

Affordable Housing Agreement

CITY OF ATASCADERO

(RENTAL OR FOR-SALE INCLUSIONARY AND DENSITY BONUS UNITS – ON-SITE – NO PUBLIC FINANCING)

ADMINISTRATIVE CHECKLIST

(Remove Upon Completion)

BLANK LINES: CHECKLIST

- _____ Date of Document, p. 1, first paragraph
- _____ Developer's Name and Entity, p. 1, first paragraph
- _____ Total Number of Units in Development, Name of Development, Density Bonus Units, Affordable Units, Term of Affordability, pp. 1 – 2, Recital C
- _____ Number of Market-Rate Units, p. 4, Section 2
- _____ Affordable Units, p. 4. Section 3
- _____ Phasing Requirements, p. 5, Sections 6(b) and 6(c)
- _____ Number of Ownership Affordable Units, p. 5, Section 7
- _____ Phasing Requirements for Release of Agreement, p. 9, Section 15(a)
- _____ Term of Agreement for Rental Affordable Units, p. 9, Section 15(c)
- _____ Developer's Address for Notices, p. 10, Section 19
- _____ Signatures (to be notarized), p. 12

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Atascadero
6500 Palma Avenue
Atascadero, CA. 93422
Attn: Community Development Director

No fee for recording pursuant to *(Space above for Recorder's Use)*
Government Code Section 27383

AFFORDABLE HOUSING AGREEMENT

(Inclusionary For-Rent or For-Sale Inclusionary and Density Bonus Units—On-Site—No Public Financing)

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of this [redacted] day of [redacted] 20 [redacted], by and between the **CITY OF ATASCADERO, a municipal corporation** (the "City"), and [redacted], a [redacted] (the "Developer"), with reference to the following facts:

A. The Atascadero City Council has an Inclusionary Housing Policy, adopted on June 24, 2003, and amended November 25, 2003 (the "Inclusionary Policy") to increase homeownership opportunities available and affordable to moderate-income households. The City has also adopted a Density Bonus Ordinance, Atascadero Municipal Code Section 9-3.175(f) (the "Ordinance") to conform with State Density Bonus Law (Government Code Section 65915), which allows a density bonus for the provision of housing affordable to very low income and lower income households.

B. Developer is the owner of certain real property in the City of Atascadero, California described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

C. Developer has received a discretionary approval from the City to construct a total of [redacted] ([redacted]) residential units known as [redacted] (hereinafter referred to as the "Development") on the Property. Pursuant to the Ordinance, Government Code 65915, and the Inclusionary Policy, the Development includes, and City has granted, Owner a density bonus of [redacted] ([redacted]) units (the "Density Bonus") in exchange for Owner's provision of [redacted] ([redacted]) units which will be affordable and [redacted] to **Moderate Income Households**, [redacted] ([redacted]) units which will be affordable and [redacted] to **Lower Income Households**, and [redacted] ([redacted]) units which will be affordable and [redacted] to **Very Low Income households** (the "Affordable Units") and will remain affordable for a term of [redacted] years.

D. Pursuant to the Inclusionary Policy, the Ordinance, Government Code Section 65915, and the conditions of approval for the Development, Developer is required to execute this Agreement prior to the approval of any final or parcel map for the Development and prior to the issuance of any building permit for the Development. Developer and City intend to set forth in greater detail and specificity within this Agreement the terms and conditions for producing and selling the Affordable Units in the Development.

NOW, THEREFORE, in consideration of the benefits received by the Developer and the City, the Developer and City agree as follows:

Section 1. Definitions. In addition to those terms defined in the Recitals, the following terms are specially defined in this Agreement:

(a) "Administering Agency" means the San Luis Obispo Housing Authority, the City, or another agency as determined by the Community Development Director that has experience in the administration of affordable housing programs.

(b) "Affordable Ownership Price" means a sales price that includes a reasonable down payment and results in a Monthly Housing Payment during the first calendar year of a household's occupancy that, (i) for Very Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, as adjusted for Appropriately-Sized households; (ii) for Lower Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of seventy percent (70%) of Area Median Income, as adjusted for Appropriately-Sized households; and (iii) for Moderate Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, as adjusted for Appropriately-Sized households. Affordable Ownership Price shall be calculated by the City as shown in Exhibit B.

