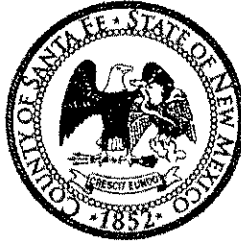


**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**Date:** December 4, 2012  
**To:** Santa Fe Board of County Commissioners  
**From:** Steven Brugger, Affordable Housing Administrator *SRB*  
**via:** Robert Griego, Planning Manager *RG*  
Penny Ellis-Green, Interim Growth Management Director *PEG*  
**Re:** La Entrada Amended and Restated Affordable Housing Agreement

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### **Background and Summary**

At the November 27 BCC Affordable Housing meeting, Commissioners discussed a proposed amended and restated affordable housing agreement for La Entrada. This would replace the original agreement that was executed on December 7, 2006. This proposed agreement is attached as Exhibit 1. Staff has met numerous times with the developer and with the Attorney's Office to craft the agreement and is satisfied that this is a workable agreement. The main provisions of the Agreement are summarized herein, and follow the business points that were discussed at previous meetings.

- La Entrada's affordable housing obligation is reduced from 30% of total 454 units to 15%; this reduces the affordable housing obligation from 137 units to 68.1; after taking into account the 15 certified affordable units that have been built to-date, the remaining affordable housing obligation becomes 53.1 affordable units, or 53 units and a residual fee of 0.1;
- Maximum Target Housing Prices, defined as the effective purchase prices to be paid by an Eligible Buyer or Entry Market Buyer from the proceeds of a first mortgage and the homebuyer's own down payment funds, are set forth in the Affordable Housing Regulations and may be updated by December 31, 2012; La Entrada agrees to be subject to these 2012 Maximum Target Housing Prices; for an affordable housing sale, contract sales price may be above the Maximum Target Housing Price and must be set in a range between the unit's appraised value and 95% of appraised value;
- The 2012 Maximum target housing prices are locked in for three years from the date of execution of the agreement, after which time they are adjusted using the current Maximum Target Housing Prices in the Regulations, with a cap on how much the prices can change over the 3 year period; this differs from the annual adjustments and no limitation on increases or decreases required in the current Agreement;

- Using current Regulations as a guide, an adjustment in Maximum Target Housing Prices due to high homeowners association fees are permitted; \$100 per month is viewed as the threshold beyond which HOA fees are viewed as “high” and require a commensurate adjustment in price;
- Whereas the existing agreement and the current Regulations require a mix of 50% 3 bedroom units, and 25% 4 bedroom and 2 bedroom units, this agreement is not prescriptive, and leaves it to the market to decide the proper mix between housing types;
- Whereas the initial agreement required 2 car garages, a 2008 amendment eliminated this requirement; only 1 car garages are being proposed by the developer here, although the developer is being strongly encouraged by staff to provide 2 car garages for the larger units;
- Developer states that plans for all homes to be constructed shall be designed with a HERS Rating of 70 or below;
- The developer and County may be able to negotiate an alternate means of compliance for satisfaction of the affordable housing obligations; these intentions are announced in this agreement, as is the need to revise the current language in the Ordinance and Regulations pertaining to the use of land donation and/or cash contributions as an alternate means of compliance; the previous agreement did not address this issue;
- This agreement makes it easier to substitute affordable lots and market lots through administrative action, while imposing penalties for failure to build affordable units with market units in the agreed upon proportions by phase;
- Language in the previous agreement requiring the use of print advertising and broker listings as part of the marketing plan was deleted;
- In the proposed agreement, the developer can obtain affordable housing credit for selling a market rate unit to an income certified Eligible Buyer or Entry Market Buyer, as defined in the Regulations, provided that the contract sales price is equal to or less than the Maximum Target Housing Price; in such a case, there would be no County Affordability Mortgage and Lien and no shared appreciation; for these transactions, there shall be no limit on lot premiums or options provided that the total contract sales price is at or under the maximum target home price ceiling for the particular Income Range.
- The time period for constructing all of the affordable homes required has been extended to ten years, with a possibility for another extension in the event that market rate sales, as well as affordable sales occur at a pace slower than a ten year absorption;
- The Remedies provision in the proposed agreement has been revised to reduce the amount of damages due the County in the event of a breach in the agreement. Damages for failure to meet energy efficiency standards have been removed, while damages for failure to timely sell affordable units or selling affordables as market rate have been modified.
- A non-profit entity that contributes hard cash to subsidize the transaction is allowed to hold a lien in lieu of the County affordability mortgage and lien in a total amount, including its cash contribution, of no greater than three times the amount of hard cash contributed. The principal amount of the lien is calculated in the following manner: contract sales price (from the HUD-1 and which includes all liens); less the effective sales price (equals the homebuyer’s first mortgage amount plus down payment from their own funds); less the amount of cash subsidy contributed by entities other than the non-profit). If there is a difference between the formula-defined principal amount of the lien and the maximum lien amount that can be retained by the non-profit, the difference would become the principal amount of a subordinate County affordability mortgage and lien.

In this draft of the Amended and Restated Agreement, staff has attempted to address Commissioner concerns regarding the terms for a non-profit's holding of the affordability mortgage and lien and concerns regarding long term affordability. Staff has also made minor clarifications and language changes so that even greater consistency between this agreement and the La Pradera agreement can be achieved.

**Staff Recommendation**

Approve the Amended and Restated Affordable Housing Agreement for La Entrada, included herein as Exhibit 1. Direct staff to continue work on revising the Alternate Means of Compliance language in the Ordinance and the Regulations.

**Attachments**

Exhibit 1: Amended and Restated Affordable Housing Agreement for La Entrada Phase 1

Exhibit 2: 2006 Affordable Housing Agreement for La Entrada Phase 1

Exhibit 3: January, 2008 Amendment to La Entrada Affordable Housing Agreement

Exhibit 4: December, 2008 Amendment to La Entrada Affordable Housing Agreement



**AMENDED AND RESTATED  
SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT  
LA ENTRADA PHASE 1**

This Amended and Restated Santa Fe County Affordable Housing Agreement for La Entrada Phase 1 is made and entered into this 12th day of December, 2012, by and between Univest-Rancho Viejo, LLC, a New Mexico limited liability corporation with its principal place of business at 5 Bisbee Court Suite 106, Santa Fe, NM 87508 (the "Applicant") and Santa Fe County (the "County").

**RECITALS:**

WHEREAS, the Applicant's predecessor in interest, Rancho Viejo de Santa Fe, Inc. received approval of a 454 lot subdivision named La Entrada Phase 1 (the "Project") and located at Rancho Viejo within central or northern Santa Fe County; and

WHEREAS, Santa Fe County Ordinance No. 2006-02 and Santa Fe County Ordinance No. 2012-01 ("Ordinances") requires, among other things, the Applicant to provide Affordable Units within La Entrada Phase I and/or comply with the Ordinances through alternative means; and

WHEREAS, the County has adopted Resolution No. 2010-189, the Santa Fe County Affordable Housing Regulations ("Regulations") to implement the Ordinance; and

WHEREAS, pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan, which was approved by the Affordable Housing Administrator, and

WHEREAS, on December 7, 2006, Applicant and the County entered into the Santa Fe County Affordable Housing Agreement La Entrada Phase I to memorialize the Applicant's obligations under Santa Fe County Ordinances and Affordable Housing Regulations in La Entrada Phase 1 (the "Agreement") which Agreement was recorded on December 11, 2006, as Instrument # 1462697 of the records of the Santa Fe County Clerk, Santa Fe, New Mexico; and

WHEREAS the Agreement was amended twice by written Amendments dated January 31, 2008, and recorded January 31, 2008 as Instrument #1514008 and a second Amendment dated December 2, 2008 and recorded December 9, 2008 as Instrument #1546175; and

WHEREAS, paragraph 11G of the Agreement states that it shall not be altered, changed or amended except by instrument in writing executed by the parties hereto; and

WHEREAS the parties wish to further amend their Agreement and restate the Agreement, for the sake of clarity and simplicity, and through this Agreement the Parties intend to memorialize the Applicant's obligations under the Ordinances and Regulations.

## AGREEMENT

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

The Agreement dated December 7, 2006, as amended is further amended and restated by this Amended and Restated Agreement.

1. **Definitions.** All capitalized terms have the same meanings given them in the Ordinances and Regulations.
2. **Certification of Previous Qualified Transactions.** From the date of the Agreement up until the date of execution of this Amended and Restated Agreement, Applicant has identified one hundred thirty seven (137) lots on which it would build or cause to be built Affordable Units and has delivered fifteen (15) Affordable Units that are Qualified Transactions in compliance with the Regulations. Four (4) of these Affordable Units were sold in Income Range 1; five (5) Affordable Units were sold in Income Range 2; three (3) Affordable Units were sold in Income Range 3; and three (3) Affordable Units were sold in Income Range 4.
3. **Controlling Affordable Housing Ordinance and Regulations.** The Ordinances shall apply to the Project and the Master Plan for the Project, and the applicable affordable housing percentage requirement for the Project is fifteen percent (15%). The Ordinances and the Regulations are applicable and shall govern the Applicant's performance of all obligations under this Amended and Restated Agreement, unless otherwise stated herein.
4. **Required Affordable Units and Lots.** To comply with the fifteen percent (15%) affordable housing requirement for the Project set forth in Section 3 and the 68.1 Affordable Units required for the 454 unit Project, Applicant agrees to cause to be built and sold to Eligible Buyers and Entry Market Buyers an additional fifty three (53) Affordable Units within La Entrada Phase 1 for the Maximum Target Housing Prices for Income Ranges 1, 2, 3 and 4 set forth in the Regulations. The County may revise the Maximum Target Housing Prices by December 31, 2012 and the Applicant agrees to be subject to this revision. Until this revision is made, the Applicant shall be subject to the current Maximum Target Housing Prices in the Regulations. The Maximum Target Housing Prices represent the maximum effective purchase prices to be paid by the Eligible Buyer or Entry Market Buyer, after any subsidies are applied, including the County Affordability Mortgage and Lien. The contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units may be greater than the Maximum Target Housing Prices and shall be set between the ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value. These fifty three (53) Affordable Units are in addition to the fifteen (15) Affordable Units already completed: Applicant agrees to cause to be built and sold thirteen (13) units in Income Range 1; twelve (12) units in Income Range 2; fourteen (14) units in Income Range 3 and fourteen (14) units in Income Range 4. All Affordable Units shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, and other requirements set forth in Exhibit A. The Applicant shall make available two, three and four bedroom Affordable Units for sale, however, the final mix of unit types shall be

determined by the market. In addition, Applicant agrees to pay a Residual Fee for the 0.1 Affordable Unit required, per the formula set forth in the Regulations.

5. **Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices as defined in Section 4 shall be adjusted every three (3) years from the date of execution of this Amended and Restated Agreement. The adjustment shall correspond to an increase or decrease in the revised Maximum Target Housing Prices in the Regulations, and shall be limited to the lesser of five percent (5%) of the Maximum Target Housing Prices set forth in the Regulations, using the anticipated December 31, 2012 revision, or the change in the Maximum Target Housing Prices in the Regulations between the anticipated December 31, 2012 revision and the Maximum Target Housing Prices in effect three (3) years from the date of this Amended and Restated Agreement. In the case of documented substantial and unanticipated increases in the cost of construction that would cause the Applicant to terminate the Project if no action were taken, the Applicant may request the County to amend this Amended and Restated Agreement. Action on such a request may only be taken by the Board of County Commissioners, in its sole discretion.

6. **Adjustment of Maximum Target Housing Prices Due to Homeowners Association Fees.** In the event that the homeowners' association fee applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price, as defined in Section 4, for the Affordable Unit shall be reduced by the Applicant so that the buyer's mortgage loan principal amount is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose the homeowners' association fee to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.

7. **Alternate Means of Compliance in Lieu of Construction.** Notwithstanding any provision of the Ordinances, the parties may agree to an Alternate Means of Compliance for the fulfillment of the Applicant's affordable housing obligations. This Alternate Means of Compliance may involve cash payment, land donation or a combination of both, in the amount of the required total contribution to be made under the Alternate Means of Compliance. Any land donation would be for a housing project (s) within Rancho Viejo. The County would agree to offset the amount to be paid under the Alternate Means of Compliance by the appraised value of the land contributed, as determined by an MAI appraiser. The Applicant would agree to contribute in cash the difference between the appraised value of the land and the total contribution required under the Alternate Means of Compliance. Upon receipt of the required contributions, the County would issue a certificate of compliance with this Amended and Restated Agreement. Applicant may utilize the Alternate Means of Compliance only if the language in the current Ordinances and Regulations is amended to make this approach an economically feasible option.

8. **Development Schedule.** The parties agree that the development schedule for the Project, including individual phases shall use the same ratio for the number of constructed Affordable Units as to the number of constructed market units. For example, in a 100-lot subdivision in which 15 units are required to be affordable, three (3) Affordable Units must be constructed for every twenty (20) market units constructed. If the required number of Affordable Units are not built in a particular forty (40) unit increment, and the Applicant has not been granted an

Affordable Lot Substitution per Section 9, or has not made payment per Section 17 - Remedies, the County may withhold permit approvals of homes in future increments, or impose the payment provisions of Section 17 for the number of required and unsold Affordable Units.

**9. Integration of Affordable Units in the Project.** The lots designated in Exhibit B are the lots upon which Affordable Units shall be built in conformance with the Ordinance and the Regulations. The Applicant may replace a designated Affordable Lot with an alternate Affordable Lot within the subdivision by submitting a lot substitution form, Exhibit C, for consideration by the Affordable Housing Administrator. Absent approval by the Affordable Housing Administrator, the lot substitution will not be implemented.

**10. Marketing Plan.** In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units in the following manner:

- By distribution of flyers and other promotional media.
- By providing information to non-profit entities designated by the County to perform homebuyer training and assist first time homebuyers.

**11. Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer (s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) has been prepared within the previous six (6) months.

B. Recordation of Affordability Mortgage and Lien. The Ordinances' goals of having Affordable Units owner-occupied by Eligible Buyers or Entry Market Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage and Lien, which contains a right of first refusal and shared appreciation requirements, as set forth in the Ordinances and the Regulations. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer or Entry Market Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

D. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

**12. Affordability Lien and Maintenance of Long-Term Affordability.**

Notwithstanding the provisions of Section 11, County and Applicant agree that the Applicant may provide the required Affordable Units through a program with a non-profit housing organization where the non-profit holds a lien in lieu of the County affordability lien provided that the total lien held by the non-profit, including its cash subsidy, can be no greater than three (3) times the amount of cash proven to be contributed by the non-profit from its own funds to subsidize the homeowner. Furthermore, the principal amount of the lien shall equal the contract sales price as shown on the HUD-1 settlement statement, which includes all liens; less the effective sales price, which is the affordable buyer's first mortgage amount plus downpayment from their own funds; less the cash subsidy contributed by entities other than the non-profit. If there remains a difference between the total principal amount of the lien that is allowed per the above formula and the maximum lien amount that can be retained by the non-profit, as set forth above, the difference shall become the principal amount of a separate subordinate County affordability mortgage and lien. The effective sales price paid by the Eligible Buyer or Entry Market Buyer after any subsidy shall be less than or equal to the Maximum Target Housing Price, as set forth in the Affordable Housing Regulations. Applicant agrees that the contract sales price for an Affordable Unit must be set between ninety-five percent (95%) and one hundred percent (100%) of the unit's appraised value. Applicant agrees that the note and mortgage instruments used by the non-profit to secure this lien shall represent a deferred payment, non-amortizing, zero percent (0%) loan that shall not include a shared appreciation provision, nor include a right of first refusal with the County and must be approved by the Affordable Housing Administrator. Applicant agrees that the difference between the cash subsidy provided by the non-profit and the total amount of the lien retained by the non-profit shall, upon payoff of this subsidy loan, be committed to affordable housing subsidies for households in Santa Fe County, per an agreement between the non-profit and the Applicant, a copy of which shall be provided to the County prior to the first closing of an Affordable Unit under this Amended and Restated Agreement. Applicant agrees that for such a transaction to be certified as a Qualified Transaction, all other provisions of Section 11 of this Amended and Restated Agreement must be satisfied, along with all provisions of the Affordable Housing Ordinance, 2012 Ordinance and Affordable Housing Regulations, unless otherwise stated herein.

