

NO FEE DOCUMENT

Recorded	REC FEE	.00
Official Records	CC1 CON	1.00
County Of		
SANTA BARBARA		
JOSEPH E. HOLLAND		
Recorder		
	CCD	
08:00AM 28-Sep-2004	Page 1 of 14	

Recording requested by and
When recorded, mail to:

County of Santa Barbara
105 East Anapamu Street, Room 105
Santa Barbara, CA 93101
Attn: Affordable Housing Manager

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

14
cc1

83374

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(COUNTY)**

This Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this 1st day of September, 2004 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender"), and Mercy Housing California XXIII, a California Limited Partnership (the "Owner").

RECITALS

- A. The Owner has a leasehold estate on the property located at 4200 Calle Real in the City of Santa Barbara, in the County of Santa Barbara, as more particularly described in Exhibit A (the "Property") upon which the Owner intends to construct seventy five (75) units of multi-family rental housing (the "Development").
- B. The Lender has received HOME Investment Partnership Program funds ("HOME Funds") from the United States Department of Housing and Urban Development ("HUD") pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for low-income persons and families.
- C. In addition to the HOME Funds, Lender has set aside certain funds to be used for the development of affordable housing in the County of Santa Barbara (the "Local Funds")
- D. Owner has received a loan from Lender of HOME and Local Funds in the amount of One Million Five Hundred Fourteen Thousand Seventy-Four Dollars (\$1,514,074) to provide financing for the Development (the "Loan").
- E. As further consideration for this funding and to further the interests of the Lender, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is

to regulate and restrict the occupancy, rents, operation, the ownership, and management of the Development. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.1 **"ASSISTED UNIT"** means any of ten (10) Units in the Development with restricted occupancy and rents pursuant to this Agreement which has been designated as an Assisted Unit. A Unit shall not be considered an Assisted Unit until the Unit has been constructed and made available for occupancy.

1.2 **"AREA MEDIAN INCOME"** means the median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, with adjustments for household size, as determined from time to time by the United States Department of Housing and Urban Development ("HUD") pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the Lender that HUD may hereafter adopt in connection with said Act.

1.3 **"DEED OF TRUST"** means that certain deed of trust, placed on the Property as security for the Loan with the Owner as trustor and the Lender as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust.

1.4 **"DEVELOPMENT"** means the seventy-five (75) units of housing with appurtenant parking and site improvements on the Property to be constructed by the Owner on the Property according to the terms of the Loan Agreement.

1.5 **"LENDER"** is the County of Santa Barbara, a political subdivision of the State of California, and its officers, officials, directors, employees, agents and authorized representatives.

1.6 **"LOAN"** means the loan of HOME and local funds made by the Lender to the Owner for the Development pursuant to the Loan Agreement and the Note.

1.7 **"LOAN AGREEMENT"** is the Loan Agreement executed by and between the Owner and the Lender, setting forth the terms and conditions governing the Loan.

1.8 **"LOAN DOCUMENTS"** are collectively the Loan Agreement, the Note evidencing the Loan, the Deed of Trust securing the Note, and this Agreement as they may be

amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.9 "NOTE" means the promissory note executed by the Owner in favor of the Lender evidencing the Loan, which is secured by the Deed of Trust, as well as any amendments to, modifications of, or restatements of said promissory notes.

1.10 "OWNER" means Mercy Housing California XXIII, a California Limited Partnership

1.11 "PROPERTY" means the leasehold estate in the real property described in Exhibit A attached hereto and incorporated herein, including the Development to be constructed thereon pursuant to the Loan Agreement.

1.12 "QUALIFYING HOUSEHOLD" means a household that qualifies as a Very Low-Income Household.

1.13 "UNIT" means a housing unit in the Development.

1.14 "TERM" means the term of this Agreement described herein.

1.15 "VERY LOW INCOME HOUSEHOLD" means a household whose annual income does not exceed fifty percent (50%) of the Area Median Income.

2. THE OWNER'S OBLIGATIONS

2.1 **COMPLIANCE WITH LOAN DOCUMENTS.** The Owner's actions with respect to the Property and the use of funds from the Loan shall at all times be in full conformity with all of the requirements of the Loan Documents, including but not limited to the insurance requirements contained therein.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence upon execution and shall remain in full force and effect until fifty five (55) years following the date of recordation of a final Certificate of Occupancy for all Units in the Development.

2.3 **COMPLIANCE WITH PROGRAM REQUIREMENTS.** The Owner shall comply with all requirements imposed on projects assisted under the HOME program.