(c) "Affordable Rent" means monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding: (i) for Very Low Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income, as adjusted for Appropriately-Sized households; (ii) for Lower Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income, as adjusted for Appropriately-Sized households; and (iii) for Moderate Income Households, is equal to or less than one-twelfth (1/12) of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, as adjusted for Appropriately-Sized households. Affordable Rent shall be calculated by the City as shown in Exhibit C.

(d) "Affordable Unit Property" is as defined in Section 4.

(e) "Appropriately-Sized" shall be consistent with California Health and Safety Code Section 50052.5(h), as amended from time to time, and shall be based on presumed maximum occupancy levels of one person in a studio apartment, two (2) persons in a one-bedroom unit, three (3) persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

(f) "Area Median Income" means median yearly income in San Luis Obispo County as published pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

(g) "City Deed of Trust" means the deed of trust, in the form provided by the City, executed by each buyer of an Ownership Affordable Unit at the time of purchase of the Affordable Unit, securing the buyer's performance under the Resale Agreement and the City Note.

(h) "City Note" means the promissory note, in the form provided by the City, executed by each buyer of an Ownership Affordable Unit at the time of purchase of the Affordable Unit.

(i) "Eligible Household" means a household that is qualified by the Administering Agency as i) a First-Time Homebuyer and ii) with Household Income not exceeding the household income level as defined for the applicable income category in this Section 1.

(j) "First-Time Homebuyer" means a person who does not currently hold an ownership interest in any real estate (as verified by a credit report) and who has not had an ownership interest in his or her primary residence during the past three (3) years; except that any person who is a Displaced Spouse may not be excluded from consideration as a First Time Homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse. "Displaced Spouse" means a person who is separated or divorced from his or her spouse.

(k) "Household Income" means the combined adjusted gross income for all adult persons living in a dwelling unit, as calculated for the purpose of the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.

(l) "Initial Fair Market Value" means the sales price that the Developer could receive for an Affordable Unit if the City did not restrict the amount that the Developer may receive to the Affordable Ownership Price. The City may, at its option, require that the Initial Fair Market Value be established through an appraisal by an MAI or other qualified appraiser.

(m) "Initial Maximum Rents" means the initial rents for the any Rental Affordable Units calculated as shown in Exhibit C.

(n) "Lower Income Household" means a household with a Household Income that does not exceed the United States Department of Housing and Urban Development's annual determination for lower income households with incomes of approximately 80 percent of Area Median Income, adjusted for household size.

(o) "Lower Income Affordable Unit" means an Affordable Unit reserved for purchase or rent at the completion of construction by Lower Income Households at an Affordable Ownership Price or Affordable Rent.

(p) "Moderate Income Household" means a household with a Household Income that does not exceed 120 percent of Area Median Income, adjusted for household size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(q) "Moderate Income Affordable Unit" means an Affordable Unit reserved for purchase or rent at the completion of construction by Moderate Income Households at an Affordable Ownership Price or Affordable Rent.

(r) "Monthly Housing Payment" includes mortgage interest and principal, property taxes, mortgage insurance, homeowner's insurance, homeowners' association dues, assessments paid by homeowners, and a reasonable allowance for utilities and property maintenance costs, as determined by the Administering Agency.

(s) "Ownership Affordable Unit Property" is as defined in Section 4.

(t) "Ownership Affordable Units" are Affordable Units initially offered for sale.

(u) "Regulatory Agreement" means the Inclusionary Housing Regulatory Agreement and Declaration of Restrictive Covenants between the Developer (or its successors to the Rental Affordable Unit Property) and the City, to be recorded against the Rental Affordable Unit Property pursuant to Section 15(a) below.

(v) "Rental Affordable Unit Property" is as defined in Section 4.

(w) "Rental Affordable Units" are Affordable Units initially offered for rent.