13. **Affordable Housing Credit for Qualifying Market Rate Transaction.** County and Applicant agree that the Applicant shall receive an affordable housing credit for a Qualifying Market Rate Transaction to an Eligible Buyer or Entry Market Buyer income-certified by the County as qualifying to purchase within a designated Income Range at a contract sales price, as set forth in the HUD-1 settlement statement, equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Regulations.



Applicant may charge any lot premium or option provided that total contract sales price is equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Regulations. Furthermore, the contract sales price of the Qualifying Market Rate Transaction must be set between ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value and the Qualifying Market Rate Transaction must comply with Section 14 of this Amended and Restated Agreement and all other provisions of the Ordinances and Regulations, unless otherwise stated herein. For a Qualifying Market Rate Transaction, the County agrees that there shall be no County affordability lien or shared appreciation with the County, unless the County provides other assistance where program regulations require such instruments.

**14. Closing of Qualifying Market Rate Transactions.** All Qualifying Market Rate Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualifying Market Rate Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the market rate unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) have been prepared within the previous 6 months.

B. Affordability Mortgage and Lien. If an Eligible or Entry Market Buyer is buying a market rate home where the contract sales price, as set forth in the HUD-1 settlement statement, is less than or equal to the Maximum Target Housing Price for the applicable housing type and Income Range within which the Eligible or Entry Market Buyer qualifies, as set forth in the Regulations, there shall be no Affordability Mortgage and Lien or Shared Appreciation, unless the County provides other assistance where program regulations require such instruments.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualifying Market Rate Transaction, a copy to the County of the Settlement Statement (HUD 1) for the Qualifying Market Rate Transaction, signed by the seller and purchaser.

D. Affordable Housing Credit and Certificate of Compliance. Provided that the Applicant complies with all provisions of this Amended and Restated Agreement, the Ordinances and the Regulations, unless otherwise stated herein, and upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall

grant the Applicant affordable housing credit within the Eligible Buyer's or Entry Market Buyer's Income Range for a Qualifying Market Rate Transaction and shall issue a Certificate of Compliance for the transaction.

15. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinances, the County has agreed to provide the following incentives to the Applicant:

A. Relief from Development Fees. County agrees to waive all development fees for each Affordably Priced Housing Unit and Entry Market Housing Unit to be provided by Applicant hereunder.

B. Relief from County Water Utility Connection Charge. County agrees to waive any water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units and Entry Market Housing Units to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve Applicant of any obligation it may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units and Entry Market Housing Units.

C. Water for Affordably Priced Housing Units. County agrees to supply the Affordably Priced Housing Units and Entry Market Housing Units identified in Section 4 above with water, including all necessary water rights pursuant to Section 8 of the Ordinance, provided that the Affordably Priced Units and Entry Market Units are constructed. This does not obligate the County to provide a water line extension or other water infrastructure to the development.

16. **Successors, Assigns and Buyers of Affordable Lots.** Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Exhibit B is transferred. Applicant agrees to provide County with ten (10) business days advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer or Entry Market Buyer, along with a request for lot substitution as set forth in Section 9 of this Amended and Restated Agreement.

17. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the master plan and final plat for the Project.. Applicant further acknowledges and agrees: (i) that because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, or for Applicant to not provide the required number of Affordable Units in the Project or a phase of the Project, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees and water connection charges that were waived for each house on an Affordable Lot; (c) collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot.

In the event Applicant does not sell Affordable Units to Eligible Buyers or Entry Market Buyers in the amount required in Section 4 within ten (10) years, which time may be extended by the County if a proportional number of market rate units also remains unsold, and has not paid the County 50% of the Maximum Target Housing Price set forth in the Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of the Project;
- C. Collect all development fees and water connection charges that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;
- D. Collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be.
- E. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit B.
- F. Receive 50% of the Maximum Target Housing Price set forth in the Regulations, for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.
- G. Notwithstanding the foregoing provisions, whenever a period of time or specified date is herein prescribed for action to be taken by any party, there shall be excluded from the computation of any such period of time or an extension of such specified date, any delays due to strikes, riots, acts of God (excluding weather delays reasonably and historically known to occur, as defined by a ten (10) year average of the U.S. Meteorological Survey data, or similarly and mutually acceptable data, in the geographical area of the Property), shortages of labor or materials outside of the parameters typically found in the geographical area of the Property, war, terrorism or governmental laws, regulations, restrictions or moratoriums (except to the extent waived or otherwise not applied to the Project or the Property) and unforeseeable delays by the Project lender; provided, however, that both Parties shall use their best and diligent efforts to mitigate the effects of such occurrences with respect to the required action. Subject to the foregoing, time is of the essence with respect to each and every provision of this Amended and Restated Agreement.

**18. Miscellaneous Provisions.**

A. If any provision of this Amended and Restated Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Amended and Restated Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Amended and Restated Agreement shall be construed and enforced in accordance with the Ordinances and Regulations and the laws of the State of New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Amended and Restated Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

D. This Amended and Restated Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Amended and Restated Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Amended and Restated Agreement.

E. At the request of County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Amended and Restated Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Amended and Restated Agreement, subjecting Applicant to the per unit payment provisions of Section 17 above, multiplied by the number of Affordable Units for which information has been requested.

F. This Amended and Restated Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.

G. This Amended and Restated Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.

H. This Amended and Restated Agreement must be filed and recorded.

I. Entering into this Amended and Restated Agreement does not prohibit Applicant or Applicant's buyers from applying for downpayment assistance from the County under the program which may be in effect at that time.

19. This Amended and Restated Agreement shall terminate upon the County issuing a certificate of compliance with the Amended and Restated Agreement in accordance with Section 7.5 of the Regulations. The County may terminate this Amended and Restated Agreement and impose all Section 17 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Amended and Restated Agreement by Applicant.

IN WITNESS WHEREOF, the parties have duly executed this Amended and Restated Affordable Housing Agreement as of this 12th day of December, 2012.

APPLICANT:

Univest-Rancho Viejo, LLC  
A New Mexico limited liability corporation

By: \_\_\_\_\_  
Warren Thompson

Its: \_\_\_\_\_  
Manager

SANTA FE COUNTY

\_\_\_\_\_  
By: \_\_\_\_\_  
Board of County Commissioners

SANTA FE COUNTY AFFORDABLE  
HOUSING ADMINISTRATOR

\_\_\_\_\_  
By: Steven Brugger, AICP

APPROVED AS TO FORM:

\_\_\_\_\_  
By: \_\_\_\_\_  
Stephen Ross, County Attorney

\_\_\_\_\_  
By: Katherine Miller, County Manager



**Exhibit A**  
**AFFORDABLE UNIT PRICING, INCOME RANGES AND OTHER DATA**

Maximum Target Housing Price – Set forth in the Affordable Housing Regulations. The County expects that Maximum Target Housing Prices may be revised no later than December 31, 2012. Applicant agrees to be subject to these revised Maximum Target Housing Prices.

Applicant will make available 2, 3, and 4 bedroom within each Income Range and to have the units spread evenly over the 4 Income Ranges.

Applicant agrees to provide a proportionate number of the required units in Income Ranges 1, 2, 3 and 4 in both Phases 1A and 1B.

Minimum House size (heated square footage) and Minimum Number of Baths:

2 Bedroom/1 Bath 1,000 sq. ft.	3 Bedroom/2 Bath 1,150 sq. ft.	4 Bedroom/2Bath 1,300 sq. ft.
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Minimum Structural Requirements

The homes constructed pursuant to this Amended and Restated Agreement shall comply with Section 3 of the Regulations, unless otherwise stated herein, and shall include the following:

1. Slab on grade
2. 2 by 4 wood frame construction
3. Vinyl, dual pane windows
4. 2-coat stucco system
5. 2" spray on polyurethane foam roof or single ply membrane roof
6. Forced air heat with gas furnace
7. 40 gallon gas water heater
8. Hollow core slab interior doors—insulated steel front entry door
9. Flat panel cabinetry
10. Laminate countertops
11. Freestanding gas or electric range, dishwasher, hood vent and in-sink disposal
12. Acrylic latex interior paint
13. Carpet and vinyl flooring (tile optional)
14. 2-Category 5 telephone outlets
15. 2-RG6 CATV outlets
16. Energy Efficiency – Plans for all homes to be constructed shall be designed with HERS Rating of 70 or below.

17. Garages: Applicant agrees to provide a minimum 1 car garage for all Affordable Units and shall use its best efforts to provide a 2 car garage for future three and four bedroom units.

18. Standard equipment and equipment hookups shall be provided per the Regulations.



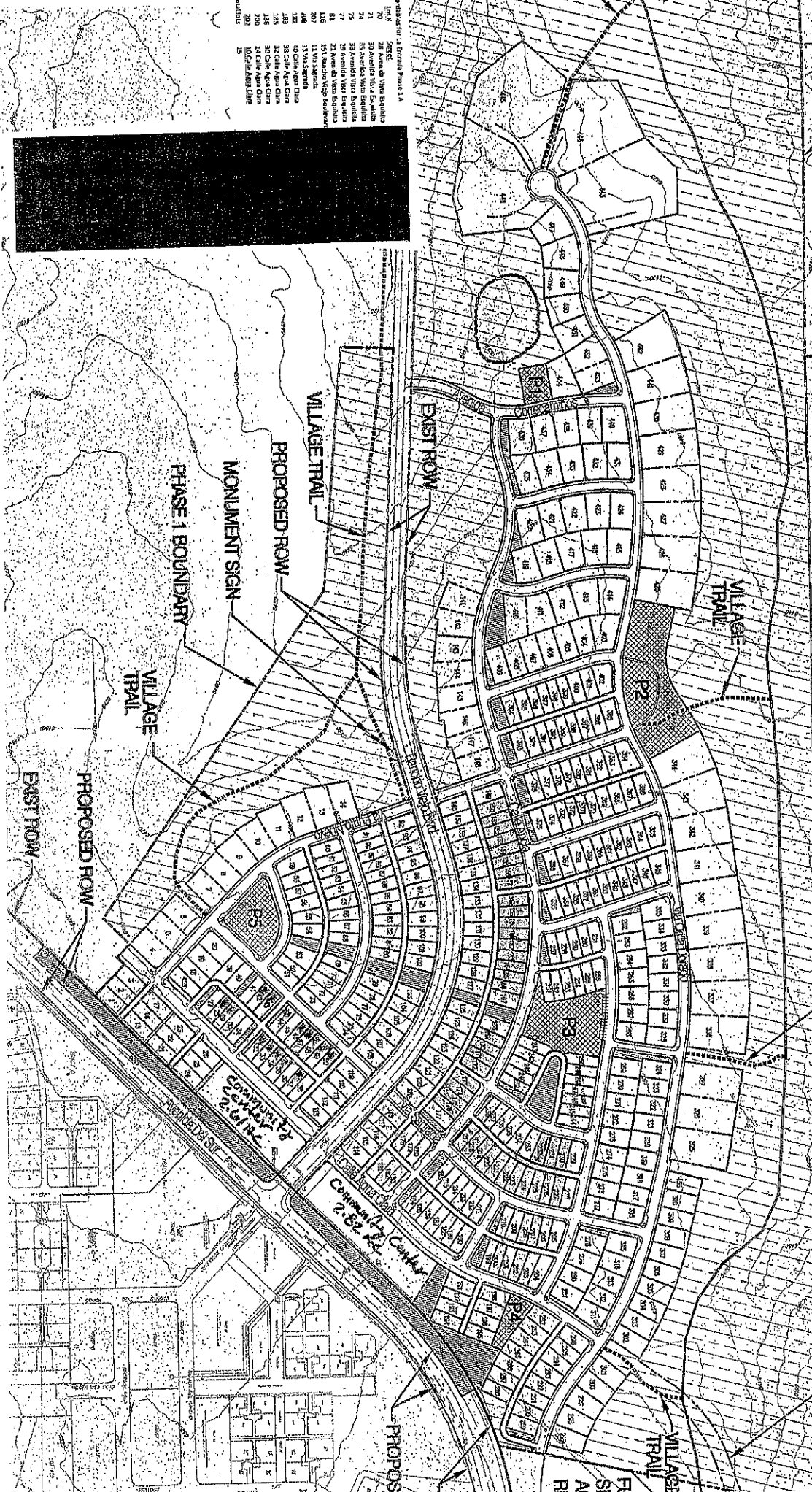
**Exhibit B: PLAN SHOWING AFFORDABLE UNIT LOT  
DESIGNATIONS**

1 BOUNDARY

# Exhibit B

VILLAGE TRAIL

RIGHT-OF-WAY RESERVATION  
FOR FUTURE ROAD EXPANSION  
RIGHT-OF-WAY TO BE DEDICATED  
UNDER SEPARATE PLAT



- Lot 1-15
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**Exhibit C: LOT SUBSTITUTION FORM**

I, \_\_\_\_\_, Affordable Housing Administrator for Santa Fe County, do hereby approve/disapprove the Applicant's request to substitute Lot # \_\_\_\_ in La Entrada Phase 1 for Affordable Lot # \_\_\_\_\_, identified in Exhibit B as one of the required Affordable Lots. Exhibit B to the Amended and Restated Agreement for La Entrada Phase 1 is hereby modified through the execution of this document.

\_\_\_\_\_  
By: Affordable Housing Administrator

Date: \_\_\_\_\_



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SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT  
LA ENTRADA PHASE 1

This Affordable Housing Agreement (the "Agreement") is entered into as of this 7<sup>th</sup> day of December 2006, by and between Rancho Viejo de Santa Fe, a New Mexico Corporation with its principal place of business at 55 Cañada del Rancho (the "Applicant"), and Santa Fe County (the "County").

RECITALS

WHEREAS, the Applicant has requested approval of a 456 lot subdivision to be located at Rancho Viejo de Santa Fe Inc, within central or northern Santa Fe County (the "Project"); and

WHEREAS, the Project is to be completed in phases, with La Entrada Phase I having received Final Plat approval; and

WHEREAS, Santa Fe County Ordinance No. 2006-02 ("Ordinance") requires, among other things, the Applicant to provide Affordable Units within La Entrada Phase I and/or comply with the Ordinance through alternative means; and

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to implement the Ordinance; and

WHEREAS, pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan, which was approved by the Affordable Housing Administrator, and

WHEREAS, Applicant and the County desire to memorialize the Applicant's obligations under the Ordinance and Regulations.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. **Definitions.** All capitalized terms herein have the same meanings given them in the Ordinance and Regulations.

