

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Director of Planning and Building
County of San Luis Obispo
County Government Center, Room 300
San Luis Obispo, California 93408

APN 076-201-084; 085; 086; 087; 088

**AMENDED AGREEMENT TO PROVIDE HOUSING UNIT
FOR PERSONS AND FAMILIES OF LOW OR MODERATE INCOME/
RENT LIMITATION AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 201____, by and between TOP OF THE HILL GANG, LLC, a California limited liability company, and Michael K. Hodge, an individual, hereinafter collectively referred to as "Subdivider," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California acting by and through its Director of Planning and Building, 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 unincorporated area of the County of San Luis Obispo described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, Subdivider obtained approval from the County to develop a seven (7) unit residential development on property known as Tract 3021 (hereinafter referred to as the "Project"); and

WHEREAS, the Project is located in the "coastal zone" as that term is defined in the California Coastal Act of 1976; and

WHEREAS, Government Code section 65590(d) requires that new housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Health and Safety Code section 50093; and

WHEREAS, in connection with the approval of a vesting tentative map for Tract 3021, the County found and determined that it is feasible for Subdivider to provide one (1) residential unit for persons and families of low or moderate income within said residential development; and

WHEREAS, as a condition precedent to the approval of said final map by County, Subdivider was required by conditions 20 and 21 of the conditions of approval of the vesting tentative tract map to enter into an agreement with the County to provide one (1) residential studio unit within the Project (hereinafter referred to as the "affordable unit") as a new dwelling unit which will be affordable housing for sale or rental to persons and families of low or moderate income, as defined in Health and Safety Code section 50093, for a continuous period of fifty-five (55) years pursuant to the provisions of Sections 23.04.092 and 23.04.094 of the San Luis Obispo County Code; and

WHEREAS, Subdivider elected to comply with said conditions of approval and recorded a final map for Tract 3021 in the County of San Luis Obispo, as shown in the map recorded on October 3, 2014, 2014, in Book 34, Pages 80 through 83 inclusive of Maps; and

WHEREAS, to satisfy said conditions of approval, Subdivider and County entered into an Agreement to Provide Housing Unit for Persons and Families of Low or Moderate Income/Rent Limitation Agreement dated September 23, 2014, and recorded on October 3, 2014, as Instrument No. 2014-040911, in the Official Records of the office of the County Recorder of the County of San Luis Obispo (hereinafter referred to as "Original Agreement"); and

WHEREAS, as described in the Original Agreement, Subdivider elected to provide the affordable studio unit for rent and to locate it on Lot 3 of the Project site; and

WHEREAS, Subdivider now desires to locate the affordable rental unit on Lot 4 of Subdivider's Property as more fully described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full (hereinafter referred to as "Subject Property"), necessitating an amendment to the Original Agreement; and

NOW, THEREFORE, in consideration of County approval of a final map for Tract 3021, and the benefits conferred thereby on Subdivider and Subdivider's Property and in compliance with the provisions of Government Code section 65590, 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. Subdivider to provide affordable residential unit. Within the time period set forth in paragraph 8 below, Subdivider agrees to construct, provide, and rent one (1) residential unit within the Subject Property to persons and families of low or moderate income as defined in San Luis Obispo County Code Section 23.04.094 and Section 50093 of the Health and Safety Code of the State of California, the provisions of which are 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.

2. Continued availability of residential units. The residential unit 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 23.04.094 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 23.04.092c(3). In the event that ownership of the affordable unit is transferred during the initial 55-year period, a new agreement shall be executed with a term of 55 years.

3. Selection of tenants. The selection of tenants for the affordable units (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 paragraph 1 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.

4. 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 3 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 low or moderate income standards

pursuant to paragraph 1 above. If during the annual recertification, the tenants have become ineligible under the household income limits after occupying the affordable units, they may remain in possession of their units 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 1 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.

5. Affordable rent. The rent level of the affordable unit shall not exceed the amount allowed by San Luis Obispo County Code Section 23.04.094e, or 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 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 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.

6. 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 affordable unit. 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.

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

8. Time for performance. Subdivider shall construct, provide, and rent the one (1) residential unit required by this agreement to persons and families of low or

moderate income within three (3) years after the date of execution of the Original Agreement on September 23, 2014. Time is of the essence in carrying out the terms of this agreement.

