

## **SUPPLEMENTAL HOUSING SUPPORT AGREEMENT (Richmar Station)**

This Supplemental Housing Support Agreement ("Agreement") is dated as of the 9<sup>th</sup> day of December, 2014, by and between the City of San Marcos acting solely in its capacity as the designated successor housing agency to the former Redevelopment Agency of the City of San Marcos ("SHA") and Richmar Station San Marcos, LP, a California limited partnership ("Developer").

### **RECITALS**

A. The Developer and the SHA entered into that certain Exclusive Negotiating Agreement, dated as of September 9, 2014 ("ENA"), pursuant to which the SHA agreed to make a predevelopment loan to the Developer in the amount of \$392,500.00 ("Predevelopment Loan").

B. As set forth in more detail in the ENA, the Predevelopment Loan is to be used to assist in funding predevelopment activities with respect to the possible development of a project at the real property in the SHA of San Marcos generally bounded by West Mission Road, Pleasant Avenue, Richmar Avenue and Firebird Lane, which may also include adjacent properties immediately across Richmar Avenue to the north (collectively referred to herein as the "Property").

C. The ENA further provides that the SHA and Developer will attempt to negotiate an agreement ("Development and Loan Agreement") pursuant to which the SHA would provide financial assistance to the Developer for the development of a project at the Property. Entry into this Agreement is a prerequisite and condition to the SHA's agreement to enter into a Development and Loan Agreement.

NOW, THEREFORE, in furtherance of the recitals stated above, the mutual covenants set forth below, and for good and valuable consideration the nature of which is described above and the receipt of which is hereby acknowledged, the Developer and the SHA agree, promise and declare as follows:

1. Supplemental Housing Support Fee. In the event that affordable residential dwelling units are built at the Property by the Developer, or its successor in interest, then, the Developer, or its successor in interest, shall pay to the SHA an annual supplemental housing support fee "SHS Fee" in the amount set forth in this Agreement. The first annual SHS fee shall be payable to the SHA in the calendar year in which a certificate of occupancy is obtained for the affordable residential dwelling units at the Property ("First SHS Year"). The SHS Fee payable, to the SHA in the First SHS Year shall be in the amount of Ninety-Five and No/100 Dollars (\$95.00) for each rent or occupancy restricted residential dwelling unit at the Property. In each subsequent year, the Developer, Villa Serena Apartments Limited Partnership, or either of their successors in interest, as applicable, shall pay to the SHA an SHS Fee equal to prior year's SHS Fee increased by two percent (2%). The SHA shall use the SHS Fee to support affordable housing in the City of San Marcos, which may include, but shall not be limited to, any or all of the following uses: subsidizing additional affordable housing (whether by making loans, grants, rental assistance,

down payment assistance or otherwise), providing educational opportunities to income qualified households and paying costs incurred by the SHA with respect to affordable housing.

2. Termination/Expiration of Agreement. In the event that the SHA and the Developer, or its successor in interest, do not reach an agreement with respect to the construction of affordable residential dwelling units at the Property, then this Agreement shall terminate. In the event that the SHA and the Developer, or its successor in interest, reach an agreement with respect to the construction of affordable residential dwelling units at the Property, and rent or occupancy restricted residential dwelling units are built at the Property, then this Agreement shall terminate at such time as no rent or occupancy restricted residential dwelling units are located at the Property. At the time of execution of this Agreement the term of the rent and occupancy restrictions applicable to affordable residential dwelling units located at the Property is expected to be 55 years from issuance of a certificate of occupancy for the affordable units, provided, however, that the parties agree that this Agreement shall terminate at such time as no rent or occupancy restricted residential dwelling units are located at the Property, regardless of whether that is less or more than 55 years from issuance of a certificate of occupancy for the affordable units.

3. General Provisions.

(a) Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the SHA and Developer.

(b) Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

(c) Counterparts. This Agreement may be executed in counterparts, and all counterparts constitute but one and the same document.

(d) No Novation. This Agreement is not a novation of, nor does it amend, the ENA or any other agreement, instrument or document with respect to the Property or any other agreement, instrument or document between the SHA and the Developer or Villa Serena Apartments Limited Partnership.

(e) Signature Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the SHA that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

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

**SHA:**

City of San Marcos acting solely in its capacity as the

designated successor housing agency to the former  
Redevelopment Agency of the City of San Marcos

By: \_\_\_\_\_  
Jack Griffin, Executive Director

**APPROVED AS TO FORM:**  
Christensen & Spath LLP

By: \_\_\_\_\_  
Walter F. Spath III  
Special Counsel to the SHA

**DEVELOPER:**  
Richmar Station San Marcos, LP, a California limited partnership  
By: Hitzke Development Corporation  
Its: Administrative General Partner

By: \_\_\_\_\_  
Ginger Hitzke, President

By: The Southern California Housing Development Corporation of Orange,  
a California nonprofit public benefit corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
Steve PonTell, Chief Executive Officer