2. **Required Affordable Units and Lots.** Applicant agrees to cause to be built and sold to Eligible Buyers and Entry Market Buyers the Affordable Units within La Entrada Phase 1 (137) set forth in Appendices A and B hereto for the Maximum Target Housing Price indicated.

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All Affordable Units shall meet the minimum structural requirements, minimum bathrooms and floor area, and other requirements set forth in the Regulations.

The Maximum Target Home Prices set forth above shall be valid for one year following execution of the Agreement, and shall be adjusted annually thereafter to the then current Maximum Target Home Prices established by the Affordable Housing Administrator.

3. **Development Schedule.** The development schedule for the Project and individual Phases shall be such that the number of constructed Affordable Units bears the same proportion to the number of constructed market units as the total number of required Affordable Units bears to the total number of approved market units. For example, in a 100 parcel subdivision in which 30 units are required to be affordable, three (3) Affordable Units must be constructed for every 10 market units constructed.

4. **Integration of Affordable Units and Affordable Lots in the Project.** The County agrees that the Affordable Units and Lots are integrated into the Project as required by the Ordinance and Regulations.

5. **Final Plat Recordation for Phase I.** This Affordable Housing Agreement must be filed and recorded simultaneously with the Final Plat for Phase I. Should the Final Plat for Phase I be filed and recorded without an Affordable Housing Agreement, such filing and recordation shall be null and void and without any legal effect.

6. **Marketing Plan.** In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units in the following manner:

- Print Advertising.
- Flyers and Other Promotional Media.
- Listings with Homewise, Inc. and Other Entities Designed to Assist First Time Homebuyers.
- Broker Listings.

7. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinance, County has agreed to provide the following incentives to Applicant:

A. **Density Bonus:** County agrees to grant Applicant a density bonus of (i) 0 units for the provision of the Affordably Priced Housing Units identified in Paragraph 2 hereof and (ii) 0 units for the provision of the Entry Market Housing Units identified in Paragraph 2 hereof, for a total density bonus of 0 units over and above the number of units it would have otherwise been entitled to under the Santa Fe County Land Development Code.

B. **Relief from Development Fees.** County agrees to waive all development fees for each Affordably Priced Housing Unit and Entry Market Housing Unit to be provided by Applicant hereunder.

C. **Relief from Additional County Water Utility Connection Charge.** County agrees to waive any additional water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units and Entry Market Housing Unit to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve

Applicant of any obligation it may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units and Entry Market Housing Units.

D. Water for Affordably Priced Housing Units: County agrees to supply the Affordably Priced Housing Units and Entry Market Housing Units identified in Paragraph 2 above with water, including all necessary water rights pursuant to Section 8 of Santa Fe County Ordinance No. 2006-02, provided that the affordably priced units as individuals in this agreement are constructed within 5 years of execution of this agreement. Failure to construct these units within the 5 year time frame shall constitute a breach of this agreement and the County shall be entitled to remedies set forth in Section 7C.

E. Energy Efficiency Measures. Applicant agrees to provide the following energy efficiency measures for each housing unit in the Project:

1. Slab on grade footing & stem concrete foundation
2. 2 x 4 wood frame construction
3. Vinyl, dual pane windows
4. 2-Coat Sonneborn elastomeric stucco
5. R-20 Total exterior wall insulation
- \* 6. R-30 blown insulation for total R-44 ceiling component
7. 2" spray on Polyurethane foam roof application
- \* 8. 2-car attached garages
9. Forced air heat with gas furnace
10. 40 Gallon gas water heater
- \* 11. Tape & skip trowel - Hand applied drywall installation
- \* 12. Masonite EP-6 slab interior doors - Steel front entry door
- \* 13. EZ-set door hardware
- \* 14. Mastercraft melamine cabinets
- \* 15. Kohler/Sterling plumbing fixtures
- \* 16. Sterling tub/shower units
- \* 17. Laminate countertops
18. Maytag appliances
- \* 19. Glidden acrylic latex interior paint
20. Carpet & Vinyl flooring (tile optional)
21. 2-Category 5 telephone outlets
22. 2-RG6 CATV outlets

Pursuant to § 10 of the Ordinance, these energy efficiency measures allow Applicant to earn incentives it otherwise would not be eligible for on Entry Market Housing Units, which incentives are reflected in subparagraphs A through D hereof.

F. Incentives authorized by the New Mexico Affordable Housing Act as contemplated in Section XV of Ordinance 2006-02 and as set forth in duly adopted ordinances.

8. **Successors, Assigns, and Buyers of Affordable Lots.** Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Paragraph 2 and in Exhibit A is transferred. Applicant agrees to provide County with ten (10) business days' advance written notice of its intent to transfer an Affordable Lot to

someone other than an Eligible Buyer or Entry Market Buyer, such notice to include a copy of the sales contract or other agreement by which such third party shall irrevocably assume Applicant's obligations hereunder with respect to such Affordable Lot. County shall have the right to (i) request further assurances that Applicant's obligations with respect to the Affordable Lot are being assumed by the transferee; (ii) require changes to the portion of the sales contract or other agreement concerning the transferee's assumption of Applicant's obligations; and (iii) attend the closing of the transfer to assure that the sales contract or other agreement whereby the transferee assumes Applicant's obligation is executed.

#### 9. Closing of Qualified Transactions.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, MAI certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (ii) have been prepared within the previous 6 months.

B. Recordation of Affordability Mortgage or Lien. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD 1) for the Qualified Transaction, signed by the seller, purchaser and mortgagee.

10. Remedies. Applicant acknowledges and agrees that, but for this Affordable Housing Agreement, County would not have approved the final plat for the Project or the phase of the Project to which this Affordable Housing Agreement relates. Applicant further acknowledges and agrees (i) that, because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and infeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, is to pay County the Maximum Target Home Price for those units, so as to enable County to provide affordable housing elsewhere. Accordingly, County shall be entitled to the following remedies for the indicated breaches by Applicant of this

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Affordable Housing Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

A. Selling Homes on Affordable Lots to Non-Eligible Buyers or Non-Entry Market Buyers: In the event Applicant sells homes built on Affordable Lots to someone other than an Eligible Buyer or Entry Market Buyer, County shall be entitled to:

- (i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- (ii) refuse to grant preliminary or final plat approval for any future phase of the Project;
- (iii) collect all development fees and water connection charges that were waived, pursuant to Paragraph 7(B)-(C) of this Affordable Housing Agreement, for each house on an Affordable Lot Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;
- (iv) collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be; and/or
- (ii) collect as damages the Maximum Target Home Price for each Affordable Unit that Applicant was required to build on the Affordable Lot that it improperly sold to a non-Eligible Buyer or non-Entry Market Buyer, such damages to be paid into the fund or trust established pursuant to Section 18(G) of the Ordinance.

B. Breach of Agreement to Provide Energy Efficiency Measures. In the event Applicant fails to provide the energy efficiency measures identified in Paragraph 7(E) throughout the entire project, County shall be entitled to:

- (i) an injunction from a Court of competent jurisdiction requiring Applicant to comply with its energy efficiency obligations;
- (ii) refuse to grant preliminary or final plat approval for any future phase of the Project; and/or
- (iii) collect as damages 20% of the average price of market units in the Project or phase that this Affordable Housing Agreement relates to times the number of units the Applicant received as a density bonus for agreeing to provide the energy efficiency measures, such damages to be paid into the fund or trust established pursuant to Section 18(G) of the Ordinance. For example, if the Applicant got a density bonus of 3 units for providing energy efficiency measures throughout the Project as a whole and the average price of market units in the Project or phase was \$400,000, County could collect as damages \$240,000.

C. Failure to Timely Build Affordable Units. In the event the Applicant fails to timely build Affordable Units, the County shall be entitled to:

- (i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder; and/or
- (ii) refuse to grant preliminary or final plat approval for any future phase of the Project.



(iii) Revocation of all applicable incentives set forth in paragraph 10 of this agreement, including but not limited to declining to provide water rights credits for those affordable units not timely constructed.

## 11. Miscellaneous Provisions

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations and the Laws of the State of New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

D. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. Applicant shall provide to the County on a quarterly basis documentation establishing its compliance with this Agreement. The County may request any additional documentation it deem relevant to assessing the Applicant's compliance with this Agreement. Failure to provide documentation which the County deems sufficient to determine compliance shall constitute a breach of this agreement. The County shall be entitled to inspect Applicant's records and development site periodical to ensure compliance with this Agreement, the Affordable Housing Ordinance and the Regulations.

F. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to the development. —

G. This Agreement shall not be altered, changed or amended except by instrument in writing — executed by the parties hereto. —


12. This Agreement shall terminate upon the County issuing a certificate of compliance with Affordable Housing Agreement in accordance with paragraph 7.5 of the Regulations. The County may terminate this Agreement and impose all requirements waived as incentives under this Agreement in the event of a breach of the Agreement by Applicant.

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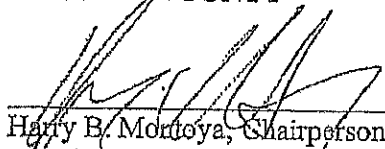
SFC CLERK RECORDED 12 11 2006

IN WITNESS WHEREOF, the parties have duly executed this Affordable Housing Agreement as of this 7<sup>th</sup> day of December, 2006.

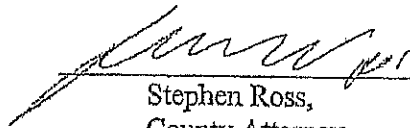
APPLICANT:  
Rancho Viejo de Santa Fe, Inc.  
A New Mexico Corporation

  
By: **Isaac J. Pino**  
As: *Vice President & General Manager*

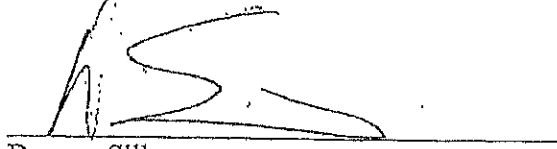
SANTA FE COUNTY

  
Harry B. Montoya, Chairperson  
Board of County Commissioners

APPROVED AS TO FORM:

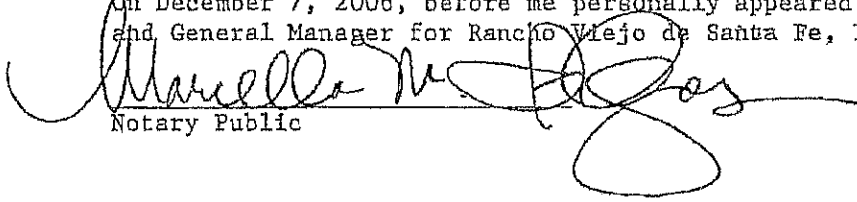
  
Stephen Ross,  
County Attorney

SANTA FE COUNTY AFFORDABLE  
HOUSING ADMINISTRATOR

  
Duncan Sill

State of New Mexico  
County of Santa Fe

On December 7, 2006, before me personally appeared Isaac J. Pino, Vice President and General Manager for Rancho Viejo de Santa Fe, Inc.

  
Notary Public

OFFICIAL SEAL  
Marcela M. Salazar  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: 7/26/2010

**Santa Fe County Affordable Housing  
Income Ranges and Maximum Target Home Prices**

The Regulation's definition of Area Median Income recognizes that there may be a discrepancy between the AMI established by the United States Department of Housing and Urban Development ("HUD") and the AMI inferred from HUD's actual income limits. In that event, the Regulations provide that the AMI, adjusted for various household size, inferred from HUD's actual income limits shall be used to establish the Income Ranges and Maximum Target Home Prices in the Regulations. Using the AMI inferred from HUD's actual income limits for FY 2006, current as of May 30, 2006, the following are the Income Ranges for the indicated household sizes within each Income Range:

Income Range	Income Ranges for Indicated Household Size							
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
1	\$0 to \$30,025	\$0 to \$34,320	\$0 to \$38,610	\$0 to \$42,900	\$0 to \$46,310	\$0 to \$49,765	\$0 to \$53,175	\$0 to \$56,630
2	\$30,026 to \$36,950	\$34,321 to \$42,250	\$38,611 to \$47,500	\$42,901 to \$52,800	\$46,311 to \$57,000	\$49,766 to \$61,250	\$53,176 to \$65,450	\$56,631 to \$69,700
3	\$36,951 to \$46,190	\$42,251 to \$52,800	\$47,501 to \$59,400	\$52,801 to \$66,000	\$57,001 to \$71,250	\$61,251 to \$76,560	\$65,451 to \$81,810	\$69,701 to \$87,125
4	\$46,191 to \$55,430	\$52,801 to \$63,360	\$59,401 to \$71,280	\$66,001 to \$79,200	\$71,251 to \$85,500	\$76,561 to \$91,870	\$81,811 to \$98,170	\$87,126 to \$104,550

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Based upon the above Income Ranges, the following are the current Maximum Target Home Prices for the different unit sizes:

<i>Income Range</i>	<i>Maximum Target Home Price Studio</i>	<i>Maximum Target Home Price 1 Bedroom</i>	<i>Maximum Target Home Price 2 Bedroom</i>	<i>Maximum Target Home Price 3 Bedroom</i>	<i>Maximum Target Home Price 4 Bedroom</i>
Income Range 1	\$76,500	\$87,000	\$100,000	\$112,000	\$125,000
Income Range 2	\$103,500	\$114,000	\$130,000	\$146,000	\$162,000
Income Range 3	\$129,500	\$140,000	\$160,000	\$180,000	\$200,000
Income Range 4	\$164,500	\$175,000	\$200,000	\$225,000	\$250,000

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Exhibit A

Lot Number	Street
388	Via Punto Nuevo
391	Via Punto Nuevo
381	Via Punto Nuevo
379	Via Punto Nuevo
371	Vuelta Tecolote
360	Vuelta Tecolote
363	Vuelta Tecolote
348	Camino de las Rositas
363	Camino de las Rositas
259	Camino de las Rositas
247	Camino Cerro Escondido
244	Camino Cerro Escondido
153	Calle Ancla
161	Calle Ancla
154	Calle Ancla
171	Calle Ancla
237	Camino Puerta Solita
234	Camino Puerta Solita
222	Via Sagrada
208	Via Sagrada
71	Via Sagrada
48	Via Sagrada
46	Calle Agua Clara
188	Calle Agua Clara
185	Calle Agua Clara
39	Calle Agua Clara
36	Calle Agua Clara
35	Calle Agua Clara
28	Calle Agua Clara
75	Avenida Vista Esquisita
81	Avenida Vista Esquisita
84	Avenida Vista Esquisita
89	Avenida Vista Esquisita
83	Avenida Vista Esquisita
TOTAL LOTS	34

