

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:                      March 7, 2005	Department ID Number:                      PL05-10

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

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

**PREPARED BY:** HOWARD ZELEFSKY, Director of Planning *[Signature]*

**SUBJECT:** APPROVE AFFORDABLE HOUSING AGREEMENT (TEAM DELAWARE, LLC)

RECEIVED  
CITY CLERK  
CITY OF  
HUNTINGTON BEACH, CA  
2005 FEB 24 11:38

**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 Team Delaware, LLC to approve an affordable housing agreement for a six unit condominium project located on the east side of Delaware Street, south of Yorktown Avenue. The proposed project was approved with a density bonus for one unit. The agreement restricts one condominium unit to a low income household for a period of 30 years, consistent with the City's density bonus provisions. Staff recommends that the City Council review and approve the affordable housing agreement.

**Funding Source:** Not applicable.

**Recommended Action:**

Motion to:

"Approve the Agreement Containing Covenants Affecting Real Property By and Between the City of Huntington Beach and Team Delaware, LLC, and authorize the Mayor and City Clerk to sign and execute (Attachment No. 1)."

**Alternative Action(s):**

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

"Continue the Agreement Containing Covenants Affecting Real Property By and Between the City of Huntington Beach and Team Delaware, LLC, and direct staff accordingly."

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## REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: March 7, 2005

DEPARTMENT ID NUMBER: PL05-10

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### Analysis:

#### A. PROJECT PROPOSAL:

Applicant: Team Delaware, LLC, 800 N. Haven Ave., Ste. 260, Ontario, CA 91764

Location: East side of Delaware Street, south of Yorktown

The affordable housing agreement will restrict one on-site two-bedroom unit to a low income household for a period of 30 years.

The Planning Commission approved the Team Delaware, LLC project on February 10, 2004. The project consists of six condominium units on a 17,152 square foot site and includes one density bonus unit. The project offers two floor plans, which include a minimum of two bedrooms and each has a two-car garage.

#### B. ANALYSIS:

Pursuant to the City's affordable housing policy in effect at the time of this project's approval, the equivalent of 10 percent of the units were required to be affordable to median income households. However, this project included a density bonus request for one unit. The City's density bonus requirements stipulate that projects have to provide a lower affordability level. Therefore, pursuant to the Huntington Beach Zoning and Subdivision Ordinance, this project was required to provide one low income unit for a period of 30 years.

As a low income unit it will be affordable to households earning less than 80 percent of the Orange County median income. For a four-person household this is the equivalent of \$57,500 in annual gross income. The maximum sales price of this unit has not been determined as of this date. However, final sale price will be determined by the City of Huntington Beach.

The City Attorney's Office has prepared the standard affordable housing agreement, which has been signed by the applicant, and staff recommends the City Council approve the agreement.

### Environmental Status:

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

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# REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: March 7, 2005

DEPARTMENT ID NUMBER: PL05-10

## Attachment(s):

City Clerk's Page Number	No.	Description
4	1.	Affordable Housing Agreement

RCA Author: Medel/MBB

PL05-10  
Covenant  
Tr16573

E-7.3

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# ATTACHMENT 1

E-7.4

RECEIVED  
AUG 10 2004

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.

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

This Declaration Of Conditions, Covenants And Restrictions For Property (the "Declaration") is made as of \_\_\_\_\_, 200\_\_\_\_, by and between TEAM DELAWARE, LLC (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"). Collectively, the City and Agency will be referred to as the "Covenantee".

RECITALS

A. Covenantor will be 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 February 10, 2004 the City Council of the City of Huntington Beach approved Final Tract Map Number 16573. The 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 20% of the total number of units or 1 unit to be affordable housing for households earning less than 80% 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, that the property located at 2340 Delaware Street, Huntington Beach, California 92648, which consists of 1 unit, shall be designated as affordable and shall be held subject to this Declaration

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for thirty years from the date of Notice of Completion of units built in Tract Number 16573 as follows:

(a) Each affordable unit shall only be owned and occupied by Covenantor or by "Low Income Households", which shall mean persons or families earning not more than eighty percent (80%) or less 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 Low 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 Low 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 purchaser shall also submit to the City an executed disclosure statement which certifies that the

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purchaser is aware that the purchaser buying the affordable unit may only sell the unit at an Affordable Housing Cost to a Low 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.

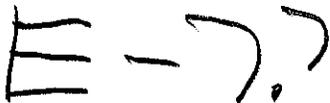
THE COVENANTOR AND EACH SUCCESSOR, HEIR, OR ASSIGN OF COVENANTOR UNDERSTAND THAT THE DETERMINATION OF THE AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, THE TERMS OF SALE OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED 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 Low 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 marital 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 marital 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 marital 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 marital 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."

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

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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:

COVENANTEE:

Team Delaware LLC, a  
California LLC

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

By: [Signature]

\_\_\_\_\_  
Mayor

Bill Fox  
print name

\_\_\_\_\_  
City Clerk

ITS: (circle one) Chairman President Vice President  
MANAGING MEMBER

AND

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

By: [Signature]  
[Signature]  
print name

By: [Signature]  
Deputy Executive Director

ITS: (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer MANAGING MEMBER

APPROVED AS TO FORM:

[Signature] 2/22/05  
City Attorney / Agency Counsel LHM1-31-05  
2/4/05

INITIATED AND APPROVED:

[Signature]  
Planning Director

REVIEWED AND APPROVED:

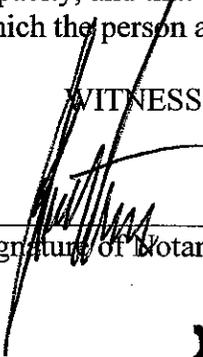
[Signature]  
City Administrator

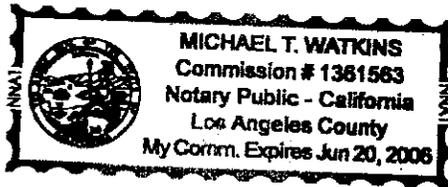
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STATE OF CALIFORNIA )  
 )  
 ) SS.  
COUNTY OF ORANGE )

On September 9, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Bill Fox personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public

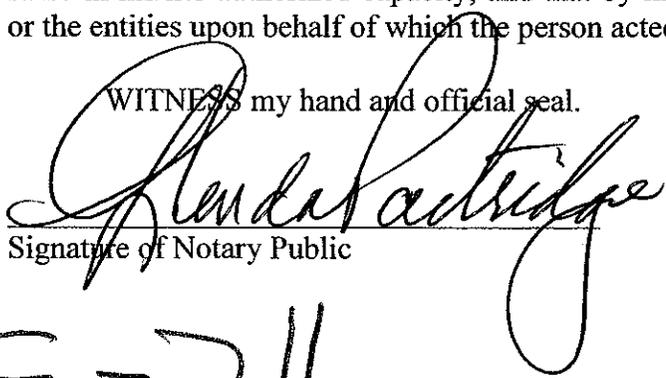


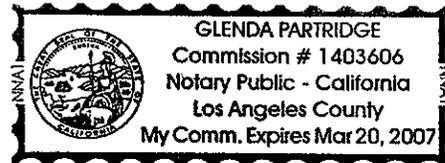
(SEAL)

STATE OF CALIFORNIA )  
 )  
 ) SS.  
COUNTY OF ORANGE )

Los Angeles  
On 9/3, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew Gin Lee personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public



(SEAL)

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"EXHIBIT A"

UNIT NO. 5 WILL BE DESIGNATED AS THE AFFORDABLE UNIT LOCATED AT THE NORTH 66 FEET OF BLOCK 2305 OF THE "EAST SIDE VILLA TRACT", IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGE 85 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY.

UNRECORDED  
FILE  
2/14/19

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