

Recording Requested By And  
When Recorded Return To:  
County Clerk

**JULIE RODEWALD**  
San Luis Obispo County – Clerk/Recorder

IF  
12/24/2009  
8:10 AM

Recorded at the request of  
**First American Title Company**

DOC#: **2009070574**



<b>Titles:</b>	<b>1</b>	<b>Pages:</b>	<b>16</b>
<b>Fees</b>			<b>0.00</b>
<b>Taxes</b>			<b>0.00</b>
<b>Others</b>			<b>0.00</b>
<b>PAID</b>			<b>\$0.00</b>

## IN THE BOARD OF SUPERVISORS

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday December 15, 2009

PRESENT: Supervisors Frank Mecham, Adam Hill, K.H. 'Katcho' Achadjian, James R. Patterson  
and Chairperson Bruce S. Gibson

ABSENT: None

### **RESOLUTION NO. 2009-431**

#### **RESOLUTION APPROVING AGREEMENT TO PROVIDE AN INCLUSIONARY HOUSING UNIT FOR PERSONS AND FAMILIES OF WORKFORCE INCOME WITH SAN MIGUEL COMPANY LLC**

The following resolution is hereby offered and read:

**WHEREAS**, the Director of Planning and Building by letter dated December 15, 2009, has  
duly recommended that the Board of Supervisors enter into the above-mentioned agreement.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Board of Supervisors  
of the County of San Luis Obispo, State of California, as follows:

1. That the Agreement to Provide an Inclusionary Housing Unit for Persons and  
Families of Workforce Income, a copy of which is attached hereto, and incorporated by reference  
herein as though set forth in full, is hereby approved by the County of San Luis Obispo and the  
Chairperson of the Board of Supervisors is hereby authorized and directed to execute said agreement  
on behalf of the County of San Luis Obispo.

2. That the Clerk of the Board of Supervisors is hereby authorized and directed to record  
the above agreement and a certified copy of this resolution in the office of the County Recorder of  
the County of San Luis Obispo.



RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors  
County of San Luis Obispo  
County Government Center  
San Luis Obispo, California 93408

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APN: 021-221-019  
021-221-020

AGREEMENT TO PROVIDE INCLUSIONARY HOUSING UNIT  
FOR PERSONS AND FAMILIES OF WORKFORCE INCOME

THIS AGREEMENT is made and entered into this 15<sup>th</sup> day of December, 2009, by and between SAN MIGUEL COMPANY LLC, a California limited liability company, hereinafter referred to as "Subdivider," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Subdivider is record owner of certain real property (hereinafter referred to as "Subdivider's Property") located in the County of San Luis Obispo, State of California, which is more particularly described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, Subdivider proposes to develop a twenty (20) unit mixed-use commercial/residential planned development on Subdivider's Property known as Tract 2995 (hereinafter referred to as the "Project"); and

ck. title rpt./Tract 2995

WHEREAS, Subdivider has prepared a proposed final map for Tract 2995, in the County of San Luis Obispo for approval by County; and

WHEREAS, as a condition precedent to the approval of a final tract map for Tract 2995 by County, Subdivider is required by condition 16 of the conditions of approval of the vesting tentative tract map to enter into an agreement with County to provide one (1) residential unit within the Project (hereinafter referred to as the "affordable unit") as a new inclusionary dwelling unit which will be affordable housing for rental to persons and families of workforce income, as defined in San Luis Obispo County Code Section 22.12.070; and

WHEREAS, by the execution of this agreement by Subdivider and County, and the subsequent performance of the obligations of this agreement by Subdivider, Subdivider will have satisfied said condition of approval of the vesting tentative tract map.

NOW, THEREFORE, in consideration of County approval of a final tract map for Tract 2995, and the benefits conferred thereby on Subdivider and Subdivider's Property, and in further consideration of the mutual promises, covenants and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Location of the residential unit. Subdivider agrees to construct and place the one (1) residential unit to be provided and rented pursuant to this agreement on Parcel 17 within the mixed-use commercial/residential planned development located on Subdivider's Property, which is described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full. Subdivider shall comply with all applicable County ordinances and regulations including those regulating land use and

construction permits. This planned development approval allows twelve (12) parcels to be constructed with commercial buildings and eight (8) parcels to be constructed with mixed-use commercial/residential buildings. The inclusionary affordable unit required by this agreement on mixed-use Parcel 17 shall obtain final permit approval for occupancy before any other commercial/residential building on the seven other mixed-use parcels receives final permit approval for occupancy from the County. The twelve parcels to be used only for commercial buildings may receive final permit approval for occupancy at any time.

