

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 9/20/04
Department Name: Housing & Community Dev
Department No.: 055
Agenda Date: 10/5/04
Placement: Administrative
Estimate Time: 0.5 hour
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Housing and Community Development
Ed Moses, Director

STAFF Susan Everett Affordable Housing Program (568-2014)
CONTACT: Housing and Community Development Department

SUBJECT: Release of Rental Restrictive Covenant and Pre-emptive Right on 460 San Ysidro Road # 2 and replacement with a Rental Restrictive Covenant on 460 San Ysidro Road # 4, First Supervisorial District, Assessor Parcel Number

Recommendation(s):

That the Board of Supervisors:

- A. Approve and execute the attached Release of Rental Restrictive Covenant and Pre-Emptive Right on 460 San Ysidro Road # 2, recorded as instrument No. 96-001616 on January 10, 1996 (The property is identified as 462 A San Ysidro Road in that Rental Restrictive Covenant and Preemptive Right)
- B. Approve and execute the attached Rental Restrictive Covenant and Preemptive Right on 460 San Ysidro Road # 4.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with actions required by law or by routine business necessity. The recommendation(s) are also aligned with Goal No. 4. A Community that is Economically Vital and Sustainable.

Executive Summary and Discussion:

A Rental Restrictive Covenant and Preemptive Right was recorded as instrument No. 96-001616 on January 10, 1996 between Teresa McWilliams, owner of the property, and the County of Santa Barbara. The Rental Restrictive Covenant was recorded to satisfy the project's affordable housing requirement. The Covenant restricts rental on 460, 462, and 466 San Ysidro Road. However, the address 462 was eliminated when the project was completed and new addresses were formulated in collaboration with the Montecito Fire

Department. The original 462 A San Ysidro Road, the restricted unit, is synonymous with 460 San Ysidro Road # 2.

The eligible tenant of the restricted unit 460 San Ysidro Road # 2 is mobility impaired and experiences difficulty accessing the covenanted unit. The owner wishes to transfer the rental restriction to a unit with better access for the tenant located at 460 San Ysidro Road # 4 within the same subdivision. This unit is of similar size, bedroom count and amenities and within the owner's ownership and control.

The County wishes to accommodate the owner's request to transfer the restrictions of the Covenant to the substitute unit by executing a Release of Rental Restrictive Covenant and Pre-emptive Right and executing a new Rental Restrictive Covenant and Pre-exemptive Right on the similar unit for the period of time remaining on the original Covenant recorded instrument No. 96-001616.

Mandates and Service Levels:

State Planning Law mandates that local jurisdictions prepare Housing Elements containing policies and programs to ensure local provision of affordable housing. One of these programs is Santa Barbara County's Inclusionary Program, which applies to all housing developments with five or more units. This program requires that a percentage of units within a project have affordability restrictions placed upon them. The Agreement to Provide Affordable Housing Hidden Hollow Condominiums recorded instrument No. 96-001615 satisfied the basic requirement of the housing condition with the provision of one lower-moderate income housing unit. The Rental Restrictive Covenant and Pre-emptive Right recorded instrument 96-001616 provided the restricted condominium units within the development. In the release of one unit and the placing of restrictions on another unit of similar size, bedroom count and amenities the County is maintaining the same number of restricted units as required in the Agreement to Provide. Additionally, The Fair Housing Act requires housing providers to make reasonable accommodations in rules and practices to make it possible that persons with disabilities can apply for and occupy a home, and to allow persons with disabilities to make reasonable modifications to a home if needed. By approving a substitution of units, Santa Barbara County is making reasonable accommodation in rules as outlined in The Fair Housing Act.

Fiscal and Facilities Impacts:

No fiscal impact is anticipated.

Special Instructions:

- Clerk of the Board to forward the executed Release of Rental Restrictive Covenant and Pre-emptive Right to Susan Everett, Affordable Housing Program, Housing and Community Development Department for recordation at the County Clerk Recorder.
- Clerk of the Board to forward the executed Rental Restrictive Covenant and Preemptive Right to Susan Everett, Affordable Housing Program, Housing and Community Development Department for recordation at the County Clerk.

- Clerk of the Board shall send copies of the Minute Order and executed document to Susan Everett, Housing and Community Development and to Jackie Campbell, Planning and Development.

Concurrence: County Counsel.

