

RECORDING REQUESTED BY AND RETURN TO:

Clerk of the Board of Supervisors  
County of Santa Barbara  
105 E. Anapamu Street  
Santa Barbara, CA 93101

SEND ANOTHER COPY TO:

Housing and Community Development Department  
County of Santa Barbara  
105 East Anapamu Street, Room 105  
Santa Barbara, CA 93101-2062

Attn: Affordable Housing Program

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A.P.N: \_\_\_\_\_

## **AGREEMENT TO PROVIDE AFFORDABLE HOUSING**

### **The Preserve at San Marcos**

*(Project Name)*

01TRM-00000-00005/TM 14,585

*(Project Case Number)*

This AGREEMENT between the County of Santa Barbara (hereinafter "County") and Santa Barbara Foothills, LLC, a California limited liability company (hereinafter "Developer") is made and entered into on the date set forth below.

Developer proposes to develop a residential development consisting of five affordable housing condominiums located on Lot 16 of Tract 14,585, as described in The Preserve at San Marcos Findings and Conditions of Approval as Revised by the Board of Supervisors, November 21, 2005. Said development is further identified as Assessor Parcel Number(s) 059-020-014 and is to be called Preserve at San Marcos Condominiums (the "Subject Property") and is more fully described in Exhibit "A" attached hereto and made a part hereof for all purposes.

### **RECITALS**

WHEREAS, the County has determined that the granting of approval for The Preserve at San Marcos Condominiums requires as a condition of approval that Developer provide affordable housing;

WHEREAS, Developer desires to comply with the conditions of approval by constructing, marketing and selling the Subject Property, and all portions thereof, in compliance with the County's Housing Element of the Comprehensive Plan and Housing Element Implementation Guidelines;

WHEREAS, the purpose of this agreement is to assure that the developer complies with the County requirements for provision of affordable housing;

NOW, THEREFORE the parties hereto agree as follows:

1. Developer agrees to construct 5 affordable condominium units for sale ("Restricted Units") on the real property described in Exhibit "A" pursuant to the conditions stated in Exhibit "B" which are incorporated by reference herein. The project shall be developed in two phases as shown on the recorded Condominium Plans for the Subject Property. The number affordable housing units required to be provided with Phase I shall not be less than two affordable units, to be located on Lot 16, consistent with the approved Final Development Plan. The balance of the affordable units (3 additional units on Lot 16 for a total of 5 affordable units for the project) shall be provided with Phase II.

The parties acknowledge that the Subject Property is included within The Preserve at San Marcos planned development, which in addition to the Subject Property includes The Preserve at San Marcos Terrace (consisting of eight (8) residential lots) and The Preserve at San Marcos Meadows (consisting of seven (7) residential lots), all as shown on Tract Map No. 14,585.

Included in the conditions imposed by the County when approving the subdivision map of Tract 14,585 is the requirement that (a) final inspection of residential improvements located on no more than one (1) lot in The Preserve at San Marcos Meadows shall occur prior to final inspection of the two (2) condominium units to be constructed in phase I of the Subject Property, and (b) final inspection of residential improvements located on no more than one (1) lot in The Preserve at San Marcos Terrace shall occur prior to final inspection of the three (3) condominium units to be constructed in phase II of the Subject Property.

2. The Restricted Units and applicable income levels for each Restricted Unit to be constructed by Developer are described in Exhibit "C", attached hereto and incorporated herein. Developer agrees to provide a list of all addresses for the Restricted Units containing the information set forth in the attached Exhibit "C" to the Santa Barbara County Housing and Community Development Department prior to commencement of the income certification process for any project

units. The County or its designee will not be able to process any income certification applications without the address list, as applicants must be matched with the Restricted Units.