2. Subdivider to provide residential unit. Within the time period set forth in paragraph 9 below, Subdivider shall construct, provide, and rent the one (1) residential unit to persons and families of workforce income as defined in Section 22.12.070 of the San Luis Obispo County Code, the provisions of which are incorporated by reference herein as though set forth in full

3. Continued availability of residential units. The residential unit(s) provided as a rental under this agreement shall be subject to the long-term housing affordability provisions described in San Luis Obispo County Code Section 22.12.070 for a continuous period of fifty-five (55) years following the date of initial occupancy of the residential unit as required by the provisions of San Luis Obispo County Code Section 22.12.070. If ownership of Parcel 17 is transferred during the initial fifty-five (55) year period, then a new inclusionary housing agreement, in a form approved by County Counsel, shall be executed by the new property owner(s) with an additional new term of fifty-five (55) years as required by the provisions of San Luis Obispo County Code Section 22.12.070.

4. Selection of tenants. The selection of tenants for the affordable unit (household) shall be made from applicants on the Housing Authority of the City of San Luis Obispo's (hereinafter referred to as the "Authority") waiting list or from applicants the Subdivider has submitted to the Authority (or such other agency as may be designated in writing by the Director of Planning and Building) to be screened for eligibility and that are certified as income qualified pursuant to the inclusionary housing provisions of San Luis Obispo County Code Section 22.12.080 and the provisions of paragraph 2 above. As used in this agreement, the term "household" shall mean the occupants (excluding minors) of each affordable unit who contribute to the household income.

5. Continuing eligibility of tenants. Tenant incomes shall be recertified once each year. Each tenant shall be notified in writing by Subdivider at least sixty (60) days in advance of the impending recertification. The notification shall require the tenant to submit to the certifying entity (as identified in paragraph 4 above) a declaration of income within thirty (30) days in a form approved by the Director of Planning and Building. The certifying entity shall verify the accuracy of the declaration, certify the tenant's income accordingly and notify the tenant in writing of the certification and any implications of the tenant's income exceeding the workforce income standards pursuant to paragraph 2 above. If during the annual recertification, the tenants have become ineligible under the household income limits after occupying the affordable unit(s), they may remain in possession of their unit(s) for the next year. Provided, however, if at the end of the next year during annual recertification the tenants are still ineligible under the household income limits, then the tenants shall vacate the premises within ninety (90) days after the date of annual recertification and said premises shall be occupied

thereafter by tenants that are eligible under the household income limits set forth in paragraph 2 above. Should a tenant fail or refuse to supply the information required for the annual recertification, the tenant shall be deemed to be over income and shall be required to vacate the premises within ninety (90) days after the date of the annual recertification. A tenant that is receiving rental assistance through the Authority shall be deemed to meet the household income limits of this agreement and the Subdivider shall be relieved of the annual recertification requirements of this paragraph during that time period.

6. Affordable rent. The rent level of the affordable unit(s) shall not exceed the current Fair Market Rents as established by the U.S. Department of Housing and Urban Development for the existing Section 8 Housing Assistance Payment Program or any superseding government program in effect at the time the tenant takes occupancy of the unit. For tenant furnished utilities, the maximum rent shall be adjusted by the applicable Section 8 utility allowance. The rent level may be adjusted annually by the change in the published Fair Market Rents, except that tenants receiving rental assistance from the Authority may not have their rents adjusted by more than the published annual adjustment factor. A special adjustment to reflect increases in the actual and necessary expenses of owning and maintaining the unit(s) which have resulted from substantial general increases in real property taxes, utility rates or similar costs may be granted, but only to the extent that the Subdivider clearly demonstrates that such general increases are not adequately compensated for by the annual adjustment provided for above. Any such special increases shall require written approval of the Director of Planning and Building and in no case shall the increase provide for a rent level in excess of 110 percent of the Fair Market Rents. Notwithstanding any other provision of this

paragraph, the rent level for the affordable unit(s) shall not exceed the Fair Market Rents for comparable housing units in the community in which the Project is located, as determined by the Authority or such other agency as may be designated in writing by the Director of Planning and Building.

7. Reporting. Subdivider shall report annually in writing to County, in a form acceptable to the Director of Planning and Building, on the occupancy of the rental affordable unit(s). The report shall include at a minimum for each affordable unit the rent paid, the household income, and the household size. The adult members of the household shall be identified by name. The County shall maintain the confidentiality of such personal information to the extent permitted by law, and such information shall be used only for necessary audit and administrative purposes.

8. Maintenance of affordable units. The affordable unit(s) are to be maintained in a reasonable and habitable condition. The affordable unit(s) shall be maintained to no lesser standard than that which generally prevails in other housing unit(s) of the Project, and the tenants of the affordable units shall be entitled to no lesser degree of rent inclusive benefits, including without limitation parking privileges, storage privileges, utility services, recreational facilities, or other advantages, than tenants of other housing units in the Project.

