

RECORDING REQUESTED BY AND RETURN TO

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

SEND ANOTHER COPY TO:

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

ATTN: Affordable Housing Division

APN(s): 075-173-023
075-173-024

AGREEMENT TO PROVIDE AFFORDABLE HOUSING

This Document Creates a Lien on Real Property

PROJECT NAME: The Icon Mixed-Use Building and Townhomes Project;
Planning and Development Case Number: 09DVP-00000-00002, 09TPM-00000-00001,
09CUP-00000-00003, 09-CDP-00000-00004, 11SCD-00000-00002

This Agreement to Provide Affordable Housing (hereinafter "Agreement") by and between Icon at UCSB, LLC, a California limited liability company (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 6545 and 6547 Trigo Road 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 09DVP-00000-00002, 09TPM-00000-00001, 09CUP-00000-00003, 09-CDP-00000-00004, 11SCD-00000-00002 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, including increased height and reduced setbacks in return for providing affordable housing units;

WHEREAS, it is the intent of Developer that three 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 Low 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 three affordable 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, successors in interest and assigns, 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, 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. “Low-Income Household” means a household annual gross income does not exceed the maximum income levels permitted within the Low income category (at or under 80% of area median income) established by the County. The County's income categories shall be as defined in the Housing Element of the Comprehensive Plan of Santa Barbara County and periodically revised by the County.
- B. “Maximum Monthly Rent” means the maximum rents for a Rent Restricted Unit as established and periodically revised by the County Board of Supervisors as described in the Housing Element Implementation Guidelines of Santa Barbara County.
- C. “Developer” initially shall mean Icon at UCSB, LLC as owner of the Subject Property and shall also mean all successors in interest thereto.
- D. “Restricted Unit” means a Unit with restricted occupancy and rents pursuant to this Agreement and which has been designated as such by the Developer or 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 6545 and 6547 Trigo Road in Isla Vista, Santa Barbara County, California, which is more fully described in Exhibit "A".

III. OCCUPANCY AND RENT RESTRICTIONS

- A. A total of three (3) Units in the Subject Property shall be designated as Restricted Units on Exhibit “C” attached hereto. The Restricted Units must be occupied by, or reserved for occupancy by, certified Low-Income Households for the thirty (30) 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 Housing and Community Development Department. Notwithstanding the above, the County reserves the right to perform certifications of eligibility and re-certifications 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 Low-Income Household as determined by the Board of Supervisors, then upon the ninety (90) days notice from Developer or County to the Tenant, Developer or County 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 Low 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 Tenant Selection Plan which has been approved by the Director of Housing and Community Development (hereinafter "Director") or his or her designee.
- B. Before leasing any Restricted Unit, Developer shall submit its proposed lease form to the Housing and Community Development 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 Housing and Community Development 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 delivered to and approved by Housing and Community Development 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 or other legal costs even if the Tenant wins in a court proceeding by Lessor against the Tenant. The Tenant however may be obligated to pay costs if the Tenant loses.
- 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 Low-Income Household or repeatedly refuse or fail to cooperate in the recertification process.
- E. To terminate or refuse to renew 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. 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 Housing and Community Development 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 Housing and Community Development 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 for the Restricted Units 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 Housing and Community Development 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 Housing and Community Development 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 Housing and Community Development 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 violation of the provisions of this Agreement or if any 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 Low-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 Low-Income Household and a subsequent recertification reveals that such Tenant no longer qualifies as a Low-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 for the Restricted Units only during the entire period a Restricted Unit is rented in material violation of this Agreement. During such material violation period, Developer also assigns to the County the right to collect and/or compromise such rents for the Restricted Units only, 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 material 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.
- G. This Agreement may be enforced by the Redevelopment Agency of the County of Santa Barbara.