3. Developer understands that the purpose and objective of this Agreement is to obtain and provide housing affordable to income eligible families. To achieve this end, Developer agrees to have executed and recorded the County's Resale Restrictive Covenant and Preemptive Right ("Restrictive Covenant) attached hereto as Exhibit "D" and incorporated by this reference, on the title of each Restricted Unit within the Subject Property at the time of the first sale of the Restricted Unit to a qualified buyer. The Restrictive Covenant places maximum sales price on the Restricted Units and maximum income restrictions on potential buyers of Restricted Units. By executing this Agreement Developer agrees that all successor in interest assignees and beneficiaries of Restricted Units shall be bound by the terms of the Restrictive Covenant (even if they do not execute such covenant). Developer also agrees that it shall not sell Restricted Units except as allowed for in the Restrictive Covenant and that all purchasers must meet the County's Income Certification Guidelines.

4. Developer agrees to sell each of the Restricted Units located on the Subject Property in compliance with the Restrictive Covenant. Developer shall comply with the procedures for the sale of a Restricted Unit, as described in the Restrictive Covenant, including, but not limited to sale of the Restricted Unit for a price within the maximum sales price as established by the Santa Barbara County Board of Supervisors or as dictated by other State or Federal programs and approved by the County. Failure to comply with these requirements shall render the developer subject to the enforcement and liquidated damages provisions set forth in the Restrictive Covenant.

5. Developer agrees that no Restricted Unit within the Subject Property shall be separately sold, offered for sale, or financed except in compliance with a marketing plan which has been approved by the Director of Housing and Community Development (hereinafter "DIRECTOR"). This Marketing Plan, approved by the DIRECTOR for the advertising, sale of the Restricted Units, is attached hereto as Exhibit "E" and by reference made a part of this Agreement as though set forth in full herein. Developer agrees to abide by the Lottery Plan attached hereto as Exhibit "F".

6. Developer is obligated to use its best efforts to sell the Restricted Units to persons within the corresponding income category. Developer understands and agrees that households of and over a certain size may be given a preference for certain Restricted Units depending on bedroom size pursuant to County Policy. Should any of the Restricted Units not be sold, or not be in escrow as

evidenced by an earnest money deposit by an eligible income purchaser within one year from the date of the Building and Safety Division's issuance of a Certificate of Occupancy for that unit, Developer may request a modification of final conditions of approval and/or changes to the terms of this Agreement. Any modification or amendment of this Agreement shall be made in writing and shall be consistent with the intent of the original conditions of approval to provide affordable housing and could include increasing the household income level, temporary rental of for sale units at or below the maximum rent for the identified income category, or some other remedy acceptable to the County.

7. Developer agrees that County is not obligated to grant a modification of condition(s) specified in paragraph 6 above. Any request for modification of condition(s) must be accompanied by proof of diligent efforts on the part of Developer to sell or rent, if applicable, the Restricted Units to eligible households. Diligent efforts include, but are not limited to, continuous advertisement of the Restricted Units for one year in a major newspaper of county-wide circulation.

8. The Developer and County shall comply with all applicable Federal, State and County laws and regulations governing conflict of interest.

9. Developer agrees that should County be required to enforce any provision of this Agreement through legal proceedings, Developer will, in addition to any other amount owing County, pay County all reasonable legal costs including attorneys' fees.

This Agreement shall be recorded by County immediately following its execution. This agreement is for the benefit of the real property described on the attached Exhibit "A" and shall inure to and benefit the owners thereof and the County of Santa Barbara. The burdens and benefits of this Agreement shall be both a covenant running with the land and equitable servitudes, binding the Developer, and the heirs, representatives, successors in interest and assigns of the Developer.

IN WITNESS WHEREOF, the parties have entered into this agreement on the date appearing below.

**COUNTY OF SANTA BARBARA**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Chair Board of Supervisors

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Housing and Community Development

Santa Barbara Foothills, LLC,  
a California limited liability company

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
**Manager**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
**Manager**

*(SIGNATURE(S) MUST BE NOTARIZED)*

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

BY: \_\_\_\_\_  
Deputy County Counsel

**EXHIBIT A**

LEGAL DESCRIPTION

**EXHIBIT B**  
Affordable Housing Condition(s)  
FOR  
**The Preserve at San Marcos/ San Marcos Condominiums**  
(Name of Development)

01TRM-00000-00005/TM 14,585; 01DVP-00000-00071  
(Project Case Number)

