

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: May 16, 2005	Department ID Number: PL 05-16

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS/REDEVELOPMENT AGENCY MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, City Administrator/Executive Director

PREPARED BY: HOWARD ZELEFSKY, Director of Planning *Howard Zelefsky*

SUBJECT: APPROVE REVISED AFFORDABLE HOUSING AGREEMENT (MAINSTREET TOWNHOMES LLC)

RECEIVED
 CITY CLERK
 CITY OF
 HUNTINGTON BEACH, CA
 2005 MAY 9 PM 4:31

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Transmitted for your consideration is a request by Mainstreet Townhomes LLC to approve a revised affordable housing agreement for a 20 unit attached townhome project located at the southwest corner of Main and Holly Streets. The amended agreement will restrict three townhomes to moderate income (120% of Orange County Median) households for a period of 30 years in accord with the Holly Seacliff Specific Plan affordable housing requirements. The original affordable housing agreement for the property was for three units restricted to median income households (100% of Orange County Median) for 60 years. Staff recommends that the City Council review and approve the revised affordable housing agreement.

Funding Source: Not applicable.

Recommended Action: City Council/Redevelopment Agency Action

Motion to:

"Approve the Revised and Restated Declaration of Conditions, Covenants and Restrictions for Property (Resale Restrictions) By and Between the City of Huntington Beach City Council/Redevelopment Agency and Mainstreet Townhomes LLC, and authorize the Mayor/ Agency Chair, Executive Director and City Clerk to sign and execute (Attachment No. 1)."

Alternative Action(s):

The City Council/Redevelopment Agency may make the following alternative motion(s):

"Continue the Declaration of Conditions, Covenants and Restrictions for Property By and Between the City of Huntington Beach and Mainstreet Townhomes LLC, and direct staff accordingly."

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REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION

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DEPARTMENT ID NUMBER: PL 05-16

Analysis:

A. PROJECT PROPOSAL:

Applicant: Mainstreet Townhomes LLC, 5622 Research Drive, Huntington Beach, CA 92649

Location: Southwest corner of Main and Holly Streets

The revised affordable housing agreement will restrict three on-site two-bedroom units to moderate income households for a period of 30 years.

B. ANALYSIS:

The Mainstreet Townhome project was approved by the Planning Commission on November 12, 2003 and was subject to the Holly Seacliff Specific Plan affordable housing criteria. The approved project consists of 20 attached townhome units on a 1.42 acre site. There are 17 three-bedroom units and three two-bedroom units; each has a two-car garage. Building permits have been issued and the project is currently under construction.

The Holly Seacliff Specific Plan affordable housing criteria and Holly Seacliff Development Agreement states that 15% of the total units shall be designated for households earning less than 120% of the Orange County Median Income for a period of 30 years. Last year, the applicant submitted an affordable housing agreement that reflected both the Holly Seacliff criteria of 15% of the project (three units) as affordable and included the citywide policy criteria regulating the income level and duration of affordability.

On November 15, 2004, City Council approved the submitted affordable housing agreement for the subject project. It included three on-site, for-sale units restricted to median income households (no more than 100 percent of the Orange County median income) for a period of 60 years. The document was recorded with the Orange County Recorder's Office on December 7, 2004.

Upon further consideration of the financial differences between median and moderate income levels, and the duration of affordability, the applicant submitted a revised affordable housing agreement consistent with the Holly Seacliff Specific Plan affordable housing criteria. The revised document restricts the three for-sale units to moderate income households (earning no more than 120% of the Orange County Median Income) for a period of 30 years.

The applicant requests that City Council approve the revised affordable housing agreement reflecting the moderate income level and 30 year affordable housing duration approved for the Holly Seacliff Specific Plan area. The maximum allowable annual gross income level for a four-person household would increase from the median income of \$75,700 to the moderate income level of \$90,850 based on 2005 Income Standards distributed by HUD.

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Staff supports the revised agreement because it is consistent with the Holly Seacliff Specific Plan affordable housing requirements. The Redevelopment Agency is co-recommending this action because it will be incurring the future costs of monitoring the affordability agreement under the agency's Administrative Fund. A project does not need to be located within a redevelopment project area for the agency to monitor the agreement. Therefore, all future agreements will include the Redevelopment Agency language and will be submitted to City Council/Redevelopment Agency for approval.

Environmental Status:

The subject request is not subject to the California Environmental Quality Act pursuant to Section 15061 (b) (3).

Attachment(s):

City Clerk's Page Number	No.	Description
4	1.	Revised and Restated Declaration of Conditions, Covenants and Restrictions for Property Resale Restrictions-Affordable Housing Agreement

RCA Author: Medel/MBB

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**INTENTIONALLY
LEFT
BLANK**

ATTACHMENT 1

E-6.4

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Huntington Beach)
2000 Main Street)
Huntington Beach, CA 92648)
Attn: City Clerk)

(Space above for Recorder's use)
This document is exempt from recording fees
pursuant to Government Code Section 27383.

REVISED AND RESTATED DECLARATION OF CONDITIONS,
COVENANTS AND RESTRICTIONS FOR PROPERTY
(RESALE RESTRICTIONS)

This Revised and Restated Declaration Of Conditions, Covenants And Restrictions For Property (the "Declaration") is made as of _____, 2005, by and between MAINSTREET TOWNHOMES LLC, a California limited liability company (the "Covenantor"), and THE CITY OF HUNTINGTON BEACH, a California municipal corporation (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic (the "Agency"). This Declaration supersedes Instrument No. 2004001084613 which was recorded on December 7, 2004, concerning the property described hereinbelow. Collectively, the City and Agency will be referred to as the "Covenantee."

RECITALS

A. Covenantor is owner of record of that certain real property located in the City of Huntington Beach, County of Orange, State of California legally described in the attached Exhibit "A."

B. On July 6, 2004, the City Council approved Final Tract Map Number 16497. City imposed conditions of approval on the Project, requiring Covenantor to submit an Affordable Housing Agreement Plan (the "Declaration") for review and approval by the Planning Department. The City further required that the plan or declaration shall provide 15% of the total number of units or 3 units to be affordable housing for households earning less than 120% of the Orange County Median Income for a period of thirty years. The execution and recordation of this Declaration is intended to fully satisfy that condition.

NOW, THEREFORE, the parties hereto agree and covenant as follows:

1. **Affordability Covenants.** Covenantor agrees for itself and its successors and assigns, and every successor to Covenantor's interest in the affordable unit, or any part thereof,

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that the property located at 7331, 7341 and 7349 Bret Court, which consists of 3 units, shall be designated as affordable and shall be held subject to this Declaration for thirty years from the date of Notice of Completion of units built in Tract Number 16497 as follows:

(a) Each affordable unit shall only be owned and occupied by Covenantor or by "Moderate Income Households," which shall mean persons or families earning less than One Hundred Twenty percent (120%) of the Orange County median income, adjusted for household size appropriate for the property as determined by the Agency based on statistics published by the United States Department of Housing & Urban Development or established by the State of California, pursuant to Health and Safety Code Section 50093, or a successor statute.

(b) The affordable unit shall only be sold at an "Affordable Housing Cost" to Moderate Income Households. Affordable Housing Cost shall mean the permitted gross sales price of the unit as set forth in the Affordable Housing Price/Income Guidelines or successor guidelines published, from time to time, by the City for such purpose.

(c) The term of this agreement shall commence on the date this document is recorded with the Orange County Recorder's Office and continue for thirty years ("Affordability Period"). The covenant contained in this Section 1 shall run with the affordable unit and shall automatically terminate and be of no further force or effect upon the expiration of the Affordability Period.

2. **Transfer of affordable unit.** No transfer of the affordable unit shall occur until the City determines (a) that the proposed purchaser intends to occupy the affordable unit as the proposed purchaser's principal residence, (b) that the proposed purchaser is a Moderate Income Household, and (c) that the proposed transfer occurs at an Affordable Housing Cost. In the event that Covenantor (including successors and assigns) desires to sell the affordable unit, Covenantor shall send written notice thereof to the City at the following address:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: Director of Economic Development

Within seven (7) days of receiving such notice, the City shall send Covenantor transfer application forms prepared by the City. Such forms shall contain a certification of the proposed purchaser's intent with respect to his/her/its residency of the affordable unit and his/her/its gross income, and an affidavit of the proposed purchaser disclosing and certifying the amount of the proposed purchase price. The City shall not be obligated to approve a transfer unless and until the proposed purchaser has submitted to the City such information and completed such forms. In the interest of expediting the close of escrow for such proposed transactions, the City shall reasonably approve or disapprove such submissions as soon as practicable after submission of such forms, and in no event later than fourteen (14) days after submission of a completed form. If the City fails to approve or disapprove a submission within such fourteen (14) day period, the City shall be deemed to have approved such transfer in accordance with the foregoing. Prior to conveyance of the affordable unit, each approved

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purchaser shall also submit to the City an executed disclosure statement which certifies that the purchaser is aware that the purchaser buying the affordable unit may only sell the unit at an Affordable Housing Cost to a Moderate-Income Household, that the maximum permitted sales price may be less than fair market value and that the affordable unit must be owner-occupied at all times and cannot be rented or leased. Covenantor shall cooperate with the City in providing such forms to proposed purchasers and in assisting proposed purchasers to prepare such forms and to provide any required information to the City in connection with only the Covenantor's sale of the affordable unit, provided that the Covenantor shall not be obligated to incur any out-of-pocket costs in connection therewith, other than employee time dedicated to providing such assistance.

THE COVENANTOR AND EACH SUCCESSOR, HEIR, OR ASSIGN OF COVENANTOR UNDERSTAND THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE PROPERTY AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION. COVENANTOR AND EACH SUCCESSOR, HEIR, OR ASSIGN OF COVENANTOR FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE, THE PRIMARY OBJECTIVE OF THE CITY AND THIS DECLARATION IS TO PROVIDE HOUSING TO MODERATE INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.



Covenantor's Initials

3. Covenantor shall include in the escrow instructions and Purchase and Sale Agreements with buyers a provision which requires each buyer to record a covenant which will run with the land and bind all successors-in-interest or assignees that will ensure that all subsequent buyers and occupants qualify as Moderate Income Households. Said covenant shall remain in full force and effect for the Affordability Period as set forth in Section 1.

4. **Non-Discrimination Covenants.** Covenantor covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the sale, transfer, use, occupancy, tenure, or enjoyment of the affordable unit, nor shall Covenantor itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use or occupancy of tenants, subtenants, or vendees in the affordable unit.

Covenantor and its successors and assigns shall refrain from restricting the sale of the affordable unit on the basis of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or martial status, handicap or disability, of any person. All such deeds or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or martial status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or martial status, handicap or disability, in the sale, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferor himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, subtenants or vendee of the premises."

(c) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assignees, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or martial status, handicap or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

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5. **Covenants Do Not Impair Lien.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Declaration shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest.

6. **Covenants For Benefit of City.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Covenantee and such covenants shall run in favor of Covenantee for the entire period during which time such covenants shall be in force and effect, without regard to whether the Covenantee is or remains an owner of any land or interest therein to which such covenants relate. The Covenantee, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

7. **Counterparts.** This Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

8. **Applicable Law.**

(a) If any provision of this Agreement or portion thereof, or the application of any provision to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

[Signatures and Jurats to Follow]

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IN WITNESS WHEREOF, the Covenantee and Covenantor have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

COVENANTOR:

MAIN STREET TOWNHOMES LLC, a California limited liability company

By: [Signature]
Title: owner/member

By: [Signature]
Title: member

COVENANTEE:

CITY OF HUNTINGTON BEACH, a California municipal corporation

Mayor

City Clerk

THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic

By: [Signature]
Deputy Executive Director

APPROVED AS TO FORM:

[Signature]
City Attorney / Agency Counsel
4/21/05 4/21/05

INITIATED AND APPROVED:

[Signature]
Planning Director

REVIEWED AND APPROVED:

[Signature]
City Administrator

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EXHIBIT "A"

Legal Description of the affordable unit

The property shall mean and refer to that certain real properties located in the City of Huntington Beach, County of Orange, State of California, more particularly described as:

Unit 18, Lot 1 of Tract 16497 as per map recorded in Book 860, Pages 25 and 26 of miscellaneous maps in the office of the county recorder of said county, and commonly known as 7333 Bret Court, Huntington Beach, California 92648;

Unit 19, Lot 1 of Tract 16497 as per map recorded in Book 860, Pages 25 and 26 of miscellaneous maps in the office of the county recorder of said county, and commonly known as 7341 Bret Court, Huntington Beach, California 92648; and

Unit 20, Lot 1 of Tract 16497 as per map recorded in Book 860, Pages 25 and 26 of miscellaneous maps in the office of the county recorder of said county, and commonly known as 7349 Bret Court, Huntington Beach, California 92648.

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