Attachments:

- A. Attachment A, *Release of Rental Restrictive Covenant and Pre-Emptive Right*
- B. Attachment B, *Rental Restrictive Covenant and Preemptive Right Hidden Hollow (Frog Hollow) CONDOMINIUMS, TM 14,326*

Attachment A

Release of Rental Restrictive Covenant and Pre-emptive Right

Attachment B

Rental Restrictive Covenant and Preemptive Right

RECORDING REQUESTED BY AND RETURN TO:

**Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101**

SEND ANOTHER COPY TO:

**Housing and Community Development Department
County of Santa Barbara
105 E. Anapamu St., Room 105
Santa Barbara, CA 93101**

Attn: Affordable Housing Division

APNs 007-220-028 & 007-220-029

RENTAL RESTRICTIVE COVENANT AND PREEMPTIVE RIGHT

**HIDDEN HOLLOW (Frog Hollow) CONDOMINIUMS, TM 14,326
460 #1, #2, #3, #4, #5, #6, #7, #8 San Ysidro Road**

This Rental Restrictive Covenant and Preemptive Right (hereinafter "Covenant") is entered into as of this _____ day of ____ 2004, by and between Teresa McWilliams (hereinafter "Owner") and the County of Santa Barbara, a body politic (hereinafter "County").

This Covenant applies to the real property commonly known as 460 #4 San Ysidro Road in Santa Barbara County, California, which is fully described in Exhibit "A" attached and incorporated by this reference herein (hereinafter "Subject Property").

RECITALS

WHEREAS, it is the intent of the parties that the housing units on the Subject Property be leased in accordance with certain affordability criteria established by the County so the Subject Property will remain "Affordable" to subsequent tenants consistent with the provisions of the Housing Element and/or Housing Implementation Guidelines of the Comprehensive Plan of the County (hereinafter "Housing Element" or "Implementation Guidelines"); and

WHEREAS, it is the intent of the parties that this Covenant will place maximum rent restrictions on the units and maximum income restrictions on potential tenants; and

WHEREAS, the purpose of this Covenant is to assure that the Subject Property remains affordable and available for lease by households for the thirty (30) year term of this Restrictive Covenant, beginning upon the date of occupancy clearance;

NOW, THEREFORE, in consideration of the benefits received by the parties, the parties agree as follows:

I. TERMS AND ENFORCEABILITY

- A. This Covenant shall bind and the benefit hereof shall inure to the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the County, its successors, designees, or assigns until thirty (30) years from the date of occupancy clearance.
- B. The Subject Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.
- C. Any purchaser of the Subject Property or of any portion of or interest in the Subject Property, by the acceptance of a deed therefore, whether from the initial Owner or from any subsequent Owner of the Subject Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement be deemed to have taken title with knowledge of the covenant, and to have personally covenanted, consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.
- D. Any tenant of a unit subject to the restrictions of this Covenant, by the execution of a rental agreement or lease or by taking possession of the property, whichever occurs first, shall also be deemed to have knowledge of this Covenant, and to have personally covenanted, consented to, and accepted the covenants, conditions, restrictions and limitations set forth herein.
- E. In order to preserve through this Covenant the affordability of the Subject Property for persons of lower moderate income, the initial Owner and any subsequent Owner hereby grants and assigns to the County the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the County an Assignment of Rents, described under Section VI C of this Covenant, and an Option to Purchase the Subject Property, described under Section III A of this Covenant.
- F. The term of this Restrictive Covenant shall be thirty (30) years from the date of initial occupancy by a rental.

II. DEFINITIONS

- A. Owner: The owner of the Subject Property and any subsequent purchaser, devisee, grantee or holder of title of the Subject Property.

- B. Institutional Lender: Any bank, savings and loan association, or any other lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.
- C. Maximum Monthly Rent: The maximum monthly rent for a restricted unit refers to the maximum rents set forth by the County Board of Supervisors. These monthly rates are determined as described in the Housing Element, Implementation Guidelines, or as otherwise dictated by applicable state or federal programs.
- D. Eligible Tenant: A tenant whose annual gross income does not exceed the maximum income levels permitted within the lower moderate-income category established by the County. Income levels are based on federal revised income limits for Public Housing and Section 8 programs published annually by the State Department of Housing and Community Development (HCD).

The term "Eligible Tenant" shall not include Owner or any partners or shareholders in Owner or in any entity having an interest in Owner or in the Subject Property.

The term "Eligible Tenant" shall not include any student dependents as defined in the U.S. Internal Revenue Code, unless the taxpayer upon whom the student is dependent resides in the same dwelling unit.

The income of all co-tenants and/or non-dependent occupants shall be taken into account in determining the eligibility of the tenant.

III. TRANSFER OF SUBJECT PROPERTY

The Subject Property shall not be transferred, sold or assigned without written approval of the County Director of the Housing and Community Development Department.