88. The *Agreement to Provide Affordable Housing* shall require that purchasers of the affordable units execute a *Resale Restrictive Covenant and Pre-emptive Right* which shall be recorded against the units at the time of purchase. The *Agreement* and *Covenant* shall specify that the affordable units remain affordable to low income households for a period of at least forty-five (45) years. For each unit, the forty-five (45) year period shall be restarted when the unit is sold or transferred, for a maximum period of ninety (90) years unless preempted by state or federal programs. In addition, the running of the covenant shall be tolled during any period of violation of it. The *Agreement* and *Covenant* shall be based upon the County's model agreement and covenant. Both shall be subject to review and approval by P&D, Housing & Community Development and County Counsel. These documents shall specify affordability consistent with the terms described above and shall include provisions describing marketing and lottery requirements for the initial sale of units. Income eligibility of prospective purchasers shall be determined by the County or its designee.
89. **NTPO Condition, Affordable Condominiums:** A recorded *Notice to Property Owner* document is required to ensure that the five (5) condominium units shall be sold at affordable levels according to the following schedule for the period prescribed by Housing Element: i. Five (5) low income dwelling units shall be provided at sale prices affordable to households earning a maximum of 60% of Area Median Income (AMI) consistent with the provisions of Government Code §65915-65918 (Density Bonus).

**Timing:** The property owner shall sign and record the document prior to approval of any Land Use Permit for construction of the affordable units.

**Monitoring:** P&D shall monitor for compliance prior to map recordation.

90. Construction of the affordable units shall occur prior to, or concurrent with, the construction of the market rate units. Final inspection for no more than one (1) market rate unit shall be allowed prior to final inspection for all the affordable and workforce units. If the project is developed in two phases (Phase I: the "Meadows" market-rate units, followed at a later date by Phase II: the "Terrace" market rate units) then the number affordable housing units required to be provided with Phase I shall not be less than two affordable units (assuming a total of nine units, including affordable units, in the Meadows area as part of Phase 1), to be located on Lot 16, consistent with the approved Final Development Plan. In this case, final inspection for no more than one (1) market-rate unit in the "Meadows" shall be allowed prior to final inspection of the two affordable units. The balance of the affordable units (3 additional units on Lot 16 for a total of 5 affordable units for the project) shall be provided with Phase II, and final inspection for no more than one (1) market-rate unit in the "Terrace" shall be allowed prior to final inspection of all five affordable units. **Plan Requirements & Timing:** Prior to map recordation, this requirement shall be included in the *Agreement to Provide Affordable Housing* and shall be printed on all grading and building plans.

**Monitoring:** Permit Compliance staff shall ensure compliance during construction.



EXHIBIT C

**ADDRESS LIST OF AFFORDABLE HOUSING UNITS**

FOR  
**The Preserve at San Marcos Condominiums**  
(Name of Development)

**01TRM-00000-00005/TM 14,585; 01DVP-00000-00071**  
(Project Case Number)

TOTAL NUMBER OF UNITS IN THE PROJECT: 20

TOTAL NUMBER OF AFFORDABLE UNITS IN THE PROJECT: 5

NUMBER OF AFFORDABLE UNITS FOR VERY LOW INCOME HOUSEHOLDS: 0

NUMBER OF AFFORDABLE UNITS FOR LOW INCOME HOUSEHOLDS: 5

NUMBER OF AFFORDABLE UNITS FOR LOWER-MODERATE INCOME HOUSEHOLDS: 0

NUMBER OF AFFORDABLE UNITS FOR UPPER-MODERATE INCOME HOUSEHOLDS: 0

	<u>Address</u>	<u>Lot &amp; Unit #</u>	<u>Bedrooms</u>	<u>Income Level</u>
1)	To be determined			LOW (60%)
2)	To be determined			LOW (60%)
3)	To be determined			LOW (60%)
4)	To be determined			LOW (60%)
5)	To be determined			LOW (60%)