Lot Number	Street
399	Calle Cuervo Negro
397	Calle Cuervo Negro
396	Calle Cuervo Negro
389	Via Punto Nuevo
390	Via Punto Nuevo
380	Via Punto Nuevo
373	Via Punto Nuevo
81	Via Punto Nuevo
370	Vuelta Tecolote
372	Vuelta Tecolote
373	Vuelta Tecolote
362	Vuelta Tecolote
351	Vuelta Tecolote
359	Vuelta Tecolote
347	Camino de las Rositas
349	Camino de las Rositas
350	Camino de las Rositas
361	Camino de las Rositas
352	Camino de las Rositas
354	Camino de las Rositas
260	Camino de las Rositas
258	Camino de las Rositas
261	Camino Cerro Escondido
256	Camino Cerro Escondido
250	Camino Cerro Escondido
246	Camino Cerro Escondido
228	Camino Cerro Escondido
205	Camino Cerro Escondido
204	Camino Cerro Escondido
231	Camino Puerta Solita
232	Camino Puerta Solita
235	Camino Puerta Solita
226	Via Sagrada
225	Via Sagrada
221	Via Sagrada
219	Via Sagrada
73	Via Sagrada
213	Via Sagrada
214	Via Sagrada
50	Via Sagrada
44	Via Sagrada
43	Calle Pico Azul
32	Calle Pico Azul
151	Calle Ancla
152	Calle Ancla
155	Calle Ancla
166	Calle Ancla
157	Calle Ancla
159	Calle Ancla
159	Calle Ancla
160	Calle Ancla
162	Calle Ancla
163	Calle Ancla
172	Calle Ancla
174	Calle Ancla
164	Calle Ancla
34	Calle Agua Clara
67	Avenida Vista Esquisita
66	Avenida Vista Esquisita
64	Avenida Vista Esquisita
62	Avenida Vista Esquisita
61	Avenida Vista Esquisita
60	Avenida Vista Esquisita
87	Avenida Vista Esquisita
86	Avenida Vista Esquisita
85	Avenida Vista Esquisita
83	Avenida Vista Esquisita
82	Avenida Vista Esquisita
77	Avenida Vista Esquisita
TOTAL LOTS	69

Lot Number	Street
253	Paseo Girasol
168	Calle Ancla
169	Calle Ancla
176	Calle Ancla
243	Calle Ancla
241	Calle Ancla
249	Camino Cerro Escondido
245	Camino Cerro Escondido
230	Camino Puerta Solita
233	Camino Puerta Solita
238	Camino Puerta Solita
218	Via Sagrada
220	Via Sagrada
224	Via Sagrada
227	Via Sagrada
49	Via Sagrada
46	Via Sagrada
42	Via Sagrada
178	Via Sagrada
216	Via Sagrada
209	Via Sagrada
206	Via Sagrada
203	Calle Agua Clara
202	Calle Agua Clara
185	Calle Agua Clara
181	Calle Agua Clara
33	Calle Agua Clara
80	Calle Agua Clara
27	Calle Agua Clara
116	Rancho Viejo Boulevard
111	Rancho Viejo Boulevard
78	Avenida Vista Esquisita
76	Avenida Vista Esquisita
72	Avenida Vista Esquisita
TOTAL LOTS	34

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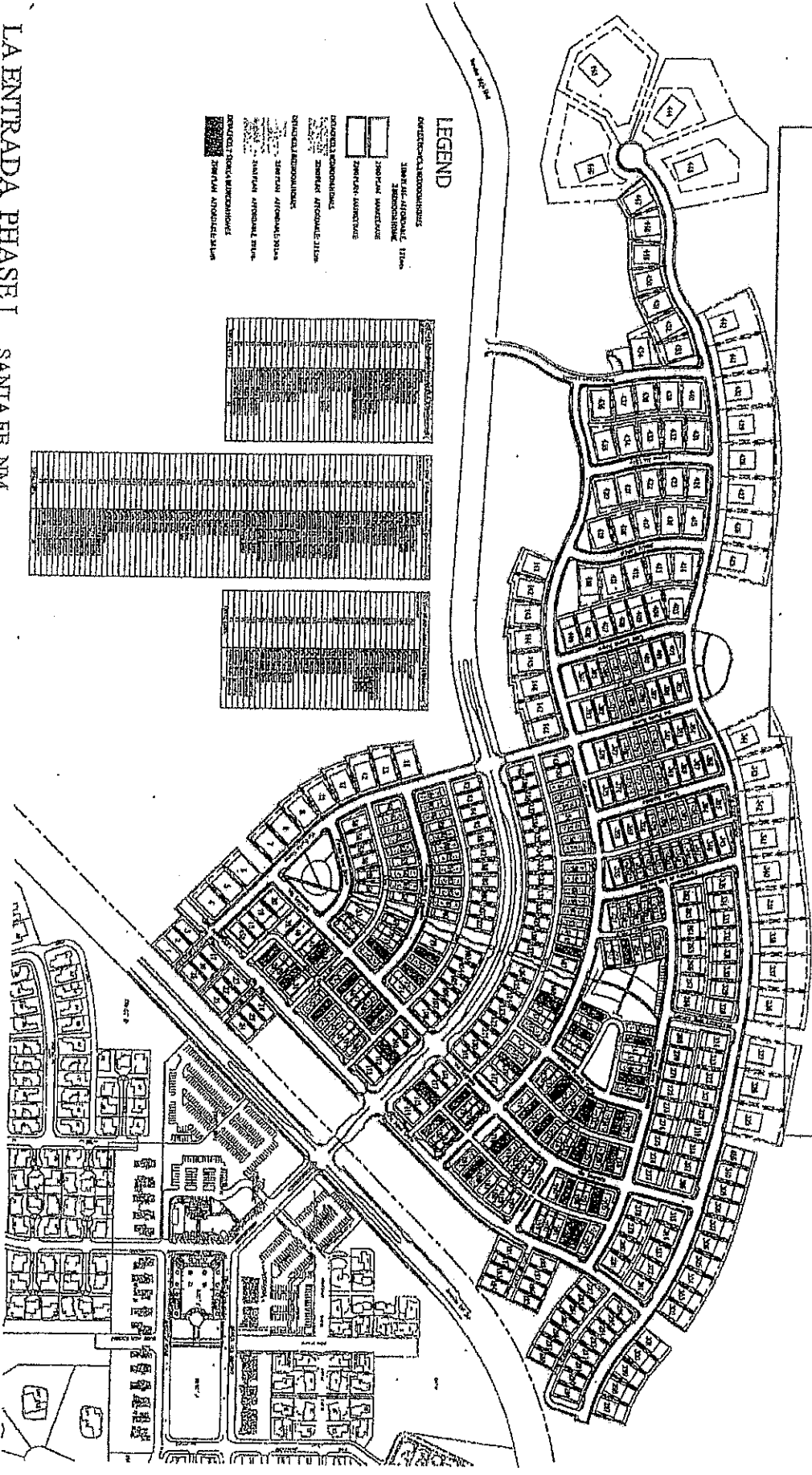
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Exhibit A

LA ENTRADA PHASE I  
RANCHO VIEJO DE SANTA FE, INC.

SANTA FE, NM

DESIGNWORKSHOP  
AFFORDABLE HOUSING DIAGRAM





**AMENDMENT TO THE SANTA FE COUNTY AFFORDABLE  
HOUSING AGREEMENT FOR  
LA ENTRADA PHASE 1**

**THIS AMENDMENT** to the Santa Fe County Affordable Housing Agreement for La Entrada Phase 1, (the Agreement), recorded in the Office of the Santa Fe County Clerk December 11, 2006, is entered into this 31 day of January, 2008, by and between Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as the "County") and Rancho Viejo de Santa Fe Inc., a Corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as "Rancho Viejo").

**The parties agree to amend the Agreement as follows:**

1. Paragraph 7, Subsection E (Energy Efficiency Measures) is replace with the following:

E. Energy Efficiency Measures. Applicant agrees to construct each housing unit covered by this Agreement to meet Energy Star Qualified New Home requirements for Santa Fe County (Climate Zone 5).

Pursuant to subsection 10 of the Ordinance, these energy efficiency measures allow Applicant to earn incentives it is otherwise not eligible for on Entry Market Housing Units, which incentives are reflected in subparagraphs A through D hereof.

The homes constructed pursuant to this Agreement shall include the following:

1. Slab on grade
2. 2 by 4 wood frame construction
3. Vinyl, dual pane windows
4. 2-coat stucco system
5. 2" spray on polyurethane foam roof or single ply membrane roof
6. Forced air heat with gas furnace
7. 40 gallon gas water heater
8. Hollow core slab interior doors – insulated steel front entry door
9. Oak flat panel cabinetry
10. Laminate countertops
11. Freestanding gas range, dishwasher, hood vent and in-sink disposal
12. Acrylic latex interior paint
13. Carpet and vinyl flooring (tile optional)
14. 2-Category 5 telephone outlets
15. 2-RG6 CATV outlets

2. Exhibit A of the Agreement is replaced with Exhibit A attached hereto, listing all the homes to be included in the Agreement and corresponding location map. The total unit count within the required categories remains the same as required by the original Agreement.
3. All provisions of the Agreement not amended or replaced by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to Affordable Housing Agreement for La Entrada Phase 1 as of this    day of January, 2008.

**APPLICANT**

Rancho Viejo de Santa Fe, Inc.  
A New Mexico Corporation

By: Isaac J. Pino  
Isaac J. Pino, Vice President and General Manager

**SANTA FE COUNTY**

By: Roman Abeyta  
Roman Abeyta, County Manager

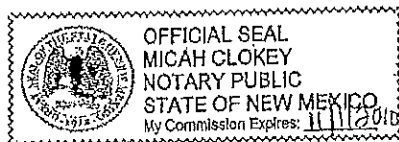


Dated the 31<sup>st</sup> day of January, 2008.

State of New Mexico  
County of Santa Fe County  
On January 31, 2008, before me personally appeared Isaac J. Pino, Vice President and General Manager for Rancho Viejo de Santa Fe, Inc., and executed this Agreement.

M. Clokey  
Notary Public

11/1/2010  
My Commission Expires



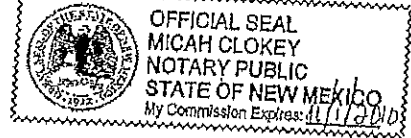


State of New Mexico  
County of Santa Fe County  
On January 31, 2008, before me personally appeared Roman  
Abeyta, County Manager for Santa Fe County, and executed this Agreement.

M. Clokey  
Notary Public

11/1/2010  
My Commission Expires

Approved as to Form



Stephen C. Ross  
Stephen C. Ross, County Attorney

1-29-08



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
AMENDMENT TO AFF HOUSI  
PAGES: 3  
I Hereby Certify That This Instrument Was Filed for  
Record On The 31ST Day Of January, A.D., 2008 at 15:16  
and Was Duly Recorded as Instrument # 1514008  
of The Records Of Santa Fe County

deputy Valerie Espinoza Witness My Hand And Seal Of Office  
County Clerk, Santa Fe, NM



SFC CLERK RECORDED 12/09/2008

**AMENDMENT TO THE AMENDED SANTA FE COUNTY AFFORDABLE HOUSING AGREEMENT FOR LA ENTRADA PHASE 1**

**THIS AMENDMENT** to the Amended Santa Fe County Affordable Housing Agreement for La Entrada Phase 1, (recorded in the Office of the Santa Fe County Clerk January 31, 2008) is entered into this 2 day of December, 2008, by and between Santa Fe County, New Mexico, through its County Manager, a political subdivision of the State of New Mexico (hereinafter referred to as the "County") and Rancho Viejo de Santa Fe Inc., a Corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as "Rancho Viejo").

**THE PARTIES HERETO AGREE, AS FOLLOWS:**

1. Paragraph 7, Subsection E (Energy Efficiency Measures), item 11 is replaced with the following:

11. Freestanding electric range, dishwasher, hood vent and in-sink disposal

The remainder of the Santa Fe County Amended Affordable Housing Agreement for La Entrada Phase 1 (recorded December 11, 2006) shall remain in force and in effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to Amended Affordable Housing Agreement for La Entrada Phase 1 as of this 2<sup>nd</sup> day of December, 2008.

**APPLICANT**  
Rancho Viejo de Santa Fe, Inc.  
A New Mexico Corporation

By: Isaac J. Pino  
Isaac J. Pino, Vice President and General Manager

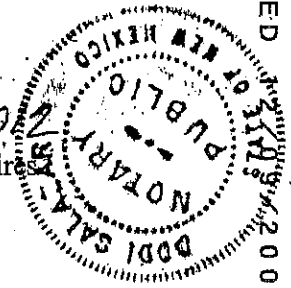
**SANTA FE COUNTY**  
By: Roman Abeyta  
Roman Abeyta, County Manager

Dated the 2 day of December, 2008.

State Of New Mexico  
Santa Fe County

On November 14, 2008, before me personally appeared Isaac J. Pino,  
Vice President and General Manager for Rancho Viejo de Santa Fe, Inc., and executed  
this agreement.

  
Notary Public

4/1/2011  
My Commission Expires  


State of New Mexico  
Santa Fe County

On December 2, 2008, before me personally appeared Roman Abeyta,  
County Manager for Santa Fe County, and executed this agreement.

  
Notary Public

11/1/10  
My Commission Expires  

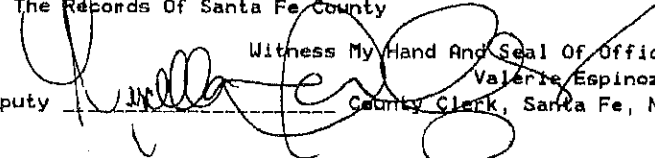

Approved as to form

  
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
AGREEMENT (NC)  
PAGES: 2

I Hereby Certify That This Instrument Was Filed for  
Record On The 9TH Day Of December, 2008 at 01:31:40 PM  
and Was Duly Recorded as Instrument # 1546175  
Of The Records Of Santa Fe County

  
Witness My Hand And Seal Of Office  
Valerie Espinoza  
Deputy County Clerk, Santa Fe, NM

**AMENDMENT TO THE AMENDED SANTA FE COUNTY AFFORDABLE HOUSING AGREEMENT FOR LA ENTRADA PHASE 1**

**THIS AMENDMENT** to the Amended Santa Fe County Affordable Housing Agreement for La Entrada Phase 1, (recorded in the Office of the Santa Fe County Clerk January 31, 2008) is entered into this 2 day of December, 2008, by and between Santa Fe County, New Mexico, through its County Manager, a political subdivision of the State of New Mexico (hereinafter referred to as the "County") and Rancho Viejo de Santa Fe Inc., a Corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as "Rancho Viejo").

**THE PARTIES HERETO AGREE, AS FOLLOWS:**

- 1. Paragraph 7, Subsection E (Energy Efficiency Measures), item 11 is replaced with the following:


11. Freestanding electric range, dishwasher, hood vent and in-sink disposal

The remainder of the Santa Fe County Amended Affordable Housing Agreement for La Entrada Phase 1 (recorded December 11, 2006) shall remain in force and in effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to Amended Affordable Housing Agreement for La Entrada Phase 1 as of this 2<sup>nd</sup> day of December, 2008.

**APPLICANT**

Rancho Viejo de Santa Fe, Inc.  
A New Mexico Corporation

By:   
Isaac J. Pino, Vice President and General Manager

**SANTA FE COUNTY**

By:   
Roman Abeyta, County Manager

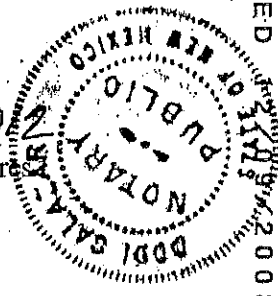
Dated the 2 day of December, 2008.

State Of New Mexico  
Santa Fe County

On *November 17*, 2008, before me personally appeared Isaac J. Pino,  
Vice President and General Manager for Rancho Viejo de Santa Fe, Inc., and executed  
this agreement.