- A. Notice of Intent to Sell/Option To Purchase:
 - 1. In consideration of the benefits received by Owner, Owner hereby grants to the County and the County hereby accepts, an Option to Purchase, which the County may exercise any time Owner wishes to sell or transfer the property.
 - 2. Prior to offering the property for sale or prior to granting an option to purchase, Owner shall send to the county at the address and in the manner specified in Section VII E below, written notice of Owner's intent to sell or transfer the property. The notice shall specify the Owner's asking price for the property.

3. The County shall have 15 days after receipt of such notice to send to Owner written notice of the County's intent to exercise its Option to Purchase.
4. If County sends Notice of Intent to exercise option, the County shall then have an additional 60 days to purchase the property. Such time shall be extended by the length of any delays caused by Owner or Owner's agents. Owner shall be responsible for all costs and provide all reports as is customary for sellers of residential property in the County, including title insurance, termite report, and required corrective work.
5. This option shall be binding on the Owner's heirs, devisees, administrators, executors, or assigns, and the failure of County to exercise this option in any one case shall not affect the county's right to exercise such option (or the option described in Section VIII of this Covenant) in other case thereafter arising during the term of this Covenant.
6. The following transfers of title, or interest therein, are not subject to the provisions of this deed: transfer by gift, devise, or inheritance to grantee's spouse or issue; taking of title by surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisition of title or interest therein in conjunction with marriage; provided, however, that this covenant and the options contained herein shall continue to run with the title to the Subject Property following said transfers, and upon any subsequent transfer of the Subject Property the Owner must send to the County its notice of intent to sell and the county may exercise its option to purchase as set forth herein.

IV LETTING OF SUBJECT PROPERTY

The Subject Property shall not be rented or leased without written approval of Housing and Community Development Department.

A. Requirements for Approval:

1. Application for Income Certification: Owner shall require tenant to complete, execute and deliver to Housing and Community Development Department or its designee the Application for Income Certification and eligibility statement. Additional information may be requested to supplement the application if necessary to verify the applicant's income.

The Housing and Community Development Department or its designee will review

the complete application in a timely manner consistent with income certification guidelines adopted by the board of Supervisors and shall certify the tenant's income if the tenant meets the County's income eligibility standards. The County may request additional information if necessary to verify tenant's income.

B. Tenant and Participant Protections:

1. Lease: The lease between a tenant and an Owner of rental housing must be for not less than one year, unless by mutual agreement between the tenant and the Owner.

V TENANT OCCUPANCY

- A. Owner shall require tenant to execute a declaration of intent to occupy which shall require the tenant to occupy the unit as his/her primary residence. A failure to require this of tenant before tenant takes possession of the unit is a violation of this Covenant.
- B. The unit shall not be sublet. All rental agreements or leases shall be in writing and must be approved by the Housing and Community Development Department.

VI. ENFORCEMENT

- A. Upon any violation of the provisions of this Covenant or if false or misleading statements are made in any documents or certification submitted to the county, the County may apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed letting, sale or transfer in violation of this Covenant, or for any such other relief as may be appropriate.
- B. Owner understands that the County's objective in requiring this Restrictive Covenant is to insure that the Subject Property remains affordable to eligible lower moderate income households for a period of thirty (30) years and that should the Owner lease the Subject Property in violation of the requirements set forth herein, the public interest would be prejudiced and the County would thereby be damaged. The parties agree that it is impracticable and extremely difficult to fix the extent of actual damages to County from such a breach. However, the parties have made reasonable efforts to establish fairly the amount of compensation and agree that a fair and reasonable amount owing to the County for such a breach by the Owner as liquidated damages would be as follows:
 1. If the Subject Property is rented or leased for an amount in excess of the Maximum Monthly Rent permitted under this Restrictive Covenant, Owner/Lessor shall be liable to the County for damages in an amount equal to the difference between the actual monthly rent and the allowable maximum affordable monthly rent as set forth in Section II C of this Covenant.

2. If the Subject Property is rented or leased to a tenant whose household income has not been certified by the County, the required income certification set forth in Section V A(1) shall be completed within thirty (30) days of notification of non-compliance. If the tenant household's income does not qualify for letting of the Subject Property as required by this Restrictive Covenant, the lessor shall be assessed liquidated damages in the amount of three times the difference between the tenant's gross monthly household income and one-twelfth of the County's maximum household income level allowable to rent or lease the Subject Property in effect at the time the Subject Property is rented or leased.
 3. This remedy shall be cumulative to all other rights and remedies the County may have.
- C. In addition to any other remedies the County may have, the Owner hereby grants, transfers and assigns to the County the right to receive the rents due or collected during the entire period the Subject Property is rented in violation of this Covenant, except where such rights are exercised by an institutional lender which is the maker of a loan secured by a deed of trust recorded in first priority as described in Section VII B. The Owner also assigns to the County the right to collect and/or compromise such rents, in whole or in part, and/or to enforce the payment of all or any part thereof as the County may deem proper.
- D. The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

VII. FORECLOSURE OR BEQUEST

- A. The County agrees that the terms and conditions of the Restrictive Covenant are and shall be subordinate to the liens, rights, duties and obligations created by a deed of trust recorded in first position.
- B. The provisions of this Covenant shall not impair the rights of an institutional lender, which is the maker of a loan secured by a deed of trust recorded in first priority (i.e. which is senior to all other deeds of trust recorded against the Subject Property). or such lender's assignee or successor in interest, to:
1. Foreclose or take title to the Subject Property pursuant to the remedies in the deed of trust; or
 2. Accept a deed or assignment in lieu of foreclosure in the event of default by a trustor; or
 3. Sell or lease the Subject Property to any person at any price, subsequent to exercising its rights under the deed of trust.
- C. In the event of a transfer of the Subject Property by operation of law such as by devise,

bequest, foreclosure on any financing (except financing by an institutional lender which is exempt under this Section VI A above), or deed in lieu of foreclosure on any financing, the transferee or the estate of the decedent shall be bound by the provisions of this Covenant, and upon any subsequent transfer of the property the County may exercise its option to purchase in accordance with Section III A of this Covenant.

- D. Owner covenants to cause to be filed for record in the office of the County Recorder of Santa Barbara County a request for any copy of any notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Subject Property, pursuant to Section 2924(b) of the Civil Code of the State of California. The request shall specify that any notice shall be mailed to the Santa Barbara County Housing and Community Development Department, Affordable Housing Program, 105 E. Anapamu St. Santa Barbara, California 93101. Any notice of sale given pursuant to Civil Code Section 2924(f) or any service of summons or other papers in a judicial foreclosure shall constitute a notice of intent to sell and the County may exercise its option as set forth in Section III A. In the event the County does not exercise its option to purchase upon receiving notice of sale or a judicial foreclosure and the Subject Property is transferred through a trustee's sale, judicial foreclosure or deed in lieu of foreclosure, any surplus to which the owner may be entitled pursuant to Code of Civil Procedure Section 727 shall be paid as follows:

That portion of the surplus, if any, which equals the net amount the Owner would have received after payments of all encumbrances, had the County exercised its option to purchase the property on the date of the foreclosure sale shall be paid to the Owner; the balance of the surplus shall be paid to the County.

The recordation of this Covenant shall establish, create and give constructive notice of a lien in favor of the County secured by the Subject Property in the amount of the surplus to be paid to the County as described above.

- E. In the event the Owner of the Subject Property reacquires the Subject Property at any time subsequent to a foreclosure, a deed in lieu of foreclosure or a trustee's sale of that Owner's interest in the property, the doctrine of after-acquired title shall apply, and the property shall be subject to all of the terms, conditions, restrictions and limitations of this Covenant.

VIII. ADDITIONAL PROVISIONS

- A. The County may assign its rights and delegate its duties hereunder without the consent of Owner. Upon such assignment the County shall notify the Owner.
- B. The Owner and County covenant that they have not and will not execute any other agreement or covenant with provisions contradictory to or in opposition to the provisions hereof and that in any event this Covenant is controlling as to the rights and obligations between the Owner, the County, and their respective successors.
- C. If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant and this Covenant be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- D. The terms of this Covenant shall be interpreted under the laws of the State of California.
- E. The terms of this Covenant shall be interpreted in a manner that is consistent with the County Housing Element and Housing Element Implementation Guidelines.
- F. All notices required herein shall be sent by certified mail, return receipt requested to the Owner at the address of the Subject Property and to the County at:

County of Santa Barbara
 Housing and Community Development Department
 Affordable Housing Program
 105 E. Anapamu St, Suite 105
 Santa Barbara, CA 93101

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2004

OWNER:

DATED: _____

BY: _____

COUNTY OF SANTA BARBARA
 HOUSING AND COMMUNITY
 DEVELOPMENT DEPARTMENT

DATED: _____

BY: _____
 Signature must be notarized

APPROVED AS TO FORM:

STEPHEN SHANE STARK
 COUNTY COUNSEL

DATED: _____

BY: _____
 Deputy County Counsel