**EXHIBIT D  
(COVENANT)**

## EXHIBIT E

### MARKETING PLAN

FOR

#### The Preserve at San Marcos/ San Marcos Condominiums

(Name of Development)

01TRM-00000-00005/TM 14,585; 01DVP-00000-00071

(Project Case Number)

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The Agreement to Provide Affordable Housing binds the representatives of Santa Barbara Foothills, LLC (hereinafter “DEVELOPER”) to this Marketing Plan. If DEVELOPER determines that changes may be necessary after the Agreement has been recorded, DEVELOPER must contact Santa Barbara County Housing and Community Development (hereinafter “HCD”) regarding these changes and must receive approval of the revised Marketing Plan from the Director of HCD or his/her designee.

- A. After the Agreement to Provide Affordable Housing has been recorded for the project, HCD will make the project publicly available in HCD’s Affordable Housing interest list by including the project’s name, location, number of affordable units, and the DEVELOPER’s or his/her representative’s phone number.
- B. DEVELOPER will advertise the project in a display ad in at least one newspaper of general circulation. Each newspaper ad must include the official “Equal Housing Opportunity” logo and each radio advertisement must incorporate the statement “Equal Housing Opportunity”. HCD will also advertise in English and Spanish on HCD’s website.
- C. Project advertising shall conform to the requirements of the Fair Housing Act. Advertisements for the project shall state that a lottery will be conducted if the number of interested persons exceeds the number of units available. The advertisement will contain the name and phone number of the person to contact to obtain additional information about the project. The advertisement will also contain information on Santa Barbara County’s first time homebuyer requirements, live/work requirements, income and asset requirements and resale restrictions. The DEVELOPER shall coordinate with HCD in the preparation of the advertisement. The advertisement shall clearly state the deadline for inclusion in the lottery. DEVELOPER shall provide HCD with a copy of all publicized advertisements.
- D. DEVELOPER’s specific marketing plan shall be comprised of the following components:
  1. DEVELOPER shall place at least one advertisement in the real estate section of the Santa Barbara News Press one time per week for two weeks unless less frequent advertising is approved by HCD. At a minimum, the advertisement shall be placed in the Sunday Real Estate section. The advertisements shall be coordinated within the time frame that the lottery list is open.
  2. HCD shall provide a notice of availability approved by DEVELOPER of the units to community groups, the County Housing Authority and housing advocacy groups.

The notice shall be provided concurrent with commencement of advertisements described above.

3. During the time that the marketing period is open, DEVELOPER will have a phone number identified at which inquiries concerning the affordable housing units can be made. A phone-recording device will be included on the phone when it is not being directly answered.
4. During the time that the marketing period is open, buyer information sheets and Lottery applications will be available at the County offices, DEVELOPER's offsite office, and HCD's website to prospective purchasers of the affordable housing units. The Buyer Information sheet shall identify the level of affordability for the affordable units, qualifying income levels, first time home buyer guidelines, County live/work requirements, an explanation of the income certification process, Santa Barbara County Income Certification Guidelines, resale restrictions, information regarding the Homeowner's Association and other information concerning time of sale, time within which each applicant must be qualified as a purchaser, etc. This packet shall be prepared by HCD in conjunction with and shall be subject to review and approval by HCD and DEVELOPER prior to commencement of project advertising.
5. During the time that the marketing period is open, DEVELOPER will have an office at a location approved by HCD. Prospective affordable home purchasers will be able to visit DEVELOPER's office in order to learn more about the project during scheduled hours approved by HCD.
6. DEVELOPER will create a list of affordable housing applicants to be given to HCD for implementing the Lottery Plan identified in Exhibit F.
7. The affordable units will be marketed to applicants pursuant to this plan.