3. DEVELOPMENT OCCUPANCY AND RENTS

3.1 **OCCUPANCY OF DEVELOPMENT.** The Owner shall limit for the full term of this Agreement the rental of ten (10) Units, which shall be designated as Assisted Units.

The Assisted Units must be occupied, or reserved for occupancy by, Qualifying Households.

3.2 MAXIMUM RENTAL CHARGES.

For each Assisted Unit, the total charges for monthly rent, utilities, and related services to each Very Low Income Household shall not exceed the lesser of one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income or the fair market rents as determined by HUD. Maximum rents for each Assisted Unit shall be set by the Lender at the time of initial occupancy of the Development based on the foregoing formula. Annual rent increases shall be calculated by Lender based on the change in permissible rents published annually by HUD. Households occupying Assisted Units shall be given at least sixty (60) days written notice prior to any rent increase.

3.3 INCOME CERTIFICATION AND INCREASES IN TENANT INCOMES.

The income levels and other qualifications of Qualifying Household applicants for Assisted Units shall be certified prior to initial occupancy and recertified annually by the Owner.

A. Very Low Income Households. In the event that recertification of a Very Low Income Household's income indicates that the household's income exceeds the maximum designated income for a Very Low Income Household, the household shall be permitted to continue to occupy the Assisted Unit upon expiration of the household's lease and upon sixty (60) days written notice, the rent may be increased to one-twelfth (1/12) of thirty percent (30%) of the household's adjusted income.

B. Borrower shall rent the next available Unit to a Very Low Income Household, as applicable, to meet the requirements of Section 3.2 above. Upon rental of the next available unit to a Very Low Income Household, the rent restrictions of this subsection 3.3.B. shall no longer apply with respect to the Assisted Unit that experienced the increase in household income.

3.4 LEASING THE DEVELOPMENT.

A. Before leasing any Assisted Unit, the Owner shall submit its proposed lease for the Lender's review and approval. The Owner shall include in leases for all Assisted Units provisions which provide that the household is subject to annual certification of income 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 Very Low Income Household. The Owner shall include in all leases for Assisted Units provisions which prohibit the household from subleasing the Assisted Unit.

B. In addition to executing a lease for an Assisted Unit, the Owner shall require that each household leasing an Assisted Unit execute a declaration of intent to occupy which shall require the household to occupy the Assisted Unit as the household's primary residence.

3.5 **TENANT SELECTION.** Before leasing the Development, the Owner must provide Lender for its review and approval the Owner's written tenant selection plan.

3.6 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective tenants.

3.7 **CONDOMINIUM CONVERSION.** The Owner shall not convert Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights in the Property during the term of this Agreement.

3.8 **NONDISCRIMINATION.** The Owner shall not discriminate or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. The Owner shall include a statement in all advertisements, notices and signs for the availability of Units for rent to the effect that the Owner is an Equal Housing Opportunity Provider.

3.9 **MARKETING PLAN.** No later than thirty (30) days following the date of commencement of construction, the Owner shall submit to the Lender for approval its plan for marketing the rental units, including information on affirmative marketing efforts and compliance with fair housing laws and the Lender's affirmative fair marketing guidelines. Upon receipt of the marketing plan, the Lender shall promptly review the Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Marketing Plan is not approved, Lender shall specify its reasons for disapproval. The Owner shall submit a revised Marketing Plan within thirty (30) days of Lender's notice of disapproval. If the Lender does not approve the revised Marketing Plan, the Owner shall be in default under the terms of the Loan Agreement.

4. PROPERTY MANAGEMENT

4.1 **MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Development. The Owner shall submit to the Lender for its approval its proposed property manager. Lender approves Mercy Services Corporation as the property

manager. The Owner may only remove and/or replace the property manager with the prior written consent of the Lender which consent shall not be unreasonably withheld.

4.2 APPROVAL OF MANAGEMENT POLICIES. The Owner shall submit its written management policies with respect to the Development to the Lender for its review, and shall amend such policies in any way necessary to insure that such policies comply with the provisions of this Agreement, the requirements of the existing housing program under Section 8 of the United States Housing Act, or its successors, and the requirements of all lenders providing financing for the Development.

4.3 INSPECTION AND RECORDS. The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit any records to the Lender within ten (10) business days of the Lender's request. The Owner shall permit the Lender to enter and inspect the Development for compliance with obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the Lender to the Owner or the Owner's management agent and to tenants of any Units.

