal Description of the Property; and

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

[Signatures of the Developer and the Subrecipient follow on pages 19 and 20 of these Affordability Restrictions. The remainder of this page is intentionally left blank.]

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

SUBRECIPIENT:

By: ______________________
Name: Mark Sorensen*
Title: City Manager

Date: 10-31-2023

Mailing Address:

City of Chico
Attn: Housing Division
PO Box 3420
Chico, CA 95927

*Authorized pursuant to City of Chico Resolution No. 02-21, adopted February 2, 2021.

APPROVED AS TO FORM:

____
John W. Lam, City Attorney**
**Approved pursuant to The Charter of the City of Chico §906(D)

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)
) ss
COUNTY OF BUTTE)

On October 31, 2023, before me, Jamie N. Hernandez, Notary Public, personally appeared Mark Sorensen who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 ______________________

JAMIE N. HERNANDEZ
Notary Public - California
Butte County
Commission # 2367075
My Comm. Expires Aug 11, 2025

DEVELOPER:

Chico PSH Pacific Associates,
A California Limited Partnership

By: TPC Holdings IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.
an Idaho corporation
Its Manager

By: _________________________ *
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit Corporation
its Managing General Partner

By: _________________________ *
Name: Hope Stone
Its: Chief Financial Officer

Mailing Address:

Chico PSH Pacific Associates
430 E State St. Suite 100
Eagle, ID 83616
Attn: President

With a copy to:

Butte County Affordable Housing
Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

[All signatures with * must be acknowledged]

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 **Idaho**

County of **Ada**

On 10/30/23, before me, Stacey Aparicio, Notary Public, personally appeared Caleb Roope, who proved to me on the basis of satisfactory evidence to be the person whose name is 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/they signature(s) on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Idaho that the foregoing paragraph is true and correct WITNESS my hand and official seal.

STACEY APARICIO
COMMISSION #20212548
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES 05/24/2027

Signature

Stacey Aparicio

Commission Expires: 5/24/2027

(Seal)

DEVELOPER:

Chico PSH Pacific Associates,
A California Limited Partnership

By: TPC Holdings IX, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.
an Idaho corporation
Its Manager

By: ______________________________*
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit Corporation
its Managing General Partner

By: ______________________________*
Name: Hope Stone
Its: Chief Financial Officer

Mailing Address:

Chico PSH Pacific Associates
430 E State St. Suite 100
Eagle, ID 83616
Attn: President

With a copy to:

Butte County Affordable Housing
Development Corporation
2039 Forest Avenue
Chico, California 95928
Attention: President

[All signatures with * must be acknowledged]

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 BUTTE }

On 10/30/, 2023 before me, LISA SALDANO, a Notary Public, personally appeared HOPE STONE, who proved to me 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 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

(SEAL)

LISA SALDANO
Notary Public - California
Butte County
Commission # 2400963
My Comm. Expires Apr 15, 2026

EXHIBIT A TO REGULATORY AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Chico, County of Butte, State of California, described as follows:

PARCEL I:

