

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  
County of Santa Barbara  
105 E. Anapamu Street, Suite 105  
Santa Barbara, CA 93101

Attn: Ed Moses, Director

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A.P.N : 105-020-046

## AGREEMENT TO PROVIDE AFFORDABLE HOUSING

Old Mill Run

*(Project Name)*

TM14,532, 99-DP-029

*(Project Case Number)*

This AGREEMENT TO PROVIDE AFFORDABLE HOUSING (this “Agreement”) between the County of Santa Barbara (hereinafter “County”) and MLB OM 54, LLS, a Delaware 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 62 parcels, 60 would be developed for single family residential use and two (2) would consist of common open space. Six (6) of the proposed residential lots (20, 21, 44, 45, 57, and 58) would contain three (3) duplex structures containing six (6) units that meet the County’s affordability requirements for low-income households. The residential development is further identified as Assessor Parcel Number 105-020-046 and is to be called Old Mill Run (the “Subject Property”) and is more fully described in Exhibit “A” attached hereto and incorporated herein by reference as though set forth in full herein.

## **RECITALS**

WHEREAS, the County has determined that the granting of approval for TM14,532, 99-DP-029 requires as a condition of approval that Developer provide affordable housing;

WHEREAS, Developer has received incentives, including increased density, modifications to development standards, changes in zoning and approvals despite environmental impacts, in return for providing affordable housing units;

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 for the Santa Maria Housing Market Area;

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

NOW, THEREFORE the parties hereto agree as follows:

1. Developer agrees to construct 6 affordable units for sale ("Restricted Units") pursuant to the conditions stated in Exhibit "B" which are incorporated herein by reference as though set forth in full herein. The Restricted Units shall be constructed on the real property described in Exhibit "A". Restricted Units will be constructed concurrently with and/or prior to the construction of the single family market homes.

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 by reference as though set forth in full 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 Shared Equity Appreciation Restrictive Covenant (the "Restrictive Covenant) attached hereto as Exhibit "D" and incorporated herein by reference as though set forth in full herein, on the title of each Restricted Unit within the Subject Property at the time of the first sale of each Restricted Unit to a qualified buyer. The Restrictive Covenant places a maximum sales price on the Restricted Units and maximum income restrictions on potential buyers of the 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) until the earlier of (a) at least 45 years which 45 year period shall be restarted when the unit is sold or transferred for a maximum period of 90 years after the owner takes title to the Restricted Unit, and (b) the owner transfers the Restricted Unit (the "Term"). Developer also agrees that it shall not sell the Restricted Units except as allowed for in this Agreement and that all purchasers must meet the County's Income Certification Guidelines.

4. Developer agrees to sell the Restricted Units in compliance with the provisions of this Agreement. Developer shall comply with the procedures for the sale of a Restricted Unit, as described in this Agreement, including, but not limited to the 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 enforcement by the County.

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

6. Developer is obligated to use best efforts to sell the Restricted Units to persons within the corresponding income category. Developer acknowledges that County may give preference to households of and over a certain size 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 (1) year from the date of the Building and Safety Division's issuance of a Certificate of Occupancy for each applicable Restricted 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 proposed by Developer 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) by Developer must be accompanied by proof of diligent efforts on the part of Developer to sell the Restricted Units to eligible households. Diligent efforts include, but are not limited to,

8. 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, reimburse County for all reasonable legal costs including attorneys' fees incurred in the enforcement proceeding.

10. 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. For the Term of the Agreement, 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

APPROVED AS TO FORM:

STEPHEN SHANE SHARK  
COUNTY COUNSEL

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

**DEVELOPER:**

MLB OM 54, LLS, a Delaware limited liability company

By: MONTECITO LAND FUND I,  
a Delaware limited liability company,  
its Sole Member

By: MONTECITO LAND FUND I,  
a Delaware limited liability company,  
its Sole Member

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[SIGNATURES MUST BE NOTARIZED]*

## **EXHIBIT A**

*(Legal Description of the Subject Property to be supplied by Property Owner)*

### **LEGAL DESCRIPTION**

Real property in the unincorporated area of the County of SANTA BARBARA, State of California, described as follows:

THE WEST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 34 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED FROM JOHN WILKINSON ET AL., TO THE COUNTY OF SANTA BARBARA, RECORDED APRIL 5, 1883 IN BOOK 2, PAGE 158 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

FURTHER EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED FROM UNION OIL COMPANY OF CALIFORNIA TO THE COUNTY OF SANTA BARBARA RECORDED APRIL 1, 1977, AS INSTRUMENT NO. 77-15235, OFFICIAL RECORDS OF SAID COUNTY.