*[Signature]*  
Notary Public

*4/1/2010*  
My Commission Expires



State of New Mexico  
Santa Fe County

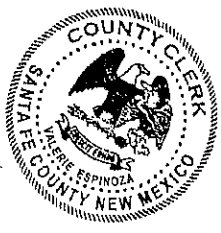
On *December 2*, 2008, before me personally appeared Roman Abeyta,  
County Manager for Santa Fe County, and executed this agreement.

*[Signature]*  
Notary Public

*11/1/10*  
My Commission Expires  
OFFICIAL SEAL  
NICAH CLOKEY  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: *11/1/10*

Approved as to form

*[Signature]*  
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

AGREEMENT (NC)  
PAGES: 2

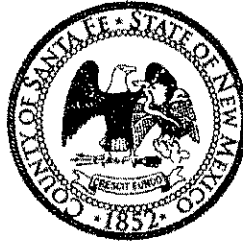
I Hereby Certify That This Instrument Was Filed for  
Record On The 9TH Day Of December, 2008 at 01:31:40 PM  
and Was Duly Recorded as Instrument # 1546175  
Of The Records Of Santa Fe County

*[Signature]*  
Witness My Hand And Seal Of Office  
Valerie Espinoza  
Deputy County Clerk, Santa Fe, NM

**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**Date:** December 4, 2012  
**To:** Santa Fe Board of County Commissioners  
**From:** Steven Brugger, <sup>SRB</sup>Affordable Housing Administrator  
**via:** Robert Griego, Planning Manager <sup>RG</sup>  
Penny Ellis-Green, Interim Growth Management Director <sup>PEG</sup>,  
**Re:** La Pradera Amended and Restated Affordable Housing Agreement

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### **Background and Summary**

At the November 27 BCC Affordable Housing meeting, Commissioners discussed a proposed amended and restated affordable housing agreement for La Pradera. This would replace the original agreements and amendments that were executed between 2004 and 2010. This proposed amended and restated agreement is attached as Exhibit 1. Staff has met numerous times with the developer and with the Attorney's Office to craft the agreement and is satisfied that this is a workable agreement. The main provisions of the Agreement are summarized herein, and follow the business points that were discussed at previous meetings.

- La Pradera's affordable housing obligation under its masterplan approval of September 13, 2011 is reduced from 30% of a total of 27 units to 15%; this reduces the affordable housing obligation under that approval from 8 units to 4; prior to this approval and under previous agreements, La Pradera had an existing affordable housing obligation of 36 units; after taking into account the 25 certified affordable units that have been built to-date, the remaining affordable housing obligation is 15 units, which includes 4 units required under the September 13, 2011 approval;
- The affordable housing guidelines under which La Pradera operates under its affordable housing agreements and amendments from 2004-2010 would be changed from the Community College District Ordinance and Regulations to the 2006-02 and 2012-1 Affordable Housing Ordinances and the Resolution 2010-189 Affordable Housing Regulations; this would enable all of the La Pradera approvals and affordable housing obligations to be consistently administered under one set of standards;
- Maximum Target Housing Prices, defined as the effective purchase prices to be paid by an Eligible Buyer or Entry Market Buyer from the proceeds of a first mortgage and the homebuyer's own down payment funds, are set forth in the Affordable Housing Regulations and may be

updated by December 31, 2012; La Pradera agrees to be subject to these 2012 Maximum Target Housing Prices; for an affordable housing sale, contract sales price may be above the Maximum Target Housing Price and must be set in a range between the unit's appraised value and 95% of appraised value;

- The 2012 Maximum target housing prices are locked in for three years from the date of execution of the agreement, after which time they are adjusted using the current Maximum Target Housing Prices in the Regulations, with a cap on how much the prices can change over the 3 year period; this differs from the annual adjustments and no limitation on increases or decreases required in the current Agreement;
- Using current Regulations as a guide, an adjustment in Maximum Target Housing Prices due to high homeowners association fees are permitted; \$100 per month is viewed as the threshold beyond which HOA fees are viewed as "high" and require a commensurate adjustment in price;
- Whereas the existing agreement and the current Regulations require a mix of 50% 3 bedroom units, and 25% 4 bedroom and 2 bedroom units, this agreement is not prescriptive, and leaves it to the market to decide the proper mix between housing types;
- To insure consistency with the La Entrada agreement, language was added to this agreement that states that plans for all homes to be constructed shall be designed with a HERS Rating of 70 or below;
- The developer and County may be able to negotiate an alternate means of compliance for satisfaction of the affordable housing obligations; these intentions are announced in this agreement, as is the need to revise the current language in the Ordinance and Regulations pertaining to the use of land donation and/or cash contributions as an alternate means of compliance; the previous agreement did not address this issue;
- This agreement makes it easier to substitute affordable lots and market lots through administrative action, while imposing penalties for failure to build affordable units with market units in the agreed upon proportions by phase;
- Language in the previous agreement requiring the use of print advertising and broker listings as part of the marketing plan was deleted;
- In the proposed agreement, the developer can obtain affordable housing credit for selling a market rate unit to an income certified Eligible Buyer or Entry Market Buyer, as defined in the Regulations, provided that the contract sales price is equal to or less than the Maximum Target Housing Price; in such a case, there would be no County Affordability Mortgage and Lien and no shared appreciation; for these transactions, there shall be no limit on lot premiums or options provided that the total contract sales price is at or under the maximum target home price ceiling for the particular Income Range.
- The time period for constructing all of the affordable homes required has been set at five years, with a possibility for an extension in the event that market rate sales, as well as affordable sales occur at a pace slower than a five year absorption;
- The Remedies provision in the proposed agreement has been revised to reduce the amount of damages due the County in the event of a breach in the agreement. Damages for failure to meet energy efficiency standards have been removed, while damages for failure to timely sell affordable units or selling affordables as market rate have been modified.
- A non-profit entity that contributes hard cash to subsidize the transaction is allowed to hold a lien in lieu of the County affordability mortgage and lien in a total amount, including its cash contribution, of no greater than three times the amount of hard cash contributed. The principal amount of the lien is calculated in the following manner: contract sales price (from the HUD-1 and which includes all liens); less the effective sales price (equals the homebuyer's first

mortgage amount plus down payment from their own funds); less the amount of cash subsidy contributed by entities other than the non-profit). If there is a difference between the formula-defined principal amount of the lien and the maximum lien amount that can be retained by the non-profit, the difference would become the principal amount of a subordinate County affordability mortgage and lien.

In this draft of the Amended and Restated Agreement, staff has attempted to address Commissioner concerns regarding the terms for a non-profit's holding of the affordability mortgage and lien and concerns regarding long term affordability. Staff has also made minor clarifications and language changes so that even greater consistency between this agreement and the La Entrada agreement can be achieved. Toward that end, staff has asked the developer to provide a map which illustrates the location of the affordable lots set forth in Exhibit A. Staff's intent is to provide this map at the meeting.

### **Staff Recommendation**

Approve the Amended and Restated Affordable Housing Agreement for La Pradera, included herein as Exhibit 1. Direct staff to continue work on revising the Alternate Means of Compliance language in the Ordinance and the Regulations.

### **Attachments**

- Exhibit 1: Amended and Restated Affordable Housing Agreement for La Pradera
- Exhibit 2: Affordable Housing Agreement for La Pradera
- Exhibit 3: Amended Affordable Housing Agreement for La Pradera
- Exhibit 4: Affordable Housing Agreement for La Pradera Phase II
- Exhibit 5: Second Amendment to the Affordable Housing Agreement for La Pradera Phase I
- Exhibit 6: Affordable Housing Agreement for La Pradera Phase III
- Exhibit 7: Third Amended Affordable Housing Agreement for La Pradera
- Exhibit 8: Second Amendment to Affordable Housing Agreement for La Pradera Phase III
- Exhibit 9: First Amendment to Affordable Housing Agreement for La Pradera Phase III





**AMENDED AND RESTATED  
SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT  
LA PRADERA**

This Amended and Restated Santa Fe County Affordable Housing Agreement (the “Amended and Restated Agreement”) for La Pradera is entered into this 12th day of December, 2012, between Gardner Associates LLC and La Pradera Associates LLC as developers of La Pradera (the “Applicant”) and Santa Fe County (the “County”).

**RECITALS:**

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera on September 10, 2004 (the “Agreement”); and

WHEREAS, the County and the Applicant entered into the Amended Affordable Housing Agreement for La Pradera on January 10, 2006 (the “First Amendment”); and

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase II on April 23, 2007 (the “Phase II Agreement”); and

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase III on April 23, 2007 (the “Phase III Agreement”); and

WHEREAS, the County and the Applicant entered into the Second Amended Affordable Housing Agreement for La Pradera on June 5, 2007 (the “Second Amendment”); and

WHEREAS the County and the Applicant entered into the First Amendment to the Phase III Agreement on September 23, 2010 (the “First Phase III Agreement Amendment”); and

WHEREAS, the County and the Applicant entered into the Second Amendment to the Phase III Agreement on September 23, 2010 (the “Second Phase III Agreement Amendment”); and

WHEREAS, the County and the Applicant entered into the Third Amended Affordable Housing Agreement for La Pradera on September 23, 2010 (the “Third Amendment”) which identified the following thirty-six (36) lots as providing affordable homes within the County’s Affordable Housing Program: 51A, 51B, 32, 34(1 unit), 35, 39, 53, 54, 9, 22, 23A, 23B, 48, 71, 72, 80, 82, 87, 98, 99, 102, 118, 123, 141, 142, 164, 166, 167, 168, 169, 170, 198, 205, 222, 224 and 226; and

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12 (the “Community College District”) and the Community College District Affordable Housing Regulations, dated July 31, 2002 (the “Regulations”) which have governed these agreements and amendments; and

WHEREAS, the Applicant has submitted and the County has approved a master plan amendment and preliminary and final plat and development plan approval (the "Approval") that results in the creation of twenty-seven (27) additional residential units on September 13, 2011; and

WHEREAS, Santa Fe County Ordinance No. 2006-02 (the "Affordable Housing Ordinance") and Santa Fe County Resolution 2010-189 (the "Affordable Housing Regulations") were in effect at the time of the Approval, making the Approval subject to a thirty percent (30%) affordable housing requirement and all other requirements set forth in the Affordable Housing Ordinance and Affordable Housing Regulations; and

WHEREAS, subsequent to the date of the Approval, the County approved Santa Fe County Ordinance No. 2012-01 (the "2012 Ordinance") which reduces the thirty percent (30%) affordable housing requirement for a major project to fifteen percent (15%); and

WHEREAS, the Applicant desires that the County apply the fifteen percent (15%) affordable housing requirement to the Approval, which would result in a reduction of the required affordable housing for the Approval from eight (8) Affordable Units to four (4) Affordable Units; and

WHEREAS the County and the Applicant wish to restate and amend their previous Agreements entirely, for the sake of clarity and simplicity, and through this Amended and Restated Agreement the parties shall memorialize the Applicant's obligations under the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations.

### AGREEMENT

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

The Agreement, as amended, the Phase II Agreement and the Phase III Agreement, as amended, are further amended and restated by this Amended and Restated Agreement.

1. **Definitions.** All capitalized terms have the same meanings given them in the Affordable Housing Ordinance and Affordable Housing Regulations.
2. **Certification of Previous Qualified Transactions.** From the date of the Agreement up until the date of execution of this Amended and Restated Agreement, Applicant has identified thirty-six (36) lots on which it would build or cause to be built Affordable Units and has delivered twenty-five (25) Affordable Units that are Qualified Transactions in compliance with the Regulations. Six (6) of these Affordable Units were sold in Income Range 1; ten (10) Affordable Units were sold in Income Range 2; and nine (9) Affordable Units were sold in Income Range 3. Adding the four (4) Affordable Unit requirement of the Approval to the original thirty-six (36) Affordable Unit Requirement, the total Affordable Unit Requirement shall be forty (40) Affordable Units.
3. **Controlling Affordable Housing Ordinance and Regulations.** The Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations shall apply to La

Pradera and shall govern the Applicant's performance of all obligations under this Amended and Restated Agreement, unless otherwise stated herein. The applicable affordable housing percentage requirement for La Pradera, including the Approval, is fifteen percent (15%).

**4. Required Affordable Units.** To comply with the fifteen percent (15%) affordable housing requirement for La Pradera set forth in Section 3 and the forty (40) Affordable Units required for La Pradera for all approved master plans, plats and development plans up to and including the Approval, Applicant agrees to cause to be built and sold to Eligible Buyers and Entry Market Buyer an additional fifteen (15) Affordable Units within La Pradera for the Maximum Target Housing Prices for Income Ranges 1, 2, 3 and 4 set forth in the Affordable Housing Regulations. The County may revise the Maximum Target Housing Prices by December 31, 2012 and the Applicant agrees to be subject to this revision. Until this revision is made, the Applicant shall be subject to the current Maximum Target Housing Prices in the Affordable Housing Regulations. The Maximum Target Housing Prices represent the maximum effective purchase prices to be paid by the Eligible Buyer or Entry Market Buyer, after any subsidies are applied, including the County Affordability Mortgage and Lien. The contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units may be greater than the Maximum Target Housing Prices and shall be set between ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value. These fifteen (15) Affordable Units are in addition to the twenty-five (25) Affordable Units already completed: Applicant agrees to cause to be built and sold seven (7) units in Income Range 1; three (3) units in Income Range 2; four (4) units in Income Range 3 and one (1) unit in Income Range 4. All Affordable Units shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, and other requirements set forth in the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein. The Applicant shall make available two, three and four bedroom Affordable Units for sale, however, the final mix of unit types shall be determined by the market.

**5. Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices as defined in Section 4 shall be adjusted every three (3) years from the date of execution of this Amended and Restated Agreement. The adjustment shall correspond to an increase or decrease in the revised Maximum Target Housing Prices in the Affordable Housing Regulations, and shall be limited to the lesser of five percent (5%) of the Maximum Target Housing Prices set forth in the Affordable Housing Regulations, using the anticipated December 31, 2012 revision, or the change in the Maximum Target Housing Prices in the Affordable Housing Regulations between the anticipated December 31, 2012 revision and the Maximum Target Housing Prices in effect three (3) years from the date of this Amended and Restated Agreement. In the case of documented substantial and unanticipated increases in the cost of construction that would cause the Applicant to terminate development in La Pradera if no action were taken, the Applicant may request the County to amend this Amended and Restated Agreement. Action on such a request may only be taken by the Board of County Commissioners, in its sole discretion.

**6. Adjustment of Maximum Target Housing Prices Due to Homeowners Association Fees.** In the event that the homeowners' association fee applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price, as

defined in Section 4, for the Affordable Unit shall be reduced by the Applicant so that the buyer's mortgage loan principal amount is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose the homeowners' association fee to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.

**7. Alternate Means of Compliance in Lieu of Construction.** Notwithstanding any provision of the Affordable Housing Ordinance and 2012 Ordinance, the parties may agree to an Alternate Means of Compliance for the fulfillment of the Applicant's affordable housing obligations. This Alternate Means of Compliance may involve cash payment, land donation or a combination of both, in the amount of the required total contribution to be made under the Alternate Means of Compliance. Any land donation would be for a housing project (s) within La Pradera. The County would agree to offset the amount to be paid under the Alternate Means of Compliance by the appraised value of the land contributed, as determined by an MAI appraiser. The Applicant would agree to contribute in cash the difference between the appraised value of the land and the total contribution required under the Alternate Means of Compliance. Upon receipt of the required contributions, the County would issue a certificate of compliance with this Amended and Restated Agreement. Applicant may utilize the Alternate Means of Compliance only if the language in the current Affordable Housing Ordinance, 2012 Ordinance, and Affordable Housing Regulations is amended to make this approach an economically feasible option.