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Representative of Developer

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Interim Director  
Santa Barbara County  
Housing and Community Development  
Department

## EXHIBIT F

### Lottery PLAN FOR

#### **The Preserve at San Marcos/ San Marcos Condominiums**

(Name of Development)

01TRM-00000-00005/TM 14,585; 01DVP-00000-00071

(Project Case Number)

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To be eligible to purchase homes developed under Santa Barbara County's Affordable Housing Programs, Santa Barbara County requires applicants to participate in a lottery. Lottery winners will complete Income Certification applications and be certified as income eligible by Santa Barbara County, be residents of or employed in Santa Barbara County, meet the County's First Time Home Buyer criteria, and meet the County's household size occupancy standards. The Lottery Plan and Post Lottery Considerations are as follows:

1. Representatives of Santa Barbara Foothills, LLC Development (hereinafter DEVELOPER) and Santa Barbara County Housing and Community Development (hereinafter HCD) shall not restrict applicants on the basis of race or color, national origin, source of income, sexual orientation, HIV status, religion, gender, familial status or handicap.
2. DEVELOPER will provide a dated receipt to all applicants who have returned completed Lottery applications (completed Lottery applications form filled out completely including all questions affirmatively and a loan pre-qualification letter) and paid a \$75.00 application fee (payable to Santa Barbara County either by cashier's check or money order) to the Developer's Sales Office prior to the marketing period deadline. The receipt number shall correspond to the applicant's lottery number.. DEVELOPER shall not be held liable for any judgment errors occurring while DEVELOPER or DEVELOPER's representative is determining preliminary completeness of applications. HCD will require additional information from lottery winning applicants after the lottery is conducted during the Income Certification Process.
3. The DEVELOPER shall continue to accept applications for the lottery for a minimum of 21 days or until the number of applicants is at least three times the number of units available. If, for any reason, the number of applicants has not reached three times the number of units available at the end of the 21 day period, the DEVELOPER shall continue to accept applications for an additional ten (10) days, or until the number of applicants is three times the number of units available, whichever first occurs.
4. Upon closure of the marketing period, the DEVELOPER shall provide HCD with the list of applicants who were issued receipts and their Lottery applications. HCD shall make this list publicly available for ten (10) calendar days at the DEVELOPER's Sales Office, County offices, a Community Center in the Housing Market Area of the project, and HCD's website. It is the responsibility of EVERY applicant to check this list and to inform HCD within this ten-day period if their name does not appear on this list.

5. After the ten (10) calendar day review period, HCD shall conduct the lottery by randomly computer ranking the names of the initial list. Only applicants who have submitted complete Income Certification Applications shall be included in the lottery. The lottery shall be witnessed by a representative of the County Auditor-Controller's office. Lottery results will be posted in a manner similar to Number 4 for at least ten (10) calendar days.
6. HCD will contact the lottery winners following the lottery. Lottery winners will be asked to complete an Income Certification application and return it to HCD within two (2) weeks. The deadline for returning the Income Certification application will be sated on the front of the application. If HCD does not receive enough Income Certification applications from lottery winners after the two week period, a second group of applicants (non-winning applicants) will be contacted to complete Income Certification applications. Income Certification applications will be reviewed in the order of the lottery list.
7. HCD will conduct income certifications sequentially starting at the top of the lottery list until at least a pool of applicants equal to the number of affordable units available are income certified. Applicants who are denied Income Certification may appeal the denial to the HCD Program Supervisor within ten (10) calendar days of this decision.
8. DEVELOLOPER will provide guided site visits to the project site in a reasonable manner as determined by DEVELOPER to a certain number of the top applicants. The number of top applicants who will receive such site visits will be equal to the number of affordable units available.
9. Post Lottery Considerations:
  - A. *HCD will select which lottery participants will be offered Units pursuant to Santa Barbara County selection guidelines.*
  - B. HCD will continue down the lottery list performing income certifications as necessary until eligible buyers are found.
10. The eligible buyers selected by HCD will be referred to DEVELOPER and allowed to - choose a home based on any restrictions imposed by Santa Barbara County, open escrow and secure final loan approval. A term of escrow will provide for County final approval of loan documents prior to close of escrow.
11. Prior to the close of escrow, HCD will compare the Income Certification application with final loan documents for consistency. If any homes fall out of escrow or are disqualified by HCD, the above process will continue until all homes are sold.

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Developer's Representative

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Interim Director  
Santa Barbara County  
Director, Housing and Community Development  
Department