(x) "Resale Agreement" means the Resale and Refinancing Restriction Agreement and Option to Purchase, in the form provided by the City, executed by each buyer of an Ownership Affordable Unit and the City at the time of purchase of the Ownership Affordable Unit.

(y) "Very Low-Income Household" means a household with an annual income which does not exceed the United States Department of Housing and Urban Development's annual determination for very low income households with incomes of approximately 50 percent of Area Median Income, adjusted for household size.

(z) "Very Low-Income Affordable Unit" means an Affordable Unit reserved for purchase or rent at the completion of construction by Very Low-Income Households at an Affordable Ownership Price or Affordable Rent.

Section 2. Satisfaction of Inclusionary Housing and Ordinance Obligation and Conditions of Approval. The requirements of the Inclusionary Policy and Ordinance shall be satisfied with respect to the Property if: (a) the Developer constructs or causes to be constructed the Affordable Units meeting the requirements of Sections 3 through 5 below, in compliance with the schedule set forth in Section 6 below; (b) any Ownership Affordable Units are sold to homebuyers in compliance with Sections 7 through 10 below; and (c) if there are Rental Affordable Units, Developer records the Regulatory Agreement as described in Section 15(a) below against the Rental Affordable Unit Property and markets and operates the Rental Affordable Units in compliance with Sections 11 through 13 below and in compliance with the Regulatory Agreement. An amendment to this Agreement will be required to receive final or parcel map or other City approval for additional housing units on the Property above the requested total of [REDACTED] ([REDACTED]) Market Rate Units included in the Development, to make any changes to the Affordable Units as they are described in Sections 3 through 5 of this Agreement, or to otherwise change the terms of this Agreement.

Section 3. Number of Affordable Units. Developer shall construct, or cause to be constructed, at least [REDACTED] ([REDACTED]) Affordable Units, of which [REDACTED] ([REDACTED]) shall be [REDACTED] to Moderate Income Affordable Units, [REDACTED] ([REDACTED]) shall be [REDACTED] to Lower Income Affordable Units, and [REDACTED] ([REDACTED]) shall be [REDACTED] to Very Low Income Affordable Units.

Section 4. Location of Affordable Units. The Affordable Units shall be constructed on the Property in the location(s) shown or described in the attached Exhibit D. The legal parcel(s) of land on which the Affordable Units will be constructed, together with any Affordable Units and appurtenant improvements constructed on the land, is the "Affordable Unit Property." The legal parcel(s) of land on which any Affordable Units initially offered for sale will be constructed, together with any Affordable Units and appurtenant improvements constructed on the land, is the "Ownership Affordable Unit Property." The legal parcel(s) of land on which any Affordable Units initially offered for rent will be constructed, together with any Affordable Units and appurtenant improvements constructed on the land, is the "Rental Affordable Unit Property."

Section 5. Appearance, Size, Bedroom Count and Tenure. The Affordable Units shall be of the same general quality of exterior appearance and overall quality of construction as the Market Rate Units. Interior features and finishes of the Affordable Units shall be durable, of good quality, and consistent with contemporary standards for new housing. The Affordable Units shall include the number of bedrooms, square footage, and tenure indicated in Exhibit E to this Agreement.

Section 6. Schedule for Developing Affordable Units. Developer shall provide the Affordable Units pursuant to the following schedule:

(a) Prior to recordation of any final or parcel map or issuance of any building permit for the Property, this Agreement shall be duly executed by the City and the Developer and recorded against the Property.

(b) Concurrently with or following release by the City of building permits for [REDACTED] percent ([REDACTED]%) of the Affordable Units, and upon satisfaction of all other building permit conditions for the Market Rate Units, the City may release building permits for [REDACTED] percent ([REDACTED]%) of the Market Rate Units.

(c) No certificate of occupancy shall be released by the City for any Market Rate Unit until certificates of occupancy have been released by the City for [REDACTED] percent ([REDACTED]%) of the Affordable Units.