A PARCEL OF LAND IN RANCHO ARROYO CHICO, BUTTE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF THE "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28, FROM WHICH POINT A CONCRETE MONUMENT STAMPED L.S. 2621 MARKING THE MOST SOUTHERLY CORNER OF SAID LINDO VIEW SUBDIVISION, BEARS SOUTH 36 DEG. 15' EAST, 174.0 FEET; THENCE FROM SAID POINT OF BEGINNING, SOUTH 52 DEG. 43' WEST 66.0 FEET; THENCE SOUTH 36 DEG. 15' EAST, 119.0 FEET; THENCE SOUTH 52 DEG. 43' WEST 36.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 5.0 FEET; THENCE SOUTH 52 DEG. 43' WEST, 118.0 FEET; THENCE NORTH 36 DEG. 15' WEST, 65.0 FEET TO AN IRON PIPE; THENCE SOUTH 52 DEG. 43' WEST, 80.0 FEET TO AN IRON PIPE ON THE EASTERLY LINE OF U.S. HIGHWAY 99E NORTH (FORMERLY SHASTA ROAD); THENCE ALONG SAID LINE NORTH 36 DEG. 15' WEST, 174.22 FEET TO AN IRON PIPE MARKING THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM RICHARD C. PETERSON, ET UX, TO FAZAL MOHAMED, ET AL, DATED DECEMBER 7, 1959 AND RECORDED DECEMBER 17, 1959, IN BOOK 1034, PAGE 372, OFFICIAL RECORDS; THENCE ALONG THE SOUTH LINE OF SAID MOHAMED, ET AL, PARCEL, THE FOLLOWING 3 COURSES AND DISTANCES: NORTH 53 DEG. 54' EAST, 164.5 FEET; SOUTH 36 DEG. 15' EAST, 19.38 FEET; NORTH 53 DEG. 45' EAST, 135.45 FEET TO AN IRON PIPE ON THE MOST EASTERLY CORNER OF SAID MOHAMED, ET AL, PARCEL, ON THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION; THENCE ALONG SAID LINE, SOUTH 36 DEG. 15' EAST, 100 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS, AND OTHER HYDROCARBONS AND MINERALS HERETOFORE RESERVED TO THE GRANTOR IN THAT CERTAIN DEED FROM BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A NATIONAL BANKING ASSOCIATION, TO JOSEPH KRIKAC, DATED APRIL 26, 1945 AND RECORDED MAY 5, 1945, IN BOOK 346, PAGE 146, OFFICIAL RECORDS, AND AS QUITCLAIMED TO A DEPTH OF 50 FEET BY INSTRUMENT EXECUTED BY CAPITAL COMPANY, A CORPORATION IN FAVOR OF G.D. BRANSON, ET AL, RECORDED MARCH 7, 1951, IN BOOK 567, PAGE 368, OFFICIAL RECORDS.

PARCEL II:

AN EASEMENT FOR ROAD PURPOSES OVER THE NORTHWESTERLY 35 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT A CONCRETE MONUMENT STAMPED L.L. 2621 MARKING THE MOST WESTERLY CORNER OF LOT 8, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "LINDO VIEW", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON JULY 18, 1950, IN BOOK 18 OF MAPS, AT PAGE(S) 28; THENCE SOUTH 36

DEG. 15' EAST ALONG THE SOUTHWESTERLY LINE OF SAID LINDO VIEW SUBDIVISION, A DISTANCE OF 544.5 FEET TO THE MOST SOUTHERLY CORNER OF LOT 1 OF SAID LINDO VIEW SUBDIVISION, BEING A POINT ON THE NORTH LINE OF RIO LINDO AVENUE, AS SHOWN ON SAID MAP; THENCE SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 195.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, CONTINUING SOUTH 52 DEG. 43' WEST ALONG THE NORTH LINE OF SAID RIO LINDO AVENUE, 105.0 FEET TO THE EASTERLY LINE OF CALIFORNIA STATE HIGHWAY 99E (FORMALLY KNOWN AS THE SHASTA ROAD); THENCE NORTH 36 DEG. 15' WEST ALONG THE EASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY99E (FORMERLY KNOWN AS THE SHASTA ROAD), A DISTANCE OF 125.0 FEET; THENCE NORTH 52 DEG. 43' EAST 80.00 FEET; THENCE SOUTH 36 DEG. 15' EAST 65.0 FEET; THENCE NORTH 52 DEG. 43' EAST 25 FEET; THENCE SOUTH 36 DEG. 15' EAST, 60 FEET TO THE TRUE POINT OF BEGINNING.

APN: 006-100-049

EXHIBIT B TO REGULATORY AGREEMENT

I. UNIT DESIGNATIONS AND RENT SCHEDULE

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

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

December 31, 2025

During the Initial Operating Year:

A. Developer shall charge Rents for DR-MHP Assisted Units that do not exceed Rents set forth in the schedule below; and

B. Developer shall charge Rents for Units other than Assisted Units in amounts not less than the amounts shown herein.

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

II. UNIT MIX

No. of Bedrooms	DR-MHP Assisted Units	Restricted Units (including DR-MHP Assisted Units)	Non-Restricted Units	Total Units	Rent	Utility Allowance	Net Rent	Annual Net Rent	Income Limit	
Efficiency	21	21	0	21	$433	0	$433	$103,068	30%	AMI
1	16	16	0	16	$464	0	$464	$84,096	30%	AMI
2	0	0	1	1	$0	$0	$0	$0	MNGR.	
Totals	37	37	1	38				$187,164		

