ATTACHMENT "A" AGREEMENT TO PROVIDE AFFORDABLE HOUSING AND RENTAL RESTRICTIVE COVENANT

RECORDING REQUESTED BY AND RETURN TO

Community Services Department Housing and Community Development Division County of Santa Barbara 105 E. Anapamu Street, Room 105 Santa Barbara, CA 93101

ATTN: Affordable Housing

APN(s): 075-101-022

AGREEMENT TO PROVIDE AFFORDABLE HOUSING AND RENTAL RESTRICTIVE COVENANT

This Document Creates a Lien on Real Property

PROJECT NAME: <u>The St. George Multi Unit Housing Project;</u> Planning and Development Case Number: <u>08DVP-00000-00040</u>, <u>09CDP-00000-00039</u>

This Agreement to Provide Affordable Housing and Rental Restrictive Covenant (hereinafter "Agreement") by and between St. George & Associates (hereinafter "Developer") and the County of Santa Barbara, a political subdivision of the State of California, (hereinafter "County") is entered into on the date set forth below.

This Agreement applies to the real property generally located at 870 Camino Del Sur in Isla Vista, in Santa Barbara County, California, which is more fully described in Exhibit "A" attached hereto and incorporated by this reference (hereinafter "Subject Property").

RECITALS

WHEREAS, the County has determined that the granting of approval for 08DVP-00000-00040, 09CDP-00000-00039, requires as a condition of approval that Developer provide affordable housing;

WHEREAS, pursuant to State Density Bonus Law (Cal. Gov't Code Sec. 65915 et seq.) Developer has received incentives in return for providing affordable housing units;

WHEREAS, it is the intent of Developer that ten (10) units within the Subject Property be leased in accordance with certain affordability criteria established by the County so that they will remain affordable to tenants, consistent with the provisions of State Density Bonus Law, the Housing Element of the Comprehensive Plan of the County of Santa Barbara (herein the "Restricted Units"); and

WHEREAS, it is the intent of the parties that this Agreement will place maximum rent restrictions on the Restricted Units and maximum income restrictions on potential tenants of Restricted Units; and

WHEREAS, the purpose of this Agreement is to assure that those Restricted Units within the Subject Property remains affordable and available for lease by 60% Income households for the thirty (30) year term of this Agreement from the final Certificate of Occupancy.

NOW, THEREFORE, in consideration of the benefits received by the parties, the parties hereto agree as follows:

I. TERMS AND ENFORCEABILITY

- A. Developer agrees to construct and thereafter to maintain ten (10) Restricted Units for rent according to the terms of this Agreement as required by the Conditions of Approval as stated in Exhibit "B" which is incorporated by reference herein.
- B. This Agreement shall bind and the benefit hereof shall inure to the Developer, its heirs, legal representatives, executors, trustees, successors in interest and assigns regardless of how their interest in the Subject property was acquired, and to the County, its successors, designees, or assigns for the term of this Agreement.
- C. The Subject Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to the covenants, conditions, restrictions and limitations set forth herein. All of the herein stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- D. Any purchaser, beneficiary, trustee, successor in interest or assignee of the Subject Property or of any portion of or interest in the Subject Property, no matter how that interest is acquired, shall, be deemed to have taken title with knowledge of this Agreement, and to have personally covenanted, consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- E. Any lessee of the Subject Property shall be subject to the restrictions of this Agreement, by the execution of a rental agreement or lease or by taking possession of the Subject Property, whichever occurs first, and shall also be deemed to have knowledge of this Agreement, and to have personally covenanted, consented to, and accepted the covenants, conditions, restrictions, and limitations set forth herein.

F. In order to preserve through this Agreement the affordability of the Restricted Units for persons of low income, the Developer for itself and all successors in interest, assignees and beneficiaries hereby grants and assigns to the County the right to review and enforce compliance with this Agreement, and in furtherance of this right, grants to the County liquidated damages, described under Section VI B of this Agreement.

II. DEFINITIONS

- A. "60% Income Household" means a household annual gross income does not exceed the maximum income levels permitted within the 60% Income category as established and periodically revised by the County (at or under 60% of area median income).
- B. "Maximum Monthly Rent" means the maximum rents for a 60% Income Unit as established and periodically revised by the County.
- C. "Developer" initially shall mean St. George & Associates and any subsequent purchaser, devisee, grantee or holder of title of the Subject Property or any portion of the Subject Property.
- D. "Restricted Unit" means a Unit with restricted occupancy and rents pursuant to this Agreement as provided for herein.
- E. "Tenant" means any tenant of a Restricted Unit in the Subject Property.
- F. "Unit" means a housing unit in the Subject Property.
- G. "Subject Property" means the real property generally located at 870 Camino Del Sur in Isla Vista, Santa Barbara County, California, which is more fully described in Exhibit "A".