Section 7. Sale by Developer of Ownership Affordable Units to Eligible Households. Following completion of construction, the Developer shall sell [REDACTED] ([REDACTED]) Affordable Units to Moderate Income Households, [REDACTED] ([REDACTED]) Affordable Units to Lower Income Households, and [REDACTED] ([REDACTED]) Affordable Units to Very Low Income Households, at the Affordable Ownership Price established by the City of Atascadero as described in Section 8 below.

(a) At least thirty (30) days before offering an Ownership Affordable Unit for sale, the Developer shall provide the City with written notice of the availability of the Ownership Affordable Unit, including the number of bedrooms and required income level of the unit. No later than thirty (30) days after receipt of such notice, the City shall provide Developer with the Affordable Ownership Price for the Ownership Affordable Unit and the income limits for Eligible Purchasers.

(b) For Moderate-Income Ownership Affordable Units, Developer shall also provide City with Developer's proposed Initial Fair Market Value of the Ownership Affordable Unit at least thirty (30) days before offering an Ownership Affordable Unit for sale. No later than thirty (30) days after receipt of such notice, the City shall indicate the City's agreement, or not, with Developer's proposed Initial Fair Market Value of the Ownership Affordable Unit. The City may, at its option, require that the Initial Fair Market Value be established through an appraisal by an MAI or other qualified appraiser.

(c) Developer shall follow the procedures and comply with the requirements of the Inclusionary Policy and applicable fair housing laws in marketing and selling the Ownership Affordable Units.

(d) Prior to close of escrow for all Ownership Affordable Units, the Administering Agency shall provide verification to City and Developer that the purchaser of the Ownership Affordable Unit is an Eligible Household. Purchase contracts between Developer and prospective buyers shall include requirements that buyers are verified as Eligible Households prior to close of escrow and that buyers execute documents for the benefit of the City as described in Section 10 below.

Section 8. Affordable Ownership Price.

(a) The Ownership Affordable Units shall be sold to Eligible Households at prices that do not exceed the Affordable Ownership Price established by the City of Atascadero for Moderate Income, Lower Income, and/or Very Low Income Affordable Units, as applicable. The method of calculating the Affordable Ownership Price is included in Exhibit B attached hereto. Developer shall notify the City at least thirty (30) days prior to offering an Ownership Affordable Unit for sale to allow the City adequate time to calculate and notify the Developer of the Affordable Ownership Price applicable to the Ownership Affordable Units offered for sale.

(b) Developer acknowledges and agrees that the Affordable Ownership Price is determined based on Area Median Income in San Luis Obispo County, changes to which are published annually by the State of California, Department of Housing and Community Development, and other housing cost factors included in Exhibit B, which change from time to time. Developer agrees that the City may calculate the Affordable Ownership Price for the Affordable Units in its reasonable discretion and that the City's calculation of Affordable Ownership Price shall be binding upon the Developer.

(c) The Affordable Ownership Price established for each Ownership Affordable Unit by the City shall be the absolute maximum price that the Developer or any other person may receive as compensation for the Ownership Affordable Unit. The Developer or other seller may not charge or receive any additional compensation for an Ownership Affordable Unit regardless of whether the additional amount is (a) for options, upgrades, or additional improvements to the unit, (b) paid through escrow or outside of escrow, (c) paid prior to, after, or as part of the purchase escrow or (d) paid in cash or in kind.

Section 9. City Approval of Homebuyer Documents. The following documents, to be approved in writing by the City, shall be used in connection with the development and sale of the Ownership Affordable Units. Approval of the following documents by the City shall be required prior to the issuance of occupancy permits for the Ownership Affordable Units and the offering for sale of the Ownership Affordable Units.

(a) Form of Purchase and Sale Agreements for sale of the Ownership Affordable Units (to be prepared by Developer and submitted to the City).

(b) Form of Resale Agreement, City Note, City Deed of Trust, Request for Notice of Default and Sale, and Borrower's Disclosure (to be prepared by the City, following Developer's request).

(c) The preliminary Department of Real Estate public report for the Development, including the Ownership Affordable Units (to be obtained by the Developer and submitted to the City).