**8. Development Schedule.** The parties agree that the development schedule for La Pradera, including individual phases, shall use the same ratio for the number of constructed Affordable Units as to the number of constructed market units. For example, in a 100-lot subdivision in which 15 units are required to be affordable, three (3) Affordable Units must be constructed for every twenty (20) market units constructed. If the required number of Affordable Units are not built in a particular twenty (20) unit increment, and the Applicant has not been granted an Affordable Lot Substitution per Section 9, or has not made payment per Section 17 - Remedies, the County may withhold permit approvals of homes in future increments, or impose the payment provisions of Section 17 for the number of required and unsold Affordable Units.

**9. Integration of Affordable Units in the Project.** The lots designated in Exhibit A are the lots upon which Affordable Units shall be built in conformance with the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations. The Applicant may replace a designated Affordable Lot with an alternate Affordable Lot within the subdivision by submitting a lot substitution form, Exhibit B, for consideration by the Affordable Housing Administrator. Absent approval by the Affordable Housing Administrator, the lot substitution will not be implemented.

**10. Marketing Plan.** In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units in the following manner:

- By distribution of flyers and other promotional media.
- By providing information to non-profit entities designated by the County to perform homebuyer training and assist first time homebuyers.

11. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer (s) as well as a copy of their Certification of Eligibility;

2. The date and time of the scheduled closing;

3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);

4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) has been prepared within the previous six (6) months.

B. Recordation of Affordability Mortgage and Lien. The Affordable Housing Ordinance's goals of having Affordable Units owner-occupied by Eligible Buyers or Entry Market Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage and Lien, which contains a right of first refusal and shared appreciation requirements, as set forth in the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer or Entry Market Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

D. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

12. **Affordability Lien and Maintenance of Long-Term Affordability.** Notwithstanding the provisions of Section 11, County and Applicant agree that the Applicant may provide the required Affordable Units through a program with a non-profit housing organization where the non-profit holds a lien in lieu of the County affordability lien provided that the total lien held by the non-profit, including its cash subsidy, can be no greater than three (3) times the amount of cash proven to be contributed by the non-profit from its own funds to subsidize the homeowner. Furthermore, the principal amount of the lien shall equal the contract sales price as shown on the

HUD-1 settlement statement, which includes all liens; less the effective sales price, which is the affordable buyer's first mortgage amount plus downpayment from their own funds; less the cash subsidy contributed by entities other than the non-profit. If there remains a difference between the total principal amount of the lien that is allowed per the above formula and the maximum lien amount that can be retained by the non-profit, as set forth above, the difference shall become the principal amount of a subordinate County affordability mortgage and lien. The effective sales price paid by the Eligible Buyer or Entry Market Buyer after any subsidy shall be less than or equal to the Maximum Target Housing Price, as set forth in the Affordable Housing Regulations. Applicant agrees that the contract sales price for an Affordable Unit must be set between ninety-five percent (95%) and one hundred percent (100%) of the unit's appraised value. Applicant agrees that the note and mortgage instruments used by the non-profit to secure this lien shall represent a deferred payment, non-amortizing, zero percent (0%) loan that shall not include a shared appreciation provision, nor include a right of first refusal with the County and must be approved by the Affordable Housing Administrator. Applicant agrees that the difference between the cash subsidy provided by the non-profit and the total amount of the lien retained by the non-profit shall, upon payoff of this subsidy loan, be committed to affordable housing subsidies for households in Santa Fe County, per an agreement between the non-profit and the Applicant, a copy of which shall be provided to the County prior to the first closing of an Affordable Unit under this Amended and Restated Agreement. Applicant agrees that for such a transaction to be certified as a Qualified Transaction, all other provisions of Section 11 of this Amended and Restated Agreement must be satisfied, along with all provisions of the Affordable Housing Ordinance, 2012 Ordinance and Affordable Housing Regulations, unless otherwise stated herein.

**13. Affordable Housing Credit for Qualifying Market Rate Transaction.** County and Applicant agree that the Applicant shall receive an affordable housing credit for a Qualifying Market Rate Transaction to an Eligible Buyer or Entry Market Buyer income-certified by the County as qualifying to purchase within a designated Income Range at a contract sales price, as set forth in the HUD-1 settlement statement, equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Affordable Housing Regulations. Applicant may charge any lot premium or option provided that total contract sales price is equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Affordable Housing Regulations. Furthermore, the contract sales price of the Qualifying Market Rate Transaction must be set between ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value and the Qualifying Market Rate Transaction must comply with Section 14 of this Amended and Restated Agreement and all other provisions of the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein. For a Qualifying Market Rate Transaction, the County agrees that there shall be no County affordability lien or shared appreciation with the County, unless the County provides other assistance where program regulations require such instruments.

**14. Closing of Qualifying Market Rate Transactions.** All Qualifying Market Rate Transactions shall be closed in accordance with the procedures in this Section.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualifying Market Rate Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the market rate unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) have been prepared within the previous 6 months.

B. Affordability Mortgage and Lien. If an Eligible or Entry Market Buyer is buying a market rate home where the contract sales price, as set forth in the HUD-1 settlement statement, is less than or equal to the Maximum Target Housing Price for the applicable housing type and Income Range within which the Eligible or Entry Market Buyer qualifies, as set forth in the Affordable Housing Regulations, there shall be no Affordability Mortgage and Lien or Shared Appreciation, unless the County provides other assistance where program regulations require such instruments.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualifying Market Rate Transaction, a copy to the County of the Settlement Statement (HUD 1) for the Qualifying Market Rate Transaction, signed by the seller and purchaser.

D. Affordable Housing Credit and Certificate of Compliance. Provided that the Applicant complies with all provisions of this Amended and Restated Agreement, the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein, and upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall grant the Applicant affordable housing credit within the Eligible Buyer's or Entry Market Buyer's Income Range for a Qualifying Market Rate Transaction and shall issue a Certificate of Compliance for the transaction.

15. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Affordable Housing Ordinance and 2012 Ordinance, the County has agreed to provide the following incentives to the Applicant:

A. Relief from Development Fees. County agrees to waive all development fees for each Affordably Priced Housing Unit and Entry Market Housing Unit to be provided by Applicant hereunder.

B. Relief from County Water Utility Connection Charge. County agrees to waive any water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units and Entry Market Housing Unit to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve Applicant of any obligation it

may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units and Entry Market Housing Unit.

C. Water for Affordably Priced Housing Units. County agrees to supply the Affordably Priced Housing Units and Entry Market Housing Unit identified in Section 4 above with water, including all necessary water rights pursuant to Section 8 of the Affordable Housing Ordinance, provided that the Affordably Priced Housing Units and Entry Market Housing Unit are constructed. This does not obligate the County to provide a water line extension or other water infrastructure to the development.

16. **Successors, Assigns and Buyers of Affordable Lots.** Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Exhibit A is transferred. Applicant agrees to provide County with ten (10) business days advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer or Entry Market Buyer, along with a request for lot substitution as set forth in Section 9 of this Amended and Restated Agreement.

17. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the final master plan, plat and phases for La Pradera. Applicant further acknowledges and agrees: (i) that because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, or for Applicant to not provide the required number of Affordable Units in La Pradera or a phase of La Pradera, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees and water connection charges that were waived for each house on an Affordable Lot; (c) collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot.

In the event Applicant does not sell Affordable Units to Eligible Buyers or Entry Market Buyer in the amount required in Section 4 within five (5) years, which time may be extended by the County if a proportional number of market rate units also remains unsold, and has not paid the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on La Pradera until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of La Pradera;



- C. Collect all development fees and water connection charges that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;
- D. Collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be.
- E. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit A.
- F. Receive 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations, for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.
- G. Notwithstanding the foregoing provisions, whenever a period of time or specified date is herein prescribed for action to be taken by any party, there shall be excluded from the computation of any such period of time or an extension of such specified date, any delays due to strikes, riots, acts of God (excluding weather delays reasonably and historically known to occur, as defined by a ten (10) year average of the U.S. Meteorological Survey data, or similarly and mutually acceptable data, in the geographical area of the Property), shortages of labor or materials outside of the parameters typically found in the geographical area of the Property, war, terrorism or governmental laws, regulations, restrictions or moratoriums (except to the extent waived or otherwise not applied to the project or the Property) and unforeseeable delays by the project lender; provided, however, that both Parties shall use their best and diligent efforts to mitigate the effects of such occurrences with respect to the required action. Subject to the foregoing, time is of the essence with respect to each and every provision of this Amended and Restated Agreement.

18. **Miscellaneous Provisions.**

A. If any provision of this Amended and Restated Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Amended and Restated Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Amended and Restated Agreement shall be construed and enforced in accordance with the Affordable Housing Ordinance, the 2012 Ordinance and Affordable Housing Regulations and the laws of the State of New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Amended and Restated Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

D. This Amended and Restated Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Amended and Restated Agreement. No prior or contemporaneous agreement, covenant or

understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Amended and Restated Agreement.

E. At the request of the County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Amended and Restated Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Amended and Restated Agreement, subjecting Applicant to the per unit payment provisions of Section 17 above, multiplied by the number of Affordable Units for which information has been requested.

F. This Amended and Restated Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.

G. This Amended and Restated Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.

H. This Amended and Restated Agreement must be filed and recorded.

I. Entering into this Amended and Restated Agreement does not prohibit Applicant or Applicant's buyers from applying for downpayment assistance from the County under the program which may be in effect at that time.

19. This Amended and Restated Agreement shall terminate upon the County issuing a certificate of compliance with the Amended and Restated Affordable Housing Agreement in accordance with Section 7.5 of the Affordable Housing Regulations. The County may terminate this Amended and Restated Agreement and impose all Section 17 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Amended and Restated Agreement by Applicant.

IN WITNESS WHEREOF, the parties have duly executed this Amended and Restated Affordable Housing Agreement as of this 12th day of December, 2012.

APPLICANT:

GARDNER ASSOCIATES, LLC  
A New Mexico Limited Liability corporation

By: \_\_\_\_\_  
John J. McCarthy, Managing Member

LA PRADERA ASSOCIATES, LLC

A New Mexico Limited Liability Company

By: \_\_\_\_\_  
John J. McCarthy, Managing Member

SANTA FE COUNTY

By: \_\_\_\_\_  
Board of County Commissioners

SANTA FE COUNTY AFFORDABLE  
HOUSING ADMINISTRATOR

\_\_\_\_\_  
By: Steven Brugger, AICP

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stephen C. Ross, County Attorney

\_\_\_\_\_  
By: Katherine Miller, County Manager



**Exhibit A**  
**AFFORDABLE UNIT PRICING, INCOME RANGES AND OTHER DATA**

	<b>Income Level 1</b>	<b>Income Level 2</b>	<b>Income Level 3</b>	<b>Income Level 4</b>	<b>Total</b>
Phase 1	51A, 51B,	32, 34 (1 unit) 35, 39, 53, 54,	9, 22, 23A, 23B, 48,		13
Phase 2	141	71, 98, 102	99, 118, 123, 142		8
Phase 3	166, 167, 168	164, 169, 170	198		7
Phase 4	222, 224, 226,		205		4
Phase 5	72, 80, 82		87		4
Phase 6					
Master Plan Amendment	76	218	220	145	4
<b>TOTAL</b>	13	13	13	1	40

Homes constructed pursuant to this Amended and Restated Agreement shall comply with Section 3 of the Affordable Housing Regulations, unless otherwise stated herein. Plans for all homes to be constructed shall be designed with HERS Rating of 70 or below.

Notes: 1) Designated Affordable Lots highlighted in red remain to be built as set forth in this Amended and Restated Agreement; 2) Designated Affordable Lots in black have been built upon and are Qualified Transactions in compliance with the Regulations.

**Exhibit B - PLAN SHOWING AFFORDABLE UNIT LOT DESIGNATIONS**

**Exhibit C: LOT SUBSTITUTION FORM**

I, \_\_\_\_\_, Affordable Housing Administrator for Santa Fe County, do hereby approve/disapprove the Applicant's request to substitute Lot # \_\_\_\_ in La Pradera for Affordable Lot # \_\_\_\_\_, identified in Exhibit A as one of the required Affordable Lots. Exhibit A to the Amended and Restated Agreement for La Pradera is hereby modified through the execution of this document.

SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT FOR LA PRADERA

This Affordable Housing Agreement (the "Agreement") is entered into this 10<sup>th</sup> day of Sept, 2004, between Gardner Associates, LLC as developer of La Pradera (the "Applicant") and Santa Fe County (the "County").

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12, creating the Community College District (the "CCD") within Santa Fe County, and the Santa Fe Extraterritorial Zoning Authority has adopted EZA Ordinance No. 2000-03, creating the CCD within the Extraterritorial Zone (collectively, the "Ordinance"); and

WHEREAS, pursuant to the Ordinance, the County Land Use Administrator ("Administrator") has adopted the Community College District Affordable Housing Regulations, dated July 31, 2002, (the "Regulations") which are applicable and govern this Agreement; and

WHEREAS, the Ordinance and Regulations provide that a final plat will not be recorded until the applicant has entered into an Affordable Housing Agreement with the County to identify the locations for proposed affordable housing units within the subdivision known as "La Pradera" (the "Development"); and

WHEREAS, Applicant has prepared an Affordable Housing Plan dated October, 2003 which was approved by the Administrator and the EZC and BCC on March 9, 2004, in accordance with Article IV, § 4.1 of the Regulations (the "AHP"); and

WHEREAS, Applicant and the County desired to enter into this Agreement in accordance with the Ordinance and Regulation requirements.

NOW THEREFORE, the County and Applicant agree as follows:

1. **Affordable Housing Lots.** Applicant owns the residential lots described in Exhibit A (the "Lots").
2. **Affordable Homes.** In accordance with the AHP, Applicant agrees to construct the twelve (12) "Affordable Homes", as defined the Regulations and described in Exhibit A, as part of the first 69 dwellings constructed on the Lots. The County agrees that the Affordable Homes and Lots are integrated into the Development as required by the Ordinance and Regulations.
3. **Marketing Date.** Applicant shall begin marketing the Affordable Homes on or before twelve (12) months from Plat recordation, in accordance with the AHP.
4. **Construction Schedule.** Applicant shall begin construction of each Affordable Homes within thirty (30) days of the date an Eligible Buyer enters into a binding



agreement for the purchase of the Affordable House, but not later than twelve months from the approval of this Agreement by the Administrator.

5. **Miscellaneous Provisions.**

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

1. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations.

2. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

3. This Agreement states the entire agreement of the parties. This Agreement shall not relieve Applicant from complying with present or future County or EZ ordinances, duly adopted resolutions or regulations applicable to the development.

4. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

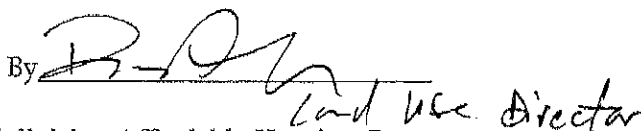
WHEREFORE, the parties set their hands and seals this 10<sup>th</sup> day of Sept., 2004.