9. Time for performance. Subdivider shall construct, provide, and rent the one (1) residential unit required by this agreement to persons and families of workforce income within seven (7) years after the date of execution of this agreement. Time is of the essence in carrying out the terms of this agreement. Provided, however, that in the event good cause is shown, the Planning Director may extend the time for completion and rental of the residential unit under this agreement. The Planning Director shall be

the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

10. Indemnification. The Subdivider shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Subdivider or of agents, employees, or independent contractors directly responsible to the Subdivider; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed jointly or concurrently by the Subdivider, the Subdivider's agents, employees, or independent contractors and the County, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Subdivider to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

11. No assignment without consent. Subdivider shall not have the right to assign or transfer this agreement, or any part hereof, without the prior written consent of the County.

12. Binding on successors in interest. All of the provisions of this agreement shall be deemed an equitable servitude and covenants running with the land pursuant to California Civil Code sections 1460 and 1468, and shall be binding on the parties hereto

and their heirs, assigns and successors in interest. Any conveyance, transfer, or sale made by Subdivider of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

13. Effect of waiver. County's waiver of the breach of any one term, covenant or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant or provision of this agreement or of the breach of any other term, covenant or provision of this agreement.

14. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

15. Enforcement of provisions.

(a) In the event of a violation or an attempted violation of any of the terms, covenants, or restrictions of this agreement by Subdivider, the County shall give written notice thereof to Subdivider by United States first class mail.

(b) If such violation or attempted violation is not corrected to the satisfaction of the County within fifteen (15) days after the date such notice is mailed, or within additional time approved by the Planning Director, the County may, without further prior notice, declare in writing a default under this agreement effective on the date of such declaration of default.

(c) Any such declaration of default may be cause for appropriate action to be taken by the County including, but not limited to, seeking an injunction against any violation or attempted violation of this agreement, requesting judicial appointment of a receiver to take over and operate the Project on Subdivider's Property in accordance

with the terms, covenants and restrictions of this agreement, seeking specific performance of the terms and provisions of this agreement, or seeking such other relief as may be appropriate.

16. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

17. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to Subdivider shall be addressed as follows: San Miguel Company LLC, Attention: Brett Butterfield, 200 Crestmont Drive, San Luis Obispo, California 93401. Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

18. Subdivider not agent of County. Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of County in connection with the performance of Subdivider's obligations under this agreement.

19. Entire agreement and modifications. This agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or


informal, regarding such matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this agreement shall be effective unless in writing and executed by the parties hereto or their assigns and successors in interest.

20. Agreement to be recorded. Subdivider and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as construction notice of the obligations contained herein to be performed by the Subdivider and the successors in interest to all or any portion of Subdivider's Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SUBDIVIDER

SAN MIGUEL COMPANY LLC,  
a California limited liability company

By:   
its MEMBER

COUNTY OF SAN LUIS OBISPO

By:   
Chairperson of the Board of Supervisors

ATTEST:

**JULIE L. RODEWALD**

Clerk of the Board of Supervisors

By: Wanda Currens  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN  
County Counsel

By: [Signature]  
Deputy County Counsel  
Dated: December, 2009

APPROVED AS TO CONTENT:

for KAMI-LYNN GRIFFIN  
Acting Director of Planning and Building

By: [Signature]  
Dated: 12/1/09

[NOTE: This Agreement to Provide Inclusionary Housing Unit for Persons and Families of Workforce Income will be recorded. All signatures to this agreement must be acknowledged by a notary.]

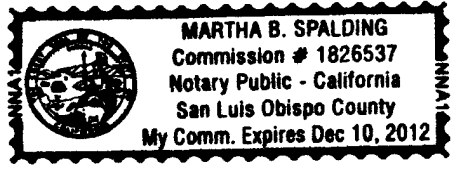
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Luis Obispo }

On 12.1.09 before me, Martha B. Spalding,  
Date Here Insert Name and Title of the Officer

personally appeared Brett Butterfield  
Name(s) of Signer(s)



who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**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**

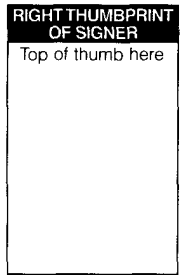
Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

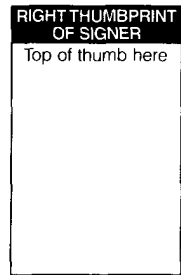
**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- 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 )  
 )  
COUNTY OF SAN LUIS OBISPO ) ss.

On DEC 15 2009, before me, SANDY CURRENS, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared BRUCE S. GIBSON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By: Sandy Currens  
Deputy County Clerk-Recorder

[SEAL]

**EXHIBIT A**

All of Tract 2995, in the County of San Luis Obispo, State of California, according to map recorded December 24, 2009 in Book 32, Pages 56 through 61 inclusive of Maps, in the Office of the County Recorder of said County.