Section 10. Homebuyer Documents and Security Instruments. Prior to the sale of each Ownership Affordable Unit, Developer shall ensure that:

(a) The Eligible Household and the City execute the Resale Agreement in the form provided by the City. The Resale Agreement shall be recorded against the Ownership Affordable Unit Property at close of escrow on the sale to the Eligible Household. The Resale Agreement shall be recorded junior only to the lien of the deed of trust securing the Eligible Household's first mortgage loan obtained by the homebuyer to finance the purchase of the Ownership Affordable Unit and only if required by the lender (and second mortgage loan if such loan is provided by a public agency which requires such subordination), unless otherwise approved in writing by the City.

(b) The Eligible Household signs the City Note in the form provided by the City. For Moderate-Income Ownership Affordable Units, the City Note shall be equal to the difference between the Affordable Ownership Price and the Initial Fair Market Value of the Affordable Unit.

(c) The Eligible Household signs the City Deed of Trust to secure performance of the Eligible Household's covenants under the Resale Agreement and payment of the amounts due under the City Note. The City Deed of Trust shall be recorded against the Ownership Affordable Unit, subordinate only to the Resale Agreement and the lien for the first mortgage loan obtained by the homebuyer to finance the purchase of the Ownership Affordable Unit (and second mortgage loan if such loan is provided by a public agency which requires such subordination), unless otherwise approved in writing by the City.

(d) A Request for Notice of Default and Sale is recorded for each deed of trust recorded at close of escrow.

(e) The Eligible Household signs the Borrower's Disclosure in the form provided by the City.

Section 11. Marketing and Rental of Rental Affordable Units. Following completion of construction, the Developer shall rent any Rental Affordable Units to [REDACTED] Households at Affordable Rents calculated in compliance with Exhibit C attached hereto and the Regulatory Agreement. Developer shall submit a marketing and management plan to the Administering Agency for approval prior to commencing marketing of the Rental Affordable Units and shall market the Rental Affordable Units in compliance with the marketing and management plan approved by the Administering Agency. Developer shall grant a preference to households that live or work in San Luis Obispo County. Developer shall comply with applicable fair housing laws in the marketing and rental of the Rental Affordable Units. Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. Developer shall refer potential tenants to the Administering Agency for income certification and not enter into a binding rental agreement with a tenant until income and asset certification has been completed, and Developer has been informed in writing by the Administering Agency that the potential tenant is income-eligible to occupy the rental Affordable Unit.

Section 12. Rental Affordable Units Not Subject to Costa-Hawkins Act. Developer hereby acknowledges that the Development has received a Density Bonus in consideration for the provision of the Rental Affordable Units. A Density Bonus is a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. As consideration for the Density Bonus, Developer hereby agrees that Civil Code Section 1954.52(a) (Costa-Hawkins Act) does not apply to the Rental Affordable Units.

Section 13. City Approval of Documents for Rental Affordable Units. The following documents, to be approved in writing by the Administering Agency, shall be used in connection with the rental of the Rental Affordable Units.

(a) A marketing and management plan approved pursuant to Section 11.

(b) Form of rental agreement or lease to be signed by tenants of the Rental Affordable Units.

- (c) The Regulatory Agreement, in a form to be provided by the County.

Section 14. Compliance, Inspections, Monitoring.

(a) Ownership Affordable Units. Within five (5) days following the sale of any Ownership Affordable Unit by the Developer, Developer shall forward to the City copies of the buyer's and seller's settlement statement and all closing documents, including Resale Agreement, City Note, City Deed of Trust, Request(s) for Notice of Default and Sale, and Borrower's Disclosure executed in connection with the sale. Developer shall retain all records related to compliance with obligations under this Agreement, the Ordinance, and the Inclusionary Policy for a period not less than two (2) years from the date of sale of all units in the Development and make them available to City employees or others designated by the City for inspection and copying on five (5) business days' written notice.