**APPLICANT:**

Gardner Associates, LLC for La Pradera Subdivision

By:   
John J. McCarthy, Managing Member

**SANTA FE COUNTY:**

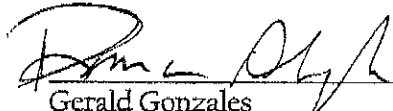
By:   
Land Use Director


La Pradera Subdivision Affordable Housing Contract

SFC CLERK RECORDED 11/22/2004

Title \_\_\_\_\_

APPROVED AS TO FORM:

  
Gerald Gonzales  
County Manager

  
Steve Ross  
County Attorney

SFC CLERK RECORDED 11/22/2004

**Exhibit A**

INCOME RANGE (1, 2 or 3)	LOCATION (Lot #)
1	23 (duplex)
1	23 (duplex)
1	51
1	52
2	32
2	42
2	53
2	54
3	9
3	28
3	39
3	48

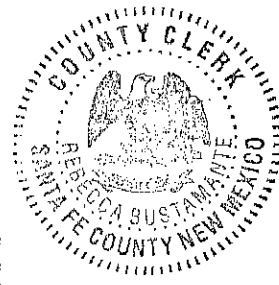
SFC CLERK RECORDED 11/22/2004

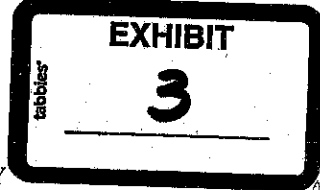
COUNTY OF SANTA FE )  
 STATE OF NEW MEXICO ) ss

AGREEMENT  
 PAGES: 4

I Hereby Certify That This Instrument Was Filed for  
 Record On The 22ND Day Of November, A.D., 2004 at 14:22  
 And Was Duly Recorded as Instrument # **1355762**  
 Of The Records Of Santa Fe County

Deputy *[Signature]* Witness My Hand And Seal Of Office  
 County Clerk, Santa Fe, NM  
 Rebecca Bustamante





*See Amendment recorded 07/31/09*

SANTA FE COUNTY  
AMENDED AFFORDABLE HOUSING AGREEMENT FOR LA PRADERA

This Amended Affordable Housing Agreement (the "Agreement") is entered into this 10 day of January, 2006, between Gardner Associates, LLC as developer of La Pradera (the "Applicant") and Santa Fe County (the "County").

WHEREAS, the County has accepted the Agreement dated ~~May~~ <sup>Sept</sup> 10, 2004 and this Agreement is to amend the previous agreement; and

WHEREAS, the Agreement is amended due to construction beginning and a change of lots that were subject to the original agreement. These lots are attached as Exhibit A; and

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12, creating the Community College District (the "CCD") within Santa Fe County, and the Santa Fe Extraterritorial Zoning Authority has adopted EZA Ordinance No. 2000-03, creating the CCD within the Extraterritorial Zone (collectively, the "Ordinance"); and

WHEREAS, pursuant to the Ordinance, the County Land Use Administrator ("Administrator") has adopted the Community College District Affordable Housing Regulations, dated July 31, 2002, (the "Regulations") which are applicable and govern this Agreement; and

WHEREAS, the Ordinance and Regulations provide that a final plat will not be recorded until the applicant has entered into an Affordable Housing Agreement with the County to identify the locations for proposed affordable housing units within the subdivision known as "La Pradera" (the "Development"); and

WHEREAS, Applicant has prepared an Affordable Housing Plan dated October, 2003 which was approved by the Administrator and the EZC and BCC on March 9, 2004, in accordance with Article IV, § 4.1 of the Regulations (the "AHP"); and

WHEREAS, Applicant and the County desired to enter into this Agreement in accordance with the Ordinance and Regulation requirements.

NOW THEREFORE, the County and Applicant agree as follows:

1. **Affordable Housing Lots.** Applicant owns the residential lots described in Exhibit A (the "Lots).
2. **Affordable Homes.** In accordance with the AHP, Applicant agrees to construct the twelve (12) "Affordable Homes", as defined the Regulations and described in Exhibit A, as part of the first 69 dwellings constructed on the Lots. The County agrees that the Affordable Homes and Lots are integrated into the Development as required by the Ordinance and Regulations.

La Pradera Subdivision Amended Affordable Housing Contract

SFC CLERK 01/10/2006

SFC CLERK 01/10/2006

3. **Marketing Date.** Applicant shall begin marketing the Affordable Homes on or before twelve (12) months from Plat recordation, in accordance with the AHP.
4. **Construction Schedule.** Applicant shall begin construction of each Affordable Homes within thirty (30) days of the date an Eligible Buyer enters into a binding agreement for the purchase of the Affordable House, but not later than twelve months from the approval of this Agreement by the Administrator.
5. **Miscellaneous Provisions.**

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

1. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations.

2. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

3. This Agreement states the entire agreement of the parties. This Agreement shall not relieve Applicant from complying with present or future County or EZ ordinances, duly adopted resolutions or regulations applicable to the development.

4. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

WHEREFORE, the parties set their hands and seals this 10 day of January, 2006.

APPLICANT:

Gardner Associates, LLC for La Pradera Subdivision

By:   
John J. McCarthy, Managing Member

La Pradera Subdivision Amended Affordable Housing Contract

SANTA FE COUNTY:

By \_\_\_\_\_  
Title Gerald Gonzalez, County Manager

APPROVED AS TO FORM:

Gerald Gonzales  
County Manager

Steve Ross  
County Attorney

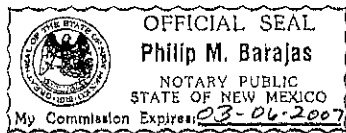
SFC Clerk 01/10/2006

*[Handwritten Signature]*

State of New Mexico  
County of Santa Fe  
This instrument was acknowledged before me on Jan. 10, 2006  
by John McCarthy

*Philip M. Barajas*  
Title Notary

My Commission expires: 03-06-2007



La Pradera Subdivision Amended Affordable Housing Contract

Exhibit A

INCOME RANGE (1, 2 or 3)	LOCATION (Lot #)
1	23 (duplex)
1	23 (duplex)
1	51 (duplex)
1	51 (duplex)
2	32
2	42
2	53
2	54
3	9
3	22
3	39
3	48

SFC Clerk 01/10/2006



COUNTY OF SANTA FE ) AMENDMENT  
STATE OF NEW MEXICO ) ss PAGES: 4

I Hereby Certify That This Instrument Was Filed for  
Record On The 10TH Day Of January, A.D., 2006 at 16:45  
And Was Duly Recorded as Instrument # 1415349  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Valerie Espinoza  
Deputy *Valerie Espinoza* County Clerk, Santa Fe, NM

011006

La Pradera Subdivision Amended Affordable Housing Contract



SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT FOR LA PRADERA  
Phase II

This Affordable Housing Agreement (the "Agreement") is entered into this 23 day of April, 2007 between Gardner Associates, LLC (phase II), as developers of La Pradera Subdivision (the "Applicant") and Santa Fe County (the "County").

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12, creating the Community College District (the "CCD") within Santa Fe County, and the Santa Fe Extraterritorial Zoning Authority has adopted EZA Ordinance No. 2000-03, creating the CCD within the Extraterritorial Zone (collectively, the "Ordinance"); and

WHEREAS, pursuant to the Ordinance, the County Land Use Administrator ("Administrator") has adopted the Community College District Affordable Housing Regulations, dated July 31, 2002, (the "Regulations") which are applicable and govern this Agreement; and

WHEREAS, the Ordinance and Regulations provide that a final plat will not be recorded until the applicant has entered into an Affordable Housing Agreement with the County to identify the locations for proposed affordable housing units within the subdivision known as "La Pradera" (the "Development"); and

WHEREAS, Applicant has prepared an Affordable Housing Plan, which was approved by the Administrator and the EZC and BCC on January 31, 2006, in accordance with Article IV, § 4.1 of the Regulations (the "AHP"); and

WHEREAS, Applicant and the County desire to enter into this Agreement in accordance with the Ordinance and Regulation requirements.

NOW THEREFORE, the County and Applicant agree as follows:

1. **Affordable Housing Lots.** Applicant owns the residential lots described in Exhibit A (the "Lots).
2. **Affordable Homes.** In accordance with the AHP, Applicant agrees to be constructed in Phase II the eight (8) "Affordable Homes", as defined the Regulations and described in Exhibit A, as part of the overall phases for dwelling units constructed on the Lots. The County agrees that the Affordable Homes and Lots are integrated into the Development as required by the Ordinance and Regulations.
3. **Marketing Date.** Applicant shall begin marketing the Affordable Homes on or before twelve (12) months from Plat recordation, in accordance with the AHP.

SEC CLERK RECORDED 05/09/2007



4. **Construction Schedule.** Applicant shall begin construction of each Affordable Homes within thirty (30) days of the date an Eligible Buyer enters into a binding agreement for the purchase of the Affordable House, but not later than twelve months from the approval of this Agreement by the Administrator.

5. **Miscellaneous Provisions.**

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

1. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations.

2. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

3. This Agreement states the entire agreement of the parties. This Agreement shall not relieve Applicant from complying with present or future County or EZ ordinances, duly adopted resolutions or regulations applicable to the development.

4. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

SFC CLERK RECORDED 05/09/2007

WHEREFORE, the parties set their hands and seals this 23 day of April, 2007.

APPLICANT:

Gardner Associates  
a New Mexico Limited Liability Company  
La Pradera Subdivision Phase II

By: [Signature]  
John J. McCarthy, Managing Member

SANTA FE COUNTY:

By: [Signature]  
Title Affordable Housing Administrator

APPROVED AS TO FORM:

[Signature]  
Steve Ross  
County Attorney

4-13-07  
Date

[Signature]  
Roman Abeyta  
County Manager

4/14/07  
Date

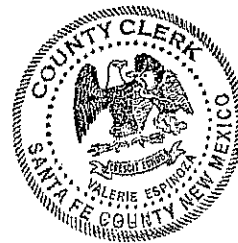
SFC CLERK RECORDED 05/09/2007

[Signature]

La Pradera  
Phase II  
Affordable Housing Worksheet

	Income Levels			
	Level One	Level Two	Level Three	Total
Phase II				
Lot #	2	3	3	8
	71,141	98,102,142	99,118,123	
Phase IV				
Lot #	2	1	1	4
	224,226	222	205	
Phase V				
Lot #	2	1	1	4
	80,82	72	87	
<b>Subtotal</b>	<b>6</b>	<b>5</b>	<b>5</b>	<b>16</b>

SEC CLERK RECORDED 05/09/2007



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss      AFFORDABLE HOUSING AGR  
PAGES: 4

I Hereby Certify That This Instrument Was Filed for  
Record On The 9TH Day Of May, A.D., 2007 at 11:23  
And Was Duly Recorded as Instrument # 1482368  
Of The Records Of Santa Fe County

Deputy *Marcella [Signature]*      Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM

*[Signature]*  
4/13/07



SFC CLERK RECORDED 07/31/2007

SANTA FE COUNTY  
SECOND AMENDMENT TO THE AFFORDABLE HOUSING AGREEMENT FOR LA PRADERA  
PHASE I

This Second Amendment to the Affordable Housing Agreement (the "Second Amendment ") is entered into this 5 day of June, 2007 between Gardner Associates, LLC, as developers of La Pradera Subdivision (the "Applicant") and Santa Fe County (the "County").

**WHEREAS**, the County has adopted Santa Fe County Ordinance No. 2000-12, creating the Community College District (the "CCD") within Santa Fe County, and the Santa Fe Extraterritorial Zoning Authority has adopted EZA Ordinance No. 2000-03, creating the CCD within the Extraterritorial Zone (collectively, the "Ordinance");

**WHEREAS**, pursuant to the Ordinance, the County Land Use Administrator ("Administrator") has adopted the Community College District Affordable Housing Regulations, dated July 31, 2002, (the "Regulations") which are applicable and govern this Agreement;

**WHEREAS**, the Ordinance and Regulations provide that a final plat will not be recorded until the applicant has entered into an Affordable Housing Agreement with the County to identify the locations for proposed affordable housing units within the subdivision known as "La Pradera" (the "Development");

**WHEREAS**, Applicant has prepared an Affordable Housing Plan (the "AHP") dated October, 2003 which was approved by the Administrator and the EZC and BCC on March 9, 2004, in accordance with Article IV, § 4.1 of the Regulations;

**WHEREAS**, the County has accepted the Applicants Affordable Housing Agreement (the "Agreement") dated September 10, 2004, and the First Amendment dated January 10th 2006, and this Second Amendment is to amend the Agreement;

**WHEREAS**, the Applicant desires to amend the Agreement to reflect a change in lot numbers on which Affordable homes will be constructed;

**WHEREAS**, the amended lot numbers lots comply with the same income range requirement and are set forth in the attached Exhibit A: and

**WHEREAS**, the Applicant and the County desire to enter into this Second Amendment in accordance with the Ordinance and Regulation requirements.

**NOW THEREFORE**, the County and Applicant agree as follows:

1. **Affordable Housing Lots.** Applicant owns the residential lots described in Exhibit A (the "Lots).
2. **Affordable Homes.** In accordance with the AHP, Applicant agrees to construct the twelve (12) "Affordable Homes", as defined in the Regulations and described in Exhibit A, as part of the first 69 dwellings constructed on the Lots. The County agrees that the Affordable Homes and Lots are integrated into the Development as required by the Ordinance and Regulations.
3. **Marketing Date.** Applicant shall begin marketing the Affordable Homes on or before twelve (12) months from Plat recordation, in accordance with the AHP.

4. **Construction Schedule.** Applicant shall begin construction of each Affordable Home within thirty (30) days of the date an Eligible Buyer enters into a binding agreement for the purchase of the Affordable Home, but not later than twelve months from the approval of this Agreement by the Administrator.

5. **Miscellaneous Provisions.**

- A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.
- B. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations.
- C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.
- D. This Agreement states the entire agreement of the parties. This Agreement shall not relieve Applicant from complying with present or future County or EZ ordinances, or duly adopted resolutions and regulations applicable to the development.
- E. This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

SFC CLERK RECORDED 07/31/2007

WHEREFORE, the parties set their hands and seals this 5<sup>th</sup> day of June, 2007.

APPLICANT:

Gardner Associates LLC  
La Pradera Subdivision

By: [Signature]  
John J. McCarthy, Managing Member

SANTA FE COUNTY:

By: [Signature]  
Title: Affordable Housing Administrator

APPROVED AS TO FORM:

[Signature]  
Steve Ross  
County Attorney

7/12/07  
Date

[Signature]  
Roman Abeyta  
County Manager

6/29/07  
Date

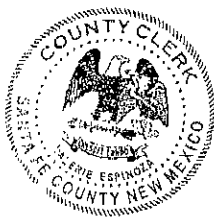


Exhibit A

INCOME RANGE (1, 2 or 3)	LOCATION (Lot #)
1	53
1	48
1	51 (duplex)
1	51 (duplex)
2	32
2	42
2	39
2	54
3	9
3	23 (duplex)
3	23 (duplex)
3	22

COUNTY OF SANTA FE ) SECOND AMENDMENT  
 STATE OF NEW MEXICO ) ss PAGES: 4

Hereby Certify That This Instrument Was Filed for  
 Record On The 31ST Day Of July, A.D., 2007 at 14:58  
 and Was Duly Recorded as Instrument # 1494031  
 of The Records Of Santa Fe County



Witness My Hand And Seal Of Office  
 Valerie Espinoza  
 Deputy County Clerk, Santa Fe, NM



SANTA FE COUNTY  
AFFORDABLE HOUSING AGREEMENT FOR LA PRADERA  
Phase III

REC CLERK RECORDED 05/09/2007

This Affordable Housing Agreement (the "Agreement") is entered into this 23 day of April, 2007 between La Pradera Associates, LLC (phase III), as developers of La Pradera Subdivision (the "Applicant") and Santa Fe County (the "County").

