

DOC # 2007-0369346



RECORDING REQUESTED BY: **20775**

MAY 31, 2007 4:14 PM

City of Carlsbad

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00
PAGES: 10

WHEN RECORDED MAIL TO:

City of Carlsbad
City Clerk's Office
Attn.: City Clerk
1200 Carlsbad Village Drive
Carlsbad, California 92008



2007-0369346

(Space above for Recorder's Use)

**AFFORDABLE HOUSING AGREEMENT
IMPOSING RESTRICTIONS ON REAL PROPERTY**

This AFFORDABLE HOUSING AGREEMENT IMPOSING RESTRICTIONS ON REAL PROPERTY ("Agreement"), entered into this 22nd day of MAY, 2007, by and between the CITY OF CARLSBAD, a municipal corporation (hereinafter referred to as the "City"), and Poinsettia Commons LLC., a Delaware limited liability company (hereinafter referred to as the "Developer"), is made with reference to the following:

- A. Developer is the owner of certain real property in the City of Carlsbad, in the County of San Diego, California (hereinafter referred to as the "Subject Property") described in "Attachment A", which is attached hereto and incorporated herein by this reference.
- B. For the purposes of this Agreement, Developer currently intends to construct a total of seventy-eight (78) multi-family residential units, along with certain commercial retail uses, (hereinafter referred to as the "Development") on the Subject Property. The City has approved a Tentative Tract Map 04-11, Site Development Plan 04-09, Conditional Use Permit 04-15, and Coastal Development Permit CDP 04-26 for the Development. The City issued the approval subject to certain Conditions of Approval, including a condition requiring at least fifteen percent (15%) of the units in the Development to be affordable housing as required by the City's Inclusionary Housing Ordinance (CMC Chapter 21.85).
- C. The Development will consist of seventy-eight (78) multi-family residential units. The Development shall include a minimum of twelve (12) affordable multi-family housing units. Developer intends to meet the inclusionary housing condition for the Development by constructing, or causing to be constructed, a minimum of twelve (12) multi-family apartment units and as further described in "Attachment B."
- D. Developer is required by the Conditions of Approval to enter into an Affordable Housing Agreement as required and with the content specified by the City's Inclusionary Housing Ordinance, Carlsbad Municipal Code ("CMC") Chapter 21.85). This Agreement is that Affordable Housing Agreement pursuant to Section 21.85.140 of CMC Chapter 21.85, and shall be executed and recorded prior to the approval of the final map for the Subject Property.

Approved by City Attorney: March 22, 2007

KS
100
NF
COM

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Satisfaction of Affordable Housing Obligation and Conditions of Approval. The Conditions of Approval of Tentative Tract Map CT 04-11, Site Development Plan SDP 04-09, and Coastal Development Permit CDP 04-26, and the requirements of the City's Inclusionary Housing Ordinance (CMC Chapter 21.85) shall not be satisfied unless twelve (12) apartment units of the Development are constructed for the purpose of providing housing to be affordable to lower-income households (the "Affordable Multi-family Units"), according to the schedule and terms contained herein. A total of sixty-six (66) market rate units and at least twelve (12) Affordable Multi-family units may be constructed with approval of this Agreement.

2. Number and Type of Affordable Units. As a condition to the satisfaction of Developer's affordable housing requirements for the Development, Developer shall construct, or cause to be constructed, on the Subject Property at least twelve (12) Affordable Multi-family Units.

3. Terms Governing Provision of Affordable Multi-family Units.

3.1 Location of Affordable Multi-family Units. Not less than twelve (12) Affordable Multi-family Units shall be constructed within Building 1 of the Development.

3.2 Size and Bedroom Count. The Affordable Multi-family Apartment Units shall include one bedroom units with the square footage indicated in "Attachment B" to this Agreement.

3.3 Affordability Requirements. The Affordable Units shall be available to households with incomes not exceeding 80% of the median income for San Diego County, adjusted for actual household size. Monthly Rents of the Affordable Units shall not exceed 1/12th of 30% of 70% of median household income for San Diego County, adjusted for assumed household size appropriate for the unit. For purposes of this Agreement, "Rent" shall include a utility allowance as established and adopted by the City of Carlsbad Housing Authority, as well as all required monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant (but not including fees and charges resulting from any default by the tenant or damage caused by the tenant, or fees or charges paid by the tenant to third party utilities or other providers). Median income figures shall be those published annually by the United States Department of Housing and Urban Development. For purposes of this agreement, the "assumed household size" for each Affordable Multi-Family Unit shall be 1.5 persons. With respect to each Affordable Multi-Family Unit, the affordability requirements of this Section 3.3 shall continue for fifty-five (55) years from the date of issuance of a Certificate of Occupancy by the City for such unit or another comparable unit based upon substitution provisions pursuant to the Regulatory Agreement. The affordability requirements of this Section 3.3 shall be set forth in the Regulatory Agreement between the Developer or its successors and the City, provided for below, which shall supersede this Agreement upon recordation of the Regulatory Agreement.

20777

3.4 Schedule for Developing Affordable Multi-family Apartment Units.

Construction on the Affordable Multi-family Units on the eastern portion of the site shall be initiated after construction has been completed on the market rate multi-family units, commercial retail and underground parking on the western parcel of the subject property. As set forth in Planning Resolution No. 5806, occupancy for up to 28 live-work units may be obtained prior to issuance of a building permit for Building 1, which includes the Affordable Multi-family Units and the daycare facility. After the building permit for Building 1 is issued, occupancy for the remaining 23 live-work units may be obtained. Occupancy for the 15 condominium loft units may not be obtained until construction has commenced and the foundations are in place for Building 1.