(b) Rental Affordable Units. Following completion of construction of any Rental Affordable Unit, a report verifying compliance of all completed Rental Affordable Units with the terms of the Regulatory Agreement, prepared on any form specified by the Administering Agency, and certified as correct under penalty of perjury by the owner of the Rental Affordable Units and any property management company managing the units, shall be submitted annually to the Administering Agency on April 1 of each year, commencing on the April 1 following issuance of final certificates of occupancy for one hundred percent (100%) of the Rental Affordable Units. If similar reports on some or all of the Rental Affordable Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this Section 14(b) by the Administering Agency with respect to the portion of the Rental Affordable Units covered by such reports, provided that copies are provided on an annual basis to the Administering Agency with an owner certification addressed to the City. Developer shall retain all records related to compliance with obligations under this Agreement, the Ordinance, and the Inclusionary Policy for a period not less than five (5) years from the date of origination of such records, and make them available to the Administering Agency for inspection and copying on five (5) business days' written notice. Developer shall permit the Administering Agency or others designated by the City to inspect the Rental Affordable Unit Property to monitor compliance with this Agreement or the Regulatory Agreement following two (2) business days' written notice to Developer.

Section 15. Release of Property From Agreement.

(a) Construction of Affordable Units. The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until terminated in accordance with this Section 15. Until portions of the Property are released from the burdens of this Agreement pursuant to this Section 15, the owners of fee title to the Property shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in such property. Upon issuance of final certificates of occupancy for one hundred percent (100%) of the Affordable Units and recordation of the Regulatory Agreement against the Rental Affordable Unit Property, the Property, except for the Affordable Unit Property, shall be released from the burdens of this Agreement.

(b) Ownership Affordable Units. As Ownership Affordable Units are sold to Eligible Households in compliance with this Agreement, and Resale Agreements and City Deeds of Trust are recorded against the Affordable Units, the portions of the Ownership Affordable Unit Property sold to Eligible Households shall be released from the burdens of this Agreement.

(c) Rental Affordable Units. The burdens of this Agreement shall remain in full force and effect and recorded against the Rental Affordable Unit Property, and the Rental Affordable Unit Property shall be restricted for affordable housing use, for the [REDACTED] year term of this Agreement.

Section 16. Sale of Affordable Rental Units or Conversion to Condominiums. Should the Developer or a future owner of the Rental Affordable Unit Property choose to sell any Rental Affordable Unit, the unit shall be sold to an Eligible Purchaser at an Affordable Ownership Price for the household income level established by the Regulatory Agreement for the Rental Affordable Unit. The Affordable Rental Unit shall first be offered for sale to the existing tenant at the Affordable Ownership Price. At least thirty (30) days before offering a Rental Affordable Unit for sale, the Developer or current owner shall provide the City with written notice of the proposed sale of the Rental Affordable Unit, including the number of bedrooms and required income level of the unit, and shall otherwise comply with the procedures specified in Sections 7 through 10 of this Agreement in the sale of the Rental Affordable Unit. As Rental Affordable Units are sold to Eligible Households in compliance with this Agreement, and Resale Agreements and City Deeds of Trust are recorded against the Affordable Units, the portions of the Rental Affordable Unit Property sold to Eligible Households shall be released from the burdens of this Agreement.

Section 17. Default and Remedies. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the City will constitute a default under this Agreement and the requirements of the Inclusionary Policy and, in addition to remedies for breach of this Agreement, the City may exercise any and all remedies available to it under the Subdivision Map Act, the Inclusionary Policy, the Atascadero Municipal Code, or otherwise, with respect to the Developer's failure to satisfy the terms of this Agreement and the requirements of the Inclusionary Policy, including but not limited to:

(a) withholding, conditioning, suspending, or revoking any permit, license, subdivision approval or map, or other entitlement for the Development, including without limitation final inspections for occupancy and/or certificates of occupancy;

(b) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(c) where one or more persons have received financial benefit as a result of violation of this Agreement or of any requirement imposed under the Inclusionary Policy or Ordinance, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(d) prosecuting a misdemeanor against any person who has sold a residential unit at a price exceeding the maximum allowed under this Agreement or to a household not qualified under this Agreement, or who has otherwise violated the Inclusionary Policy, or any other agreement, restriction or requirement authorized or imposed under the Inclusionary Policy; or

(e) any other means authorized under the City of Atascadero Municipal Code.