To the County at:

Housing and Community Development
105 East Anapamu, Room 105
Santa Barbara, CA 93101

To Developer at:

Icon at UCSB, LLC
9300 Wilshire Blvd., Suite 333
Beverly Hills, CA 90212
ATTN: Eran Fields

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: _____

Joni Gray, Chair
BOARD OF SUPERVISORS
(Signature must be notarized)

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

By: _____
Deputy Clerk

By: _____
Housing & Community Development

Dated: _____

DEVELOPER
Icon at UCSB, LLC, a California limited liability company
By: Eran Fields, its Manager of Co-Manager

By: _____
Eran Fields

By: William Ruvelson, its President of Co-Manager

By: _____
William Ruvelson

(Signatures must be notarized)

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Santa Barbara, City of Goleta, and described as follows:

Parcel 1:

Lot 1 of Block "G" of Ocean Terrace Tract, in the County of Santa Barbara, State of California, as per map recorded in Book 15, Page(s) 101, 102, and 103 of Maps, in the office of the County Recorder of said County.

APN: 075-173-24-00

Parcel 2:

Lot 2 of Block "G" of Ocean Terrace Tract, in the County of Santa Barbara, State of California, as per map recorded in Book 15, Page(s) 101, 102 and 103 of Maps, in the office of the County Recorder of said County.

APN: 075-173-23 and 075-173-24

EXHIBIT “B”

AFFORDABLE HOUSING CONDITION(S)
FOR

The Icon Mixed-Use Building and Townhomes Project;

09DVP-00000-00002, 09TPM-00000-00001, 09CUP-00000-00003, 09CDP-00000-00004,

11SCD-00000-00002

(PROJECT NAME AND CASE NUMBER)

34. Three (3) dwelling units shall be provided at rental prices affordable to **low income** households [households earning 80% of Area Median Income (AMI)], as defined by the County's Housing Element and the Housing Element Implementation Guidelines. **Requirements and Timing:** Prior to final map clearance, the applicant shall enter into and record an Agreement to Provide and Rental Restrictive Covenant and Preemptive Right based upon the County's model document which shall be subject to review and approval by Planning & Development, County Housing and Community Development (“HCD”) and County Counsel. This document shall specify affordability consistent with the terms described above and shall include provisions prohibiting the individual sale of the affordable units, as well as describing marketing of rental of units and requiring County approval of proposed leases. Income eligibility of prospective renters shall be determined by the County or its designee, however, HCD may choose to authorize applicant to conduct income certifications at the discretion of HCD subject to review and monitoring by HCD. The maximum 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. The Agreement shall specify that the affordable units shall remain affordable for a period of 30 years unless preempted by state or federal programs. **Monitoring:** P&D shall review the agreement and determine it to be appropriate prior to issuing final map clearance or DP approval

35. Affordable units shall be constructed concurrent with the construction of the market rate units. Occupancy clearance for no more than 50% of the market rate units shall be allowed prior to occupancy clearance for the affordable units. **Plan Requirements & Timing:** Prior to final map clearance, this requirement shall be included in the *Agreement to Provide and Rental Restrictive Covenant and Preemptive Right*. **Monitoring:** Permit Compliance staff shall ensure compliance during construction.

Exhibit “B”

Page 1 of 1

EXHIBIT “C”

ADDRESS LIST OF AFFORDABLE HOUSING UNITS
For

The Icon Mixed-Use Building and Townhomes Project;

09DVP-00000-00002, 09TPM-00000-00001, 09CUP-00000-00003, 09CDP-00000-00004,

11SCD-00000-00002

(PROJECT NAME AND CASE NUMBER)

TOTAL NUMBER OF RESIDENTIAL UNITS IN THE PROJECT: 21

TOTAL NUMBER OF AFFORDABLE UNITS IN THE PROJECT: 3

NUMBER OF AFFORDABLE UNITS FOR VERY LOW INCOME HOUSEHOLDS: 0

NUMBER OF AFFORDABLE UNITS FOR LOW INCOME HOUSEHOLDS: 3

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 & Unit #</u> | <u>Bedrooms</u> | <u>Income Level</u> |
|----|-----------------------|--------------------------------|------------------------|----------------------------|
| 1) | _____ | _____ | <u>Studio</u> | <u>Low</u> |
| 2) | _____ | _____ | <u>Studio</u> | <u>Low</u> |
| 3) | _____ | _____ | <u>Studio</u> | <u>Low</u> |