The above Unit Mix chart is based on the following:

2023 High HOME Program Rents and CDBG-DR Income Limits for City of Chico, California in Butte County, California

III. COMMERCIAL SPACE RENTS

N/A

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

N/A

EXHIBIT F

CITY OF CHICO
CDBG-DR MHP DEVELOPMENT AGREEMENT
OLEANDER COMMUNITY HOUSING, CHICO, CALIFORNIA
(City of Chico/Chico PSH Pacific Associates)

HCD CDBG-DR RIDER TO THE DEVELOPMENT AGREEMENT

RIDER TO DEVELOPMENT AGREEMENT

State of California
Department of Housing and Community Development
Community Development Block Grant - Disaster Recovery
2018 Disaster Recovery Multifamily Housing Program

CITY OF CHICO

Pursuant to that certain Master Standard Agreement ("MSA") number 21-DRMHP-21006, entered into on the 4th day of October 2021, by and between the California Department of Housing and Community Development ("Department") and City of Chico ("Subrecipient"), this RIDER TO DEVELOPMENT AGREEMENT ("RIDER") is incorporated into and made a part of that certain Development Agreement, defined as the legal instrument that conveys the Project Funds to the development, entered into on the 1st day of November by and between City of Chico ("Subrecipient") and Chico PSH Pacific Associates, A California Limited Partnership ("Developer") (the "Development Agreement") to include terms required by the Department for the individual multifamily affordable housing development project proposed by Subrecipient located at 2324 Esplanade Chico, California 95926 consisting of 38 affordable housing units, including 37 CDBG-DR restricted units, (the "Approved Project").

This Approved Project is subject to the terms of the MSA, this Rider, and the funding amount and conditions determined by the Department set forth in the Notice to Proceed ("NTP") for the Approved Project. The Subrecipient and Developer agree to abide by the following terms required by Department applicable to the Approved Project.

1. Performance Milestones

A. Subrecipient shall record in the applicable County Recorder's office the DR-MHP Senior 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 NTP by the Department. The DR-MHP Senior Regulatory Agreement, and specifically the affordability and rent covenants therein, must 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.

B. Subrecipient shall monitor the Project construction schedule, as provided in the Project Application and NTP, to ensure progress is being made as proposed. If any milestone dates identified in the Project construction schedule increase or decrease by more than 30 calendar days, Subrecipient must notify the Department in writing as described in subsection F of the NTP.

C. No later than April 30, 2024, Subrecipient shall provide the Department with written certification on its letterhead evidencing that physical construction work is underway for the Approved Project.

D. No later than May 31, 2026, Subrecipient shall provide the Department with a copy of the Certificate of Occupancy for the Approved Project.

E. No later than August 31, 2026, Subrecipient shall provide all required Project closeout documentation as detailed in MSA Exhibit B, Section 6, for all Approved Projects.

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, program income, 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 Approved Project activities. 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 and units in accordance with local requirements the versions of the DR-MHP Policies and Procedures Manual, and DR-MHP Regulatory Agreement in effect on the effective date of the Development 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 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 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 approval. Such management contract must contain a provision allowing Developer to terminate the contract upon 30-days' notice. Developer shall terminate said contract as directed by Subrecipient upon a determination that management does not comply with DR-MHP requirements and/or the provisions of any recorded regulatory agreement for the Approved Project. Termination of the management contract may only occur after providing the management entity with 30 days prior written notice of the failure to comply with the DR-MHP requirements and/or the provisions of any recorded regulatory agreement, and the failure of the management entity to cure such failure(s) within a reasonable period of time not to exceed sixty (60) days.