Section 18. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the Inclusionary Policy is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such document, the Inclusionary Policy, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver

thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 19. Attorneys Fees and Costs. The City shall be entitled to receive from the Developer or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including without limitation reasonable attorneys' fees and the costs of City staff time.

Section 20. Appointment of Other Agencies. At its sole discretion, the City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the City's or Administering Agency's obligations under this Agreement.

Section 21. Hold Harmless and Indemnification. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees, and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the Development, the Affordable Units, or Developer's performance or non-performance under this Agreement, including without limitation the construction or sale of any unit in the Development, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the gross negligence or willful misconduct of the City. The provisions of this Section 21 shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 21 shall remain in full force and effect.

Section 22. Insurance Requirements. Until all Affordable Units have been sold to Eligible Households in compliance with this Agreement, Developer and its successors and assigns acquiring title to the Property shall obtain, at their expense, comprehensive general liability insurance for development of the Affordable Units, naming Indemnitees as additional named insureds, with aggregate limits of not less than Two Million Dollars (\$2,000,000), for bodily injury and death and property damage, including coverage for contractual liability and products and completed operations, purchased by Developer or its successors or assigns from an insurance company duly licensed to engage in the business of issuing such insurance in the State, with a current Best's Key Rating of not less than A-V, such insurance to be evidenced by an endorsement which so provides and delivered to the City prior to the issuance of any building permit for the Affordable Units.

Section 23. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addresses set forth below:

TO THE CITY:

City of Atascadero
6500 Palma Avenue
Atascadero, CA. 93422
Attn: Community Development Director

TO THE DEVELOPER:

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

Section 24. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties and no modification shall be binding unless reduced to writing and signed by the Parties.

Section 25. Duration and Amendment of Agreement. This Agreement shall remain in effect for so long as the Property is subject to inclusionary housing obligations pursuant to the Inclusionary Policy. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the City Council.

Section 26. No Joint Venture or Partnership. Nothing contained in this Agreement or any document executed pursuant to this Agreement shall be construed as creating a joint venture or partnership between City and Developer. Nothing contained in this Agreement shall create or justify any claim against the City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Development.

Section 27. Applicable Law and Venue. This Agreement shall be governed by California law. Venue for any dispute arising out of this Agreement shall be San Luis Obispo County.

Section 28. Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer 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 City to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 29. Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 30. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 31. Recording of Agreement. The Developer shall cause this Agreement to be recorded against the Property, in the Official Records of the County of San Luis Obispo.

Section 32. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, or if any provision of this Agreement is rendered invalid or unenforceable

pursuant to any California statute which became effective after the effective date of this Agreement, the remaining portions of this Agreement shall nevertheless remain in full force and effect.

Section 33. Exhibits. The following exhibits are attached to this Agreement:

- Exhibit A Legal Description of the Property
- Exhibit B Calculation of Affordable Ownership Price
- Exhibit C Calculation of Affordable Rent
- Exhibit D Location of Affordable Units
- Exhibit E Income Level, Size, Bedroom Count, and Tenure of Inclusionary Units

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER:

,

a

By: _____

Its: _____

CITY:

City of Atascadero, a municipal corporation

By: _____
Rachelle Rickard, City Manager

APPROVED AS TO FORM AND LEGAL EFFECT:

By: _____
Brian Pierik, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public

personally appeared _____, 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 of Notary Public (Notary Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public

personally appeared _____, 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 of Notary Public (Notary Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

CALCULATION OF AFFORDABLE OWNERSHIP PRICE

The Affordable Ownership Price for Ownership Affordable Units shall be calculated using the procedures and formulas described below. The current City of Atascadero Moderate, Lower, and Very Low Income Limits as established pursuant to the Inclusionary Policy shall be used in these calculations. The interest rate used in these calculations shall be determined by the City at its sole discretion.