9. 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.

10. 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.

11. Binding on successors in interest. This agreement shall be deemed an equitable servitude and covenant running with land described herein 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.

12. 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.

13. 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.

14. 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 Director of Planning and Building, 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 Subject 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.

15. 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.

16. 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: Planning Director, 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: 351 SAN MIGUEL AVENUE, SLO, CA 93405.

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.

17. 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.

18. 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.

19. 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 the Subject Property.

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

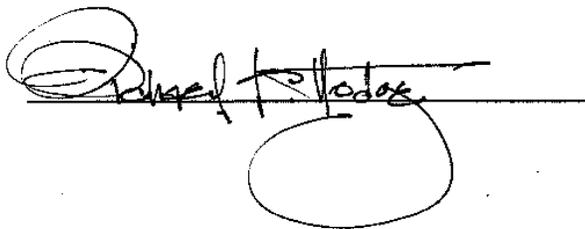
SUBDIVIDER

TOP OF THE HILL GANG,
a California limited liability company

By: T.S., LLC, its Managing Member

By: 
Name: Timothy Shea
Title: Managing Member

MICHAEL K. HODGE



COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

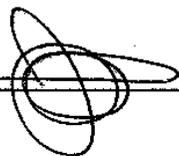
RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: 1/20/16

APPROVED AS TO CONTENT:

JAMES A. BERGMAN
Director of Planning and Building

By: 

Dated: 1-20-2016

[NOTE: This Agreement to Provide Housing Units for Persons and Families of Low or Moderate Income/Rent Limitation Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

On _____, before me, _____, Deputy
County Clerk-Recorder, County of San Luis Obispo, State of California, personally
appeared _____, 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.

TOMMY GONG, County Clerk-Recorder
and Ex-Officio Clerk of the Board of
Supervisors

By: _____
Deputy County Clerk-Recorder

ACKNOWLEDGMENT

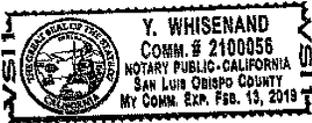
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN LUIS OBISPO) ss.

On Nov. 19, 2015, before me, Y Whisenand,
a Notary Public, in and for the State of California, personally appeared _____
Timothy Shea + Michael K. Hodge, 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

[SEAL]

ACKNOWLEDGMENT

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 that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN LUIS OBISPO) ss.

On _____, 20____, before me, _____,
a Notary Public, in and for the State of California, 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 _____
Signature of Notary Public

[SEAL]

EXHIBIT A

Lots 2 through 6 of Tract 3021, as shown in the map recorded on October 3, 2014, 2014, in Book 34, Pages 80 through 83 inclusive of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

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, CA 93408

APN 076-201-084; 085; 086; 087; 088

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3.)

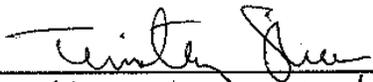
The undersigned, beneficiary of the beneficial interest under that certain Deed of Trust dated December 24, 2012, recorded as Document No. 2013-003764 on January 18, 2013, of Official Records of the County of San Luis Obispo, State of California, does hereby join in, and consent to, each and all of the terms and provisions of the Agreement To Provide Housing Units For Persons And Families Of Low Or Moderate Income/Rent Limitation Agreement entered into between Top of the Hill Gang, LLC, a California limited liability company, and Michael K. Hodge, an individual, on the one hand, and the County of San Luis Obispo, on the other hand, recorded concurrently herewith, and does hereby subordinate the interests of its Deed of Trust to the entire effect of the agreement to provide housing units.

SIGNED AND EXECUTED this 19th day of November, 2015.

[Signatures on following page.]

BENEFICIARY

T.S., LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY

By: 
its Managing member

[NOTE: This Subordination Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

EXHIBIT B

Lot 4 of Tract 3021, as shown in the map recorded on October 3, 2014, 2014, in Book 34, Pages 80 through 83 inclusive of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

ACKNOWLEDGMENT

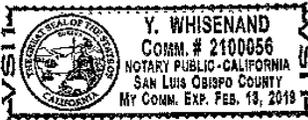
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN LUIS OBISPO) ss.

On Nov., 2015, before me, Y Whisenand,
a Notary Public, in and for the State of California, personally appeared Timothy Shea, 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

[SEAL]