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12, creating the Community College District (the "CCD") within Santa Fe County, and the Santa Fe Extraterritorial Zoning Authority has adopted EZA Ordinance No. 2000-03, creating the CCD within the Extraterritorial Zone (collectively, the "Ordinance"); and

WHEREAS, pursuant to the Ordinance, the County Land Use Administrator ("Administrator") has adopted the Community College District Affordable Housing Regulations, dated July 31, 2002, (the "Regulations") which are applicable and govern this Agreement; and

WHEREAS, the Ordinance and Regulations provide that a final plat will not be recorded until the applicant has entered into an Affordable Housing Agreement with the County to identify the locations for proposed affordable housing units within the subdivision known as "La Pradera" (the "Development"); and

WHEREAS, Applicant has prepared an Affordable Housing Plan, which was approved by the Administrator and the EZC and BCC on January 31, 2006, in accordance with Article IV, § 4.1 of the Regulations (the "AHP"); and

WHEREAS, Applicant and the County desire to enter into this Agreement in accordance with the Ordinance and Regulation requirements.

NOW THEREFORE, the County and Applicant agree as follows:

1. **Affordable Housing Lots.** Applicant owns the residential lots described in Exhibit A (the "Lots").
2. **Affordable Homes.** In accordance with the AHP, Applicant agrees to cause to be constructed in Phase III, the seven (7) "~~Affordable Homes~~", as defined the Regulations and described in Exhibit A, as part of the overall phases for dwelling units constructed on the Lots. The County agrees that the Affordable Homes and Lots are integrated into the Development as required by the Ordinance and Regulations.
3. **Marketing Date.** Applicant shall begin marketing the Affordable Homes on or before twelve (12) months from Plat recordation, in accordance with the AHP.



SFC CLERK RECORDED 05/09/2007

4. **Construction Schedule.** Applicant shall begin construction of each Affordable Homes within thirty (30) days of the date an Eligible Buyer enters into a binding agreement for the purchase of the Affordable House, but not later than twelve months from the approval of this Agreement by the Administrator.

5. **Miscellaneous Provisions.**

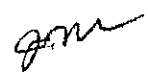
A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

1. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations.

2. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

3. This Agreement states the entire agreement of the parties. This Agreement shall not relieve Applicant from complying with present or future County or EZ ordinances, duly adopted resolutions or regulations applicable to the development.

4. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.



SFC CLERK RECORDED 05/09/2007

WHEREFORE, the parties set their hands and seals this 23 day of April, 2007.

APPLICANT:

La Pradera Associates  
a New Mexico Limited Liability Company  
La Pradera Subdivision Phase III

By [Signature]  
John J. McCarthy, Managing Member

SANTA FE COUNTY:

By [Signature]  
Title Affordable Housing Administrator

APPROVED AS TO FORM:

[Signature]  
Steve Ross  
County Attorney

4-13-07  
Date

[Signature]  
Roman Abeyta  
County Manager

4/19/07  
Date

[Signature]

SFC CLERK RECORDED 05/09/2007

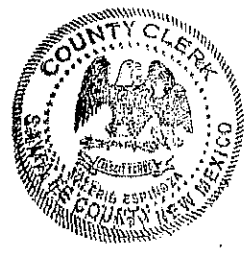
La Pradera  
Phase III  
Affordable Housing Worksheet

	Income Levels			Total
	Level One	Level Two	Level Three	
<b>Phase III</b>				
Lot #	2 166,168	2 164,170	3 167,169,198	7
<b>Phase VI</b>				
Lot #		1 146		1
<b>Subtotal</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>8</b>

COUNTY OF SANTA FE ) AFFORDABLE HOUSING AGR.  
STATE OF NEW MEXICO ) ss PAGES: 4

I Hereby Certify That This Instrument Was Filed for  
Record On The 9TH Day Of May, A.D., 2007 at 11:23  
And Was Duly Recorded as Instrument # 1482369  
Of The Records Of Santa Fe County

Deputy Valerie Espinoza )  
Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM



4/3/07



**SANTA FE COUNTY**  
**THIRD AMENDED AFFORDABLE HOUSING AGREEMENT**  
**FOR LA PRADERA**

This Third Amended Affordable Housing Agreement for La Pradera (the "Third Amendment") is entered into this <sup>23rd</sup> day of September, 2010 between Gardner Associates, LLC, as developers of La Pradera (the "Applicant") and Santa Fe County (the "County").

RECITALS

A. WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera on September 10, 2004 (the "Agreement"); and

B. WHEREAS, the County and the Applicant entered into the Amended Affordable Housing Agreement for La Pradera on January 10, 2006 (the "First Amendment"); and

C. WHEREAS, the County and the Applicant entered into the Second Amended Affordable Housing Agreement for La Pradera on June 5, 2007 (the "Second Amendment"); and

D. WHEREAS, the Agreement, as amended, sets forth Applicant's agreement to cause to be constructed in Phase I the twelve (12) "Affordable Homes" as defined in Exhibit A to the Agreement, as amended by the First Amendment; and

E. WHEREAS, County approved the "Final Subdivision Plat for La Pradera Subdivision Phases 2 & 3" which identifies Phases 2, 3, 4, 5 and 6 and identifies the following Lots as providing affordable homes within the County's Affordable Housing Program: 71, 72, 80, 82, 87, 98, 99, 102, 118, 123, 141, 142, 146, 164, 166, 167, 168, 169, 170, 198, 205, 222, 224 and 226; and

out Amen d<sup>th</sup>

F. WHEREAS, the Agreement provides for amendment subject to an instrument in writing executed by the parties hereto; and

G. WHEREAS, to facilitate buildout of La Pradera, the Applicant desires to designate one additional unit within Phase I at Income Range 2 to accommodate an Affordable Home in conjunction with the deletion of one Affordable Home lot from Phase VI, as set forth in the Second Amendment to the Affordable Housing Agreement for La Pradera Phase III and the Applicant and the County desire to enter into this Third Amendment in accord with the County's Affordable Housing Ordinance and Regulations as defined in the Agreement; and

H. WHEREAS, the Parties wish to correct certain deviations from the requirements of the existing Affordable Housing Agreements that occurred during development of Phases 1, 2 and 3.

NOW, THEREFORE, the County and Applicant agree as follows:

1. Exhibit A to the Agreement, as amended by the Second Amendment, is amended to reflect the agreement of the Parties with respect to Phases 1, 2, 4 and 5.

3. All other provisions of the Agreement remain in full force and effect.

WHEREFORE, the parties set their hands and seals this 23<sup>RD</sup> day of September, 2010.



**APPLICANT**

GARDNER ASSOCIATES, LLC,  
A New Mexico Limited Liability Company

By: [Signature]  
John J. McCarthy, Managing Member

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

HOUSING AGREEMENT  
PAGES: 3

I Hereby Certify That This Instrument Was Filed for Record On The 28TH Day Of September, 2010 at 09:47:07 AM And Was Duly Recorded as Instrument # 1612081 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
[Signature] Valerie Espinoza  
Deputy County Clerk, Santa Fe, NM

**SANTA FE COUNTY**

By: [Signature]

Its: AFFORDABLE HOUSING ADMINISTRATOR

**APPROVED AS TO FORM**

[Signature]  
Steve Ross  
County Attorney

9.24.10  
Date

[Signature]  
Katherine Miller  
County Manager

9.28.10  
Date

**Exhibit A**

	<b>Income Level 1</b>	<b>Income Level 2</b>	<b>Income Level 3</b>	<b>Total</b>
Phase 1	51A, 51B	32, 34 (1 unit), 35, 39, 53, 54,	9, 22, 23A, 23B, 48	13
Phase 2	<del>141</del>	<del>71, 98, 102</del>	99, 118, 123, <del>142</del>	8
Phase 3*	<del>166, 167, 168</del>	164, 169, 170	198	7
Phase 4	<del>222, 224, 226</del>	0	205	4
Phase 5	<del>72, 80, 82</del>	0	<del>87</del>	4
Phase 6*	0	0	0	0
<b>TOTAL</b>	12	12	12	36

\* The Affordable Housing requirements for Phases 3 and 6 are addressed in the Second Amendment to Affordable Housing Agreement for La Pradera Phase III and are included in this chart for illustrative purposes only.



**SANTA FE COUNTY**  
**SECOND AMENDMENT TO AFFORDABLE HOUSING AGREEMENT**  
**FOR LA PRADERA**  
**PHASE III**

This Second Amendment to the Affordable Housing Agreement for La Pradera Phase III (the "Second Amendment") is entered into this 23<sup>rd</sup> day of September, 2010 between La Pradera Associates, LLC, as developers of La Pradera Subdivision (Phase III) (the "Applicant") and Santa Fe County (the "County").

RECITALS

A. WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase III on April 23, 2007 (the "Agreement"); and

B. WHEREAS, the County and the Applicant entered into the First Amendment to the Affordable Housing Agreement for La Pradera Phase III on Sept. 23, 2010 (the "First Amendment"); and

C. WHEREAS, the Agreement sets forth Applicant's agreement to cause to be constructed the eight (8) "Affordable Homes" as defined in the Agreement, as amended by the First Amendment; and

D. WHEREAS, the Agreement provides for amendment subject to an instrument in writing executed by the parties hereto; and

E. WHEREAS, to facilitate buildout of La Pradera, the Applicant desires to relocate one of the Affordable Homes from one lot to another within La Pradera and the Applicant and the County desire to enter into this Second Amendment in accord with the County's Affordable Housing Ordinance and Regulations as defined in the Agreement.

NOW, THEREFORE, the County and Applicant agree as follows:

1. The attachment to the Agreement (incorrectly reference in section 2 of the Agreement as "Exhibit A"), as amended by the First Amendment, is amended to delete Lot 171. Lot 171 is therefore not subject to any affordable housing requirement. Exhibit A hereto sets forth the current affordable home obligations for Phase III.
2. All other provisions of the Agreement remain in full force and effect.

WHEREFORE, the parties set their hands and seals this 28<sup>th</sup> day of September, 2010.

APPLICANT

LA PRADERA ASSOCIATES, LLC,  
A New Mexico Limited Liability Company

By: [Signature]  
John J. McCarthy, Managing Member

SANTA FE COUNTY

By: [Signature]

Its: AFFORDABLE HOUSING ADMINISTRATION

APPROVED AS TO FORM

[Signature]  
Steve Ross  
County Attorney

9-24-10  
Date

[Signature]

9.28.10  
Date

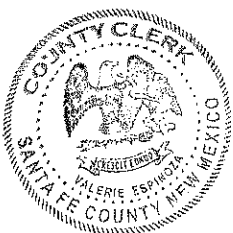
County Manager

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

HOUSING AGREEMENT  
PAGES: 3

I Hereby Certify That This Instrument Was Filed for  
Record On The 28TH Day Of September, 2010 at 09:47:06 AM  
And Was Duly Recorded as Instrument # **1612080**  
Of The Records Of Santa Fe County

Deputy [Signature] Valerie Espinoza  
County Clerk, Santa Fe, NM





**Exhibit A**

INCOME (1,2 or 3)	LOCATION (Lot #)
2	164
1	166
1	167
1	168
2	169
2	170
3	198



**SANTA FE COUNTY  
FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT  
FOR LA PRADERA  
PHASE III**

This First Amendment to the Affordable Housing Agreement for La Pradera Phase III (the "First Amendment") is entered into this <sup>23<sup>rd</sup></sup> day of September, 2010 between La Pradera Associates, LLC, as developers of La Pradera Subdivision (Phase III) (the "Applicant") and Santa Fe County (the "County").

**RECITALS**

A. WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase III on April 23, 2007 (the "Agreement"); and

B. WHEREAS, the Agreement sets forth Applicant's agreement to cause to be constructed the eight (8) "Affordable Homes" as defined in the Agreement, which Affordable Homes include 7 Lots in Phase III of La Pradera and Lot 146, which is located within Phase VI of La Pradera; and

C. WHEREAS, the Agreement provides for amendment subject to an instrument in writing executed by the parties hereto; and

D. WHEREAS, to facilitate buildout of La Pradera, the Applicant desires to relocate one of the Affordable Homes from one lot to another within La Pradera and the Applicant and the County desire to enter into this First Amendment in accord with the County's Affordable Housing Ordinance and Regulations as defined in the Agreement.

NOW, THEREFORE, the County and Applicant agree as follows:

1. The attachment to the Agreement (incorrectly reference in section 2 of the Agreement as "Exhibit A") is amended to delete Lot 146 (which is located in Phase VI) and replace it with Lot 171, which is located within La Pradera Phase III and prior to this First Amendment was not subject to any affordable housing requirement.
2. All other provisions of the Agreement remain in full force and effect.

WHEREFORE, the parties set their hands and seals this 23<sup>rd</sup> day of September, 2010.

APPLICANT

LA PRADERA ASSOCIATES, LLC,  
A New Mexico Limited Liability Company

By: [Signature]  
John J. McCarthy, Managing Member

SANTA FE COUNTY

By: [Signature]

Its: AFFORDABLE HOUSING ADMINISTRATOR

APPROVED AS TO FORM

[Signature]  
Steve Ross  
County Attorney

9-24-10  
Date

[Signature]

9.28.10  
Date

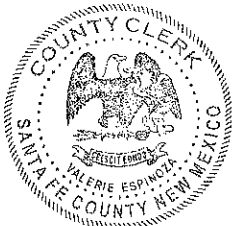
County Manager

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

HOUSING AGREEMENT  
PAGES: 2

I Hereby Certify That This Instrument Was Filed for  
Record On The 28TH Day Of September, 2010 at 09:47:05 AM  
And Was Duly Recorded as Instrument # **1612079**  
Of The Records Of Santa Fe County

Deputy [Signature] Witness My Hand And Seal Of Office  
Valerie Espinoza  
County Clerk, Santa Fe, NM



**Exhibit A**

	<b>Income Level 1</b>	<b>Income Level 2</b>	<b>Income Level 3</b>	<b>Total</b>
Phase 1	51A, 51B	32, 34 (1 unit), 35, 39, 53, 54,	9, 22, 23A, 23B, 48	13
Phase 2	141	71, 98, 102	99, 118, 123, 142	8
Phase 3*	166, 167, 168	164, 169, 170	198	7
Phase 4	222, 224, 226	0	205	4
Phase 5	72, 80, 82	0	87	4
Phase 6*	0	0	0	0
<b>TOTAL</b>	12	12	12	36

\* The Affordable Housing requirements for Phases 3 and 6 are addressed in the Second Amendment to Affordable Housing Agreement for La Pradera Phase III and are included in this chart for illustrative purposes only.