4.4 ANNUAL REPORT. The Owner shall submit to the Lender (i) not later than May 1st of each year, a report for the preceding period of January 1st through December 31st, showing the necessary information to allow the Lender to determine the Owner's compliance with this Agreement, and (ii) within thirty (30) days after receipt of a written request, any other information or completed forms requested by the Lender in order to comply with reporting requirements of the United States Department of Housing and Urban Development, or the State of California, or the Lender.

4.5 FEES, TAXES, AND OTHER LEVIES. The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

4.6 PROPERTY TAX EXEMPTION. The Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Code Section 214(g) without the Lender's prior written consent.

5. GENERAL PROVISIONS

5.1 SUBORDINATION. This Agreement shall be subordinated in priority only as provided in the Loan Agreement or to liens and encumbrances otherwise approved in writing by the Lender in its sole and absolute discretion.

5.2 DEFAULT AND REMEDIES In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Lender shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Lender determines is necessary to cure the breach if the Owner diligently undertakes to cure such

breach. If the Owner fails to perform a timely cure of the specified breach, the Lender may proceed with any or all of the following remedies upon the Owner's failure to cure:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Development, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Development as are necessary and provide for payment thereof; or

D. Pursue any other remedy provided under the Loan Agreement or allowed at law or in equity.

5.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No officers, directors, employees and agents of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

5.4 INDEMNITY. The Owner shall indemnify and hold the Lender free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which the Lender may incur as a direct or indirect consequence of the Owner's failure to perform any obligations as and when required by this Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of the Lender, its agents, and its employees. The Owner's duty to indemnify the Lender shall survive the term of this Agreement.

5.5 GOVERNING LAW. This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

5.6 AGREEMENT CONTROLS. In the event that any provisions of this Agreement and any Loan Document conflict, the terms of this Agreement shall control.

5.7 ATTORNEYS' FEES AND COSTS. In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

5.8 TIME. Time is of the essence in this Agreement.

5.9 CONSENTS AND APPROVALS. Any consent or approval of the Lender required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Lender.

5.10 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the Lender as follows:

Lender: County of Santa Barbara
Housing and Community Development
105 E. Anapamu Street, Rm. 105
Santa Barbara, CA 93101
Attn: Director

Owner: Mercy Housing California XXIII
500 S. Main St., Suite 110
Orange, CA 92868
Attn: Regional Director

With a copy to:

Mercy Housing, Inc.
1999 Broadway, Suite 1000
Denver, CO 80202
Attn: Asset Management

St. Vincent's Institution
4200 Calle Real
P.O. Box 669
Santa Barbara, CA 93102

Valensi Rose Magaram Morris & Murphy PLC
2029 Century Park East, Suite 2050
Los Angeles, CA 90067-3031
Attn: Arlen Gunner

Merritt Community Capital Corporation
1736 Franklin Street, Suite 600
Oakland, CA 94612
Attn: Bernard Deasey

5.11 **BINDING UPON SUCCESSORS.** This Agreement shall be recorded and all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferee, and assigns of the Owner, and the Lender, and shall run with the land for the full term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the Loan or Note, any

reconveyance of the Deed of Trust, or any conveyance or transfer of the Property or portion thereof.

5.12 **RELATIONSHIP OF PARTIES.** The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower shall not be construed as a joint venture, equity venture, or partnership.

5.13 **WAIVER.** Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

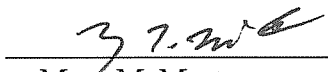
This Section Left Intentionally Blank

5.14 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

5.15 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

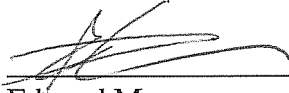
IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By: 
Mary McMaster
Deputy County Counsel

LENDER:

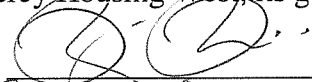
County of Santa Barbara
a political subdivision of the State of California

By: 
Edward Moses
Director, Housing and Community
Development

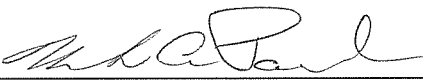
OWNER:

Mercy Housing California XXIII,
a California Limited Partnership

By: Mercy Housing West, its general partner

By: 
Its: Benjamin Phillips, Vice President
Signature must be notarized

APPROVED AS TO FORM:
Mark Paul

By: 
Senior Financial Analyst

By: _____
Its: _____
Signature must be notarized

Fund: 0065 Dept: 065
Line Item: 7671 Program: 6001

5.14 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both the Owner and the Lender.