1. Determine the area median income for a household size that is one person larger than the number of bedrooms in the Affordable Ownership Unit.
2. Multiply the income limit as follows to obtain the annual housing allowance;
 - Very Low Income: 30% of 50% of the area median income, adjusted for household size appropriate to the unit.
 - Lower Income: 30% of 70% of the area median income, adjusted for household size appropriate to the unit.
 - Moderate Income: 30% of 120% of the area median income, adjusted for household size appropriate to the unit.
3. Divide the annual housing allowance determined in the previous step by twelve (12) to determine the monthly housing allowance;
4. Calculate the average monthly cost of property taxes, mortgage insurance, homeowner's insurance, homeowners' association dues, assessments paid by homeowners, utilities (excluding telephone), and a reasonable allowance for property maintenance costs.
5. Subtract the amount calculated in Step 4 from the monthly housing allowance to compute the amount available for mortgage payments.
6. Using a standard amortization table or formula, calculate the loan amount that can be repaid over thirty (30) years with equal monthly payments equal to the amount available for mortgage payments using the prevailing interest rate for thirty (30) years, and assuming a fully amortized fixed rate mortgage.
7. Divide the loan amount calculated in the previous step by 0.95 to determine the Affordable Ownership Price assuming a five percent (5%) down payment.

The following calculations are for a three (3) bedroom Moderate-Income Affordable Unit based on the maximum income limits for San Luis Obispo County as of July 2004. These calculations illustrate how the price of a Moderate Income Affordable Unit is calculated.

Step 1	Annual Moderate Income Limit for a 4 person household	\$74,050
Step 2	30% of the Income Limit determined in Step 1	\$22,215
Step 3	One twelfth of the amount calculated in Step 2	\$1,851
Step 4	Calculate monthly cost of property taxes, mortgage insurance, homeowner's insurance, homeowners' association dues, assessments paid by homeowners, utilities, and a reasonable allowance for property maintenance costs (est.)	\$611
Step 5	Amount remaining for mortgage payments	\$1,240
Step 6	Amount that can be financed with payment calculated in Step 5 with a 30 year fixed-rate loan at a 6.25% interest rate	\$201,400
Step 7	Loan amount in Step 6 divided by 95% = Affordable Ownership Price	\$212,000

EXHIBIT C

CALCULATION OF AFFORDABLE RENT

The Affordable Rent for Rental Affordable Units shall be calculated using the procedures and formulas described below. The current City of Atascadero Moderate, Lower, and Very Low Income Limits as established pursuant to the Inclusionary Policy shall be used in these calculations.

1. Determine the area median income for a household size that is one person larger than the number of bedrooms in the Affordable Rental Unit.
2. Multiply the income limit as follows to obtain the annual housing allowance;
 - Very Low Income: 30% of 50% of the area median income, adjusted for household size appropriate to the unit.
 - Lower Income: 30% of 60% of the area median income, adjusted for household size appropriate to the unit.
 - Moderate Income: 30% of 120% of the area median income, adjusted for household size appropriate to the unit.
3. Divide the annual housing allowance determined in the previous step by twelve (12) to determine the monthly housing allowance;
4. Calculate the average monthly cost of utilities (excluding telephone) and all mandatory fees charged for use of the property.
5. Subtract the amount calculated in Step 4 from the monthly housing allowance calculated in Step 3 to compute the Affordable Rent.

EXHIBIT D

LOCATION OF AFFORDABLE UNITS

Affordable Units: Insert Legal Description(s) of Affordable Unit Property or if no legal description is available, attach map of Property showing general location and distribution of Affordable Units. Distinguish between Ownership Affordable Unit Property and Rental Affordable Unit Property, if applicable.

EXHIBIT E

**INCOME LEVEL, SIZE, TENURE, AND BEDROOM COUNT
OF AFFORDABLE UNITS**

INCOME LEVEL OF BUYERS	TYPE OF UNIT (single family detached, single family attached, or condominium)	NUMBER OF UNITS	TENURE (rental or ownership)	NUMBER OF BEDROOMS	SQUARE FOOTAGE	ASSUMED HOUSEHOLD SIZE
Moderate Income						
Lower Income						
Very Low Income						