III. OCCUPANCY AND RENT RESTRICTIONS

A. A total of ten (10) Units in the Subject Property shall be designated as Restricted Units as set forth on Exhibit "C" attached hereto and incorporated by this reference. The Restricted Units must be occupied by, or reserved for occupancy by, certified 60% Income Households for the thirty year term of this Agreement commencing upon the filing of a certificate of occupancy of the Subject Property. The initial applicable income levels for each Restricted Unit are described in Exhibit "C", attached hereto and incorporated herein.

- B. For each Restricted Unit, the total rent charged inclusive of all fees and charges including utilities, or a utility allowance if utilities are not included in rent, and including all services charged to tenants, cannot exceed the Maximum Monthly Rent.
- C. The income levels and other qualifications of applicants to lease and Tenants of Restricted Units shall be certified by Developer thereof as conforming to the income restrictions on that Restricted Unit prior to initial occupancy. The income level and other qualifications of any Tenant or lessees occupying a Restricted Unit shall be re-certified by Developer annually thereafter. Certifications and recertification may at County's option be subject to review and approval by the County's Community Services Department. Notwithstanding the above, the County reserves the right to perform certifications of eligibility and recertifications instead of the Developer if the County so elects, in which case County will provide written notice of such election to Developer.
- D. In the event that re-certification of a household occupying a Restricted Unit indicates that the income of that household exceeds the maximum income for a 60%-Income Household, then upon the ninety (90) days notice from Developer to the Tenant, Developer shall terminate the tenancy of the occupants of the Restricted Unit. Upon the vacancy of the Restricted Unit, Developer shall rent the Restricted Unit to a qualified 60% Income Household at no more than the Maximum Monthly Rent as provided for herein.
- E. The Restricted Units must all be owned and managed collectively. Restricted Units cannot be individually sold during the term of this Agreement.

IV. LEASING THE RESTRICTED UNITS

- A. Developer agrees that no Restricted Unit within the Subject Property shall be leased except in compliance with a tenant selection plan which has been approved by the Director of Community Services Department (hereinafter "Director") or his or her designee.
- B. Before leasing any Restricted Unit, Developer shall submit its proposed lease form to the Community Services Department for its review and approval. The term of the lease shall be for no less than one year unless by mutual agreement between the Tenant and Developer. Subject to the possible election of the County to perform income certifications as set forth in Section III(C) above, Developer shall have the right to enter into Residential Leases without prior written consent by Community Services Department so long as Developer certified the income and other eligibility requirements of the household and so long as each residential lease is on the standard form lease that has been approved by Community Services Department Director without modification.
- C. The lease may not contain any of the following provisions:
 - 1. An agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Lessor in a lawsuit brought in connection with the lease;

- 2. An agreement by the Tenant that Lessor may take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the Unit after the Tenant has moved out of the Unit. In such a case, Lessor may dispose of this personal property in accordance with State law;
- 3. An agreement by the Tenant not to hold Lessor or Lessor's agent legally responsible for any action or failure to act, whether intentional or negligent;
- 4. An agreement of the Tenant that Lessor may institute a lawsuit without notice to Tenant;
- 5. An agreement by the Tenant to waive any right to a trial by jury;
- 6. An agreement by the Tenant to waive the Tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
- 7. An agreement by the Tenant to pay attorney's fees.
- D. Developer shall include in leases for all Restricted Units provisions which provide that the household is subject to recertification annually and that the tenancy of the household shall be immediately terminated should one or more of the household's members misrepresent any material fact regarding the household's qualification as a qualifying 60% Income Household or repeatedly refuse or fail to cooperate in the recertification process.
- E. To terminate or refuse to renew a tenancy, Developer must serve written notice upon the Tenant specifying the grounds for the action at least 30 days before the termination of tenancy.
- F. Prior to tenancy, applicants for Restricted Units must complete, execute and deliver to Developer an Application for Certification on a form approved by County. The Developer may request additional information to supplement the application as necessary and shall consult with the County if questions are raised regarding a household's eligibility. Notwithstanding the above, the County may elect to take over certifications of eligibility of applicants during the term of this Agreement as provided for in Section III (C) above.
- G. To be eligible to lease a Restricted Unit, tenants cannot own any improved residential real estate.
- H. Developer may only lease Restricted Units to Tenants whose eligibility has been certified to be qualified Tenants.
- I. In addition to executing a lease for a Restricted Unit, Developer shall require that each household leasing a Restricted Unit execute an agreement to occupy which shall require the

household to occupy the Restricted Unit as the household's primary residence (Intent to Reside"). Failure of Developer to enforce this requirement shall constitute a material violation of this Agreement.