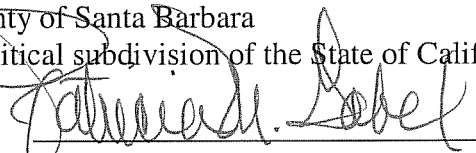
5.15 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By: _____
Mary McMaster
Deputy County Counsel

LENDER:

County of Santa Barbara
a political subdivision of the State of California
By: 
Patricia M. Gabel
Manager, Housing Finance Division

OWNER:

Mercy Housing California XXIII,
a California Limited Partnership

By: Mercy Housing West, its general partner

By: _____
Its: _____
Signature must be notarized

APPROVED AS TO FORM:
Mark Paul

By: _____
Senior Financial Analyst

By: _____
Its: _____
Signature must be notarized

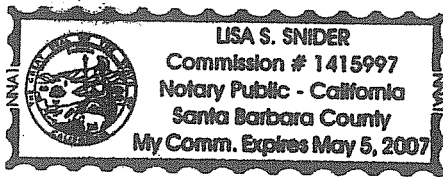
Fund: 0065 Dept: 065
Line Item: 7671 Program: 6001

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Santa Barbara } ss.

On September 21, 2004 before me, Lisa S. Snider, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Patricia M. Gabel,
Name(s) of Signer(s)

personally known to me
 ~~proved to me on the basis of satisfactory evidence~~



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Lisa S. Snider

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Mercy Regulatory Agreement (HOME)

Document Date: _____ Number of Pages: _____

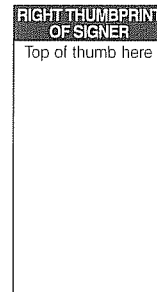
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

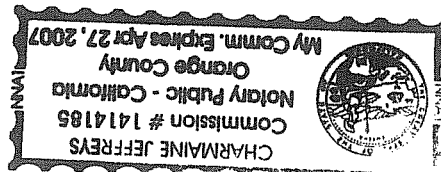


STATE OF CALIFORNIA)
)ss
COUNTY OF Orange)

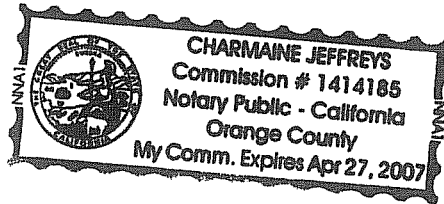
On September 14, 2004, before me, the undersigned, a Notary Public, personally appeared BENJAMIN PHILLIPS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Charmaine Jeffreys



STATE OF CALIFORNIA)
)ss
COUNTY OF _____)



On _____, 200____, before me, the undersigned, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Exhibit A
Property description
(Family Project)

Real property in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

A leasehold estate as created by that certain unrecorded lease dated as of September 15, 2004, executed by St. Vincent's Institution, a California nonprofit public benefit corporation as lessor and Mercy Housing California XXIII, a California Limited Partnership as lessee, as disclosed by a Memorandum of Lease recorded on September 28, 2004 as Instrument No. 2004-0103536 of Official Records in and to the following:

PARCEL 1:

Units 1 to 15 (the "Units") as shown and described in the Condominium Plan for the Family Housing Project (Phase 2) (with any amendments, the "Plan") recorded on September 15, 2004 as Instrument No. 2004-0099019 in the Official Records of Santa Barbara County, California (the "Official Records"). The Plan covers a portion of Lot 1 of Tract 20,671 ("Lot 1") as shown on the Subdivision Map (the "Map") filed in Book 200 Pages 34 to 38, inclusive, of Maps in the County Recorder's office of said county.

Excepting therefrom ½ oil, gas, minerals, hydrocarbon substances lying below a depth of 500 feet from the surface of said land, without however, the right of surface entry as excepted and reserved in the deed recorded November 19, 1957 in Book 1486 page 262 of Official Records, as reserved in the deed for Bertha K. More, present owner.

PARCEL 2:

That portion of Lot 1 covered by the "Plan" except the Units thereon, which area is defined as "Exclusive Use Area" in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for St. Vincent's Affordable Housing Development (with any amendments, the "Declaration") recorded on September 15, 2004, as Instrument No. 2004-0099021 in the Official Records.

PARCEL 3:

Nonexclusive easements appurtenant to Parcels 1 and 2 above for pedestrian, vehicular and reciprocal access, construction, utilities, drainage, encroachment, maintenance, repair and for other purposes, as all may be shown on the Map and/or as described or shown in the said Declaration.