APN: 105-020-46-002

## **EXHIBIT B**

### **AFFORDABLE HOUSING CONDITION(S) FOR**

Old Mill Run TM14,532, 99-DP-029  
*(PROJECT NAME AND CASE NUMBER)*

38. Prior to final map recordation and land use clearance, the applicant shall enter into and record an Agreement to Provide Affordable Housing with the County of Santa Barbara, agreeing to provide 6 affordable units at sale prices affordable to low income households, as required by the Housing Element and Housing Element Implementation Guidelines for the Santa Maria Housing Market Area. The Agreement to Provide shall require that purchasers of the affordable units execute a 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 for a period of at least 45 years which 45 year period shall be restarted when the unit is sold or transferred for a maximum period of 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 to Provide shall be based upon the County's model agreement and covenant. Both shall be subject to review and approval by Planning & Development, Housing and 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. An intent to reside statement shall be required for potential owners of the affordable units. The maximum sales price 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 affordable units shall be sold to qualified households at prices as established by the Board of Supervisors.



**EXHIBIT C**

**ADDRESS LIST OF AFFORDABLE HOUSING UNITS  
FOR**

Old Mill Run TM14,532, 99-DP-029  
*(PROJECT NAME AND CASE NUMBERS)*

TOTAL NUMBER OF UNITS IN THE PROJECT:	<u>60</u>
TOTAL NUMBER OF AFFORDABLE UNITS IN THE PROJECT:	<u>6</u>
NUMBER OF AFFORDABLE UNITS FOR VERY LOW INCOME HOUSEHOLDS:	<u>0</u>
NUMBER OF AFFORDABLE UNITS FOR LOW INCOME HOUSEHOLDS:	<u>6</u>
NUMBER OF AFFORDABLE UNITS FOR LOWER-MODERATE INCOME HOUSEHOLDS:	<u>0</u>
NUMBER OF AFFORDABLE UNITS FOR UPPER-MODERATE INCOME HOUSEHOLDS:	<u>0</u>

	<u>Address</u>	<u>Lot &amp; Unit #</u>	<u>Bedrooms</u>	<u>Income Level</u>
1)	To be determined	20	2	LOW
2)	To be determined	21	2	LOW
3)	To be determined	44	2	LOW
4)	To be determined	45	2	LOW
5)	To be determined	57	2	LOW
6)	To be determined	58	2	LOW

**EXHIBIT D**  
**(COVENANT)**

## EXHIBIT E

### MARKETING PLAN

FOR

Old Mill Run TM14,532, 99-DP-029

*(PROJECT NAME AND CASE NUMBER)*

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The Agreement to Provide Affordable Housing binds the representatives of MLB OM 54, LLS, a Delaware limited liability company (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 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 Maria Times or Lompoc Record one time per week for four 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 packets 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 Packets 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.
65. HCD 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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Director  
Santa Barbara County  
Housing and Community Development  
Department

**EXHIBIT F**  
**LOTTERY PLAN**  
**FOR**

Old Mill Run TM14,532, 99-DP-029  
*(PROJECT NAME AND 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, 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 Developer (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 applications (all required forms filled out including loan pre-qualification letter) and paid a \$50 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 number of the applicant on the lottery list. DEVELOPER shall not be held liable for any judgment errors occurring while DEVELOPER or DEVELOPER's representative is determining preliminary completeness of applications. HCD may require additional information from 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 30 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 30 day period, the DEVELOPER shall continue to accept applications for an additional 30 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 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 all households 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 an initial applicant pool of equal to the number of affordable units available following the ten (10) calendar day lottery results review period. 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.
7. DEVELOPER 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.
8. 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.
9. 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.
10. 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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Director, Housing and Community  
Development Department