- J. Developer hereby agrees to abide by the Tenant Selection Plan which must be approved by the County Services Department. Modifications of the Tenant Selection Plan can be made only upon the written approval of Developer and Director.
- K. Developer shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease or rental of the Restricted Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or any other arbitrary basis.

V. MANAGEMENT

- A. Developer is responsible for the selection of tenants, evictions, collection of rents and deposits concerning rental of the Restricted Units in the manner set forth herein. Such management functions over the Restricted Units may be performed by or on behalf of Developer by an experienced, professional management company or organization which must be approved by the County's Community Services Department Department. The County shall have no responsibility over management of the Subject Property. Developer shall submit to the County for its approval its proposed property manager pertaining to the Restricted Units, which shall not be unreasonably withheld. Developer may only remove and/or replace the property manager with the prior written consent of the County which shall not be unreasonably withheld.
- B. Developer shall submit its written management policies with respect to the Restricted Units to the County's Community Services Department for its review and approval which shall not be unreasonably withheld, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.
- C. Developer shall maintain records that clearly document Developer's performance of its obligations to operate the Subject Property under the terms of this Agreement. Developer shall submit any records to the County's Community Services Department within ten (10) business days of the County's request. Developer shall permit the County or its designee to enter and inspect the Restricted Units for compliance with obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the County to Developer and to Tenants of any Restricted Units.
- D. Developer shall submit to the County's Community Services Department (i) not later than March 1st of each year, a report for the preceding period of January 1st through December 31st, showing the necessary information to allow the County to determine Developer's compliance with the Agreement, and (ii) within thirty (30) days after receipt of a written

request, any other information or completed forms requested by the County in order to comply with reporting requirements of the County.

VI. ENFORCEMENT

- A. Upon any material violation of the provisions of this Agreement or if any material false or misleading statements are made in any documents or certification submitted to the County or its agent, the County may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed letting, sale, or transfer in violation of this Agreement, or for any such other relief as may be appropriate.
- B. Developer understands that County's objective in requiring this Agreement is to ensure that the Restricted Units remain affordable to eligible 60% Income households and that should Developer lease or should a Tenant occupy, the Subject Property in violation of the requirements set forth herein the public interest would be prejudiced and the County would thereby be damaged. The parties agree that it is impracticable and extremely difficult to fix the extent of actual damages to County from such a breach. However, the parties have made reasonable efforts to establish fairly the amount of compensation for certain types of breach described below and agree that a fair and reasonable amount owing to the County for such types of breach by the Tenant, or Developer as liquidated damages would be as follows:
 - 1. If a Restricted Unit in the Subject Property is rented or leased for an amount in excess of the Maximum Monthly Rent permitted under this Agreement, Developer/Owner shall be liable to the County for damages in an amount equal to twice the difference between the actual monthly rent and the allowable Maximum Monthly Rent multiplied by the number of months that the Restricted Unit has been leased in violation of the Agreement.
 - 2. If a Restricted Unit is rented or leased to a Tenant whose household income and other qualifications has not been certified as provided for herein, the required certification set forth in Section III shall be completed within thirty (30) days of notification of non-compliance. If the Tenant household's income does not qualify for letting of the Restricted Unit as required by this Agreement, then subject to Section III.D herein Developer shall be assessed liquidated damages in the amount of three times the difference between the Tenant's gross monthly household income and one twelfth of the County's maximum household income level allowable to rent or lease the Restricted Unit in effect at the time the Restricted is rented or leased multiplied by the number of months that the Restricted Unit has been so leased. Conversely, if any Tenant of a Restricted Unit is initially certified as

qualifying 60% Income Household and a subsequent recertification reveals that such Tenant no longer qualifies as a 60% Income Household, then Developer shall not be subject to any penalty under this Section VI(B)(2) so long as Developer complies with the requirements of Section III(D) above.

Developer hereby agrees to the above liquidated damages provisions (Developer's initials)

- 3. These remedies shall be cumulative to all other rights and remedies the County may have.
- C. In addition to any other remedies the County may have, Developer hereby grants, transfers and assigns to the County the right to receive the rents due or collected during the entire period a Restricted Unit is rented in violation of this Agreement. Developer also assigns to the County the right to collect and/or compromise such rents, in whole or in part, and/or to enforce the payment of all or any part thereof as the County may deem proper.
- D. The running of the term of this Agreement shall be tolled during any period in which Developer is found to be in violation of this Agreement.
- E. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.
- F. A violation of this Agreement constitutes a violation of the conditions of approval placed upon the Subject Property by the County and in addition to the remedies provided for herein it may be enforced as a violation of the conditions of approval.

VII. ADDITIONAL PROVISIONS

- A. The County may assign its rights and delegate its duties thereunder without the consent of Developer. Upon such assignment the County shall notify Developer.
- B. Developer and County covenant that they have not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof, and that in any event this Agreement is controlling as to the rights and obligations between Developer, the County, and their respective successors.
- C. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and this Agreement be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- D. The terms of this Agreement shall be interpreted under the laws of the State of California.

- E. The terms of this Agreement shall be interpreted in a manner that is consistent with the County Housing Element and Housing Element Implementation Guidelines which were in effect when the project application was deemed complete.
- F. All notices required herein shall be sent by certified mail, return receipt requested, to the addresses listed below.

To the County at:

Community Services Department_

Housing and Community Development Division

105 East Anapamu, Room 105

Santa Barbara, CA 93101

To Developer at:

St. George & Associates

6563 Trigo Road, #101

Isla Vista, CA 93117

ATTN: Edward St. George

or such other addresses that the parties may subsequently provide in writing.

- H. In the event of a transfer of the Subject Property by operation of law such as by devise, bequest, foreclosure on any financing, the transferee or the estate of the decedent shall be bound by the provisions of this Agreement.
- I. Developer covenants to cause to be filed for record in the office of the County Recorder of Santa Barbara County a request for any copy of any notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Subject Property, pursuant to Section 2924 (b) of the Civil Code of the State of California. The request shall specify that any notice shall be mailed to the address for the County set forth above.

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

	COUNTY OF SANTA BARBARA	
Dated:	By	
ATTEST: CHANDRA L. WALLAR CLERK OF THE BOARD		
By:		
Dated:		
	DEVELOPER St. George & Associates By: Edward St. George	
	And	
	By:	
	(Signature must be notarized)	
APPROVED AS TO FORM:		
DENNIS A. MARSHALL		

COUNTY COUNSEL

STATE OF)SS			
COUNTY OF STATE PLANS (RO)			
On 4/5/1Z before Public, personally appeared ECIWGES	who proved to me on the basis of satisfactory evidence to		
he/she/they executed the same in his/her/their author	the within instrument and acknowledged to me that prized capacity(ies), and that by his/her/their signature(s) on alf of which the person(s) acted, executed the instrument.		
I certify under PENALTY OF PERJURY under the laws true and correct.	of the State of California that the foregoing paragraph is		
WITNESS my hand and official seal.			
Signature A	SANDRA L. MAHONY COMM. # 1894938 SANTA BARBARA COUNTY OCOMM. EXPIRES JULY 9, 2014		
My Commission Expires:	This area for official notarial seal		
Notary Name:	Notary Phone:		
Notary Registration Number:	County of Principal Place of Business:		

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California				
County of				
On before me,	(Here insert name and title of the officer)			
personally appeared	·			
within instrument and acknowledged to me th	dence to be the person(s) whose name(s) is/are subscribed to the at he/she/they executed the same in his/her/their authorized on the instrument the person(s), or the entity upon behalf of which			
I certify under PENALTY OF PERJURY under the and correct.	e laws of the State of California that the foregoing paragraph is true			
WITNESS my hand and official seal.				
Signature of Notary Public	(Notary Seal)			
ADDITIONAL O	PTIONAL INFORMATION DISTRICTIONS FOR CONTRACTING FORM			
DESCRIPTION OF THE ATTACHED DOCUMENT	INSTRUCTIONS FOR COMPLETING THIS FORM Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a			
(Title or description of attached document)	document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the			
(Title or description of attached document continued)	document carefully for proper notarial wording and attach this form if required.			
Number of Pages Document Date	 State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment. Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed. 			
(Additional information)	 The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public). Print the name(s) of document signer(s) who personally appear at the time of 			
CAPACITY CLAIMED BY THE SIGNER □ Individual (s) □ Corporate Officer	notarization. • Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.			
☐ Corporate Officer (Title) ☐ Partner(s) ☐ Attorney-in-Fact	 The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form. Signature of the notary public must match the signature on file with the office of the county clerk. Additional information is not required but could help to ensure this 			

acknowledgment is not misused or attached to a different document. Indicate title or type of attached document, number of pages and date.

Securely attach this document to the signed document

Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).

Trustee(s)

Other ____

EXHIBIT "A" LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B"

AFFORDABLE HOUSING CONDITION(S)

FOR

The St. George Multi Unit Housing Project;

<u>08DVP-00000-00040, 09CDP-00000-00039</u>

(PROJECT NAME AND CASE NUMBER)

- 35. Prior to Land Use Permit issuance the applicant shall enter into and record an Agreement to Provide and Rental Restrictive Covenant which shall include a model Restrictive Covenant and Preemptive Right. The Agreement to Provide and Rental Restrictive Covenant shall be executed and recorded by the Applicant. The Agreement and Covenant shall be based on the County's model documents, as they may be amended from time to time, and subject to the review and approval of P&D, CHCD and County Counsel. These shall specify affordability terms described in Condition No. 37. The owner of the property will also agree to be bound by the Agreement to Provide and Rental Restrictive Covenant in the event the lease terminates prior to the Agreement to Provide and Rental Restrictive Covenant. In addition, the Agreement and Covenant shall include provisions describing marketing and lottery requirements for the initial sale/rental of units; requiring income eligibility of prospective buyers/renter to be determined by the county or its designee; requiring prospective buyers/renter of the affordable units to sign an Intent to Reside statement; requiring a Notice of Default and Notice of Sale, as well as the Covenant, be recorded with the original and all subsequent deeds, and stating that the maximum sales/rental rate for the affordable units shall not exceed the maximum levels established by the Board of Supervisors, consistent with the provisions of the Housing Element and state law.
- 36. Affordable units shall be constructed concurrent with the construction of the market rate units in each phase of development. Occupancy clearance for no more than 50% of the market rate units in a given phase shall be allowed prior to occupancy clearance for the affordable units for that same phase of development. Plan Requirements & Timing: Prior to Land Use Permit Issuance, this requirement shall be included in the Agreement to Provide and Rental Restrictive Covenant and shall be printed on all grading and building plans. Monitoring: Planning and Development staff shall ensure compliance during construction.
- 37. The applicant shall provide ten (10) low income dwelling units (25% of base density) available for rent at prices affordable to households earning 60% of Area Median Income (AMI) consistent with the provision of Government Code §65916-65918 (Density Bonus). Plan Requirements and Timing: Prior to Land Use Permit issuance the applicant shall enter into and record an Agreement to Provide and Rental Restrictive Covenant, which shall include a model Restrictive Covenant and Preemptive Right. The Agreement to Provide and Rental Restrictive Covenant shall be executed and recorded by the Applicant. The Agreement and Covenant shall be based on the county's model documents, as they may be amended from time to time, and subject to the review and approval of P&D, CHCD and County Counsel. The units shall remain affordable for a period of thirty years or longer if required by the financing, insurance or rental subsidy program used. In addition, the running of the covenant shall toll during any period of violation.

Exhibit "B" Page 1 of 1

EXHIBIT "C"

ADDRESS LIST OF AFFORDABLE HOUSING UNITS For

The St. George Multi Unit Housing Project;

<u>08DVP-00000-00040, 09CDP-00000-00039</u> (PROJECT NAME AND CASE NUMBER)

TOTAL NUMBER OF RESIDENTIAL UNITS IN THE PROJECT:				55
TOTA	10			
NUM	0			
NUM	10			
	BER OF AFFORDABLE UNITS FO ME HOUSEHOLDS:	R 60%-MODERATE		0
	BER OF AFFORDABLE UNITS FO ME HOUSEHOLDS:	R UPPER-MODERAT	E	0
	Address	Lot & Unit#	Bedrooms	Income Level
1)	860 Camino Del Sur	101	_1	60%_
2)	860 Camino Del Sur	102	_1	60%
3)	860 Camino Del Sur	103		60%
4)	860 Camino Del Sur	104	1	60%
5)	860 Camino Del Sur	105		60%_
6)	860 Camino Del Sur	106	1	60%
7)	860 Camino Del Sur	201	1	60%
8)(8	860 Camino Del Sur	202		60%
9)	860 Camino Del Sur	203	1	60%
10)	860 Camino Del Sur	204	1	60%

Exhibit "C" Page 1 of 1