D. Developer for the Approved Project shall develop a management plan for the Approved Project ("Management Plan") subject to Subrecipient approval prior to the start of construction. Any change to the Management Plan shall be subject to the approval of Subrecipient. The Management Plan shall be consistent with program requirements and must 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 Approved Project to ensure compliance with federal and state requirements, timely project completion and the terms of the DR-MHP 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 will charge Developer a $2,500 monitoring fee in year one with a three percent (3%) increase per year through the expiration of the Term of Agreement as defined in Section 5 of the Senior Regulatory Agreement for the Approved Project between the Subrecipient and Developer. The fee is 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 causing Developer to cure such default, by way of corrective action or providing 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 approval prior to implementation. If such default is not cured timely, Developer 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. **The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3):**

Developers and Developer's Contractors 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 foregoing requirements, the results of those actions taken and impediments, if any.

10. **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:**

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 all Approved Projects comply 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.

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 part. 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.

13. State Prevailing Wages

A. Developer shall comply and Subrecipient shall ensure that the requirements of California Labor Code (LAB), Chapter 1, commencing with Section 1720, Part 7 [LAB Section 1720-1743] pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations are met. Projects may be exempt from these requirements under State Prevailing Wage rules.

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 LAB. 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."

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

14. 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 17 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.

15. <u>Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention</u>

A. <u>Use of Explosives</u>: 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. <u>Danger Signals and Safety Devices</u>: 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. <u>Protection of Lives and Health</u>: 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.

16. <u>Equal Opportunity Requirements and Responsibilities</u>

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. <u>Title VI of the Civil Rights Act of 1964</u>: 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.

17. 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.

18. **Reporting Requirements**

A. Developer shall provide information and data for required reports 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 and request additional reports outside of what is prescribed below. 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.

1) 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.

2) 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.

3) Semi-Annual Labor Standards Report: During the term of construction for each Approved Project, each April 1st and October 1st, 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.

4) 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.

5) 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.

19. 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://hcd.ca.gov/community-development/disaster-recovery-programs/cdbg-dr/grant-management-resources/index.shtml

Subrecipient shall ensure their Developers and Approved Projects 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.

20. 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.

21. 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.

22. Insurance

Subrecipient, its Developers and Contractors shall comply with all requirements outlined in the (A) General Provisions section and (B) Project Insurance Requirements outlined in this Section 22. 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 reasonable discretion in the event of material changes to the Development.

A. General Provisions Applying to All Policies

1) Coverage Term – Insurance coverage needs to be in force for the complete term of the Agreement except for construction and Builders Risk insurance. 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 City of Chico, its officers, agents and employees, and 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 City of Chico, its officers, agents and employees, and 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. Such insurance shall remain in effect until a certificate of occupancy is issued for the last unit of the Project.

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.

23. 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.

24. 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.

25. 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.

26. 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).

27. 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.

28. 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.

29. 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.

30. 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 and no other parties are intended or should be deemed as such.

[Signatures on Following Pages]

Developer
Chico PSH Pacific Associates, A California Limited Partnership,

By: TPC Holdings IX, LLC,
An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its Manager

By: ______________________________
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit corporation
Its: Managing General Partner

By: ______________________________
Name: Hope Stone
Its: Chief Financial Officer

Developer
Chico PSH Pacific Associates, A California Limited Partnership,

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An Idaho limited liability company
Its: Administrative General Partner

By: Pacific West Communities, Inc.,
an Idaho corporation
Its Manager

By: ___________________________
Name: Caleb Roope
Its: President and CEO

By: Butte County Affordable Housing Development Corporation
a California Nonprofit Public Benefit corporation
Its: Managing General Partner

By: ___________________________
Name: Hope Stone
Its: Chief Financial Officer

Subrecipient

CITY OF CHICO

______________________________ *

Mark Sorensen, City Manager

APPROVED AS TO FORM:

____

John W. Lam, City Attorney**

**Approved pursuant to The Charter of the City of Chico §906(D)

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)
) ss
COUNTY OF BUTTE)

On October 31, 2023, before me, Jamie N. Hernandez, Notary Public, personally appeared Mark Sorensen who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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

JAMIE N. HERNANDEZ
Notary Public - California
Butte County
Commission # 2367075
My Comm. Expires Aug 11, 2025