4. City Approval of Documents. The following documents, to be approved in writing by the City, shall be used in connection with the rental of Affordable Multi-family Units.

4.1 A marketing plan consistent with the terms of this Agreement, establishing the process for seeking, selecting and determining the eligibility of tenants of the Affordable Units.

4.2 Form of Rental Agreement.

4.3 A Property Management Plan.

4.4 A Form of Regulatory Agreement between the Developer of the affordable project for the Development and City (the "Regulatory Agreement"), following a format designated by City.

5. Compliance Reports. Following completion of construction of any of the Affordable Multi-family Units, a Compliance Report meeting the requirements of Section 21.85.140 of the Inclusionary Ordinance, verifying compliance of all completed Affordable Multi-family Units with the terms of this Agreement and certified as correct by a third-party, shall be submitted annually to the Housing and Redevelopment Director, commencing on the first Report Date that is twelve months from the completion of construction of the Affordable Multi-family Units. If similar reports on some or all of the Affordable Multi-family Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this section by the Housing and Redevelopment Director, with respect to the portion of the Affordable Multi-family Units covered by such reports, provided that copies are provided on an annual basis to the Housing and Redevelopment Director with a third party certification addressed to the City.

6. Release of Subject Property From Agreement. The covenants and conditions herein contained shall apply to and bind Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Subject Property and shall run with and burden such portions of the Subject Property until released in accordance with this Section 6 or Section 12 hereof. Until portions of the Subject Property are released from the burdens of this Agreement pursuant to this Section 6, the

20778

Developer shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in such property. Notwithstanding anything to the contrary set forth in this Agreement, individual purchasers of single-family or multi-family units pursuant to an approved public report in compliance with the California Subdivided Lands Act, and mortgage lenders holding deeds of trust on such individual units after sale to such purchasers, shall not be subject to the terms of this Agreement; and the terms of this Agreement shall be of no further force or effect with respect to such completed unit on the date of the recordation of a deed to the individual purchaser. Upon 55 years from the date of issuance of certificates of occupancy for all of the Affordable Multi-family Units, the entire Subject Property shall be released from the burdens of this Agreement, except such release shall not be construed to release Developer from any and all personal covenants of Developer as provided in Section 9 herein. The burdens of this Agreement shall remain in full force and effect and recorded against the Development for the 55-year duration of this Agreement..

7. Default. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within ninety (90) days after the delivery of a notice of default from the City (or where the default is of the nature which cannot be cured within such ninety (90) day period, the failure of the Developer to commence to cure such default within the ninety (90) day period or the Developer's failure to proceed diligently to complete the cure of such a default within a reasonable time period but in no event not greater than 180 days) will constitute a failure to satisfy the Conditions of Approval with respect to the Subject Property and the requirements of Chapter 21.85 of the CMC and the City may exercise any and all remedies available to it with respect to the Developer's failure to satisfy the Conditions of Approval and Chapter 21.85 of the CMC, including but not limited to, the withholding of further building permits for the market rate units within the Development until such cure is completed.

8. Appointment of Other Agencies. At its sole discretion, the City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform the City's obligations under this Agreement.

9. Hold Harmless. Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Development will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 9 shall remain in full force and effect.

10. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addresses set forth below:

TO THE CITY OF CARLSBAD:

CITY OF CARLSBAD
Housing and Redevelopment Department
Attn: Housing and Redevelopment Director
2965 Roosevelt Street, Suite B
Carlsbad, California 92008-2389

TO THE DEVELOPER:

Poinsettia Commons LLC
949 South Coast Drive, Suite 400
Costa Mesa, Ca. 92626
Attn: Brad C. Perozzi

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

11. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

12. Duration of Agreement. This Agreement shall remain in effect for 55 years following the date certificates of occupancy have been issued for all Affordable Multi-family Units. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of Developer and the Community Development Director.

13. Recording of Agreement. The parties hereto shall cause this Agreement to be recorded against Subject Property in the official Records of the County of San Diego.

14. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER

Poinsettia Commons LLC, a Delaware Limited Liability Company

By: SC 102 Poinsettia Limited Partnership, a Delaware Limited Partnership, its sole member

By: TCR Southern California III, Inc. a Texas Corporation, its general partner

By: [Signature]

Name: BRAD PEROZZI

Title: VICE PRESIDENT

By: [Signature]

Name: Robert LaFever

Title: Assistant Secretary

CITY

CITY OF CARLSBAD, A Municipal Corporation

By: [Signature]
Sandra L. Holder
Community Development Director

If required by City, proper notarial acknowledgment of execution by Developer must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, or
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO or Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM

By: [Signature]
JANE MOBALDI
ASSISTANT CITY ATTORNEY

California All-Purpose Acknowledgment

State of California
County of Orange

On April 16, 2007 before me, Maria C. Mendivil, Notary Public, personally appeared Brad Perozzi, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Maria C. Mendivil

Signature of Notary Public



California All-Purpose Acknowledgment

State of California
County of Orange

On April 16, 2007 before me, Maria C. Mendivil, Notary Public, personally appeared Robert LaFever, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Maria C. Mendivil

Signature of Notary Public



ATTACHMENT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Lot 5 of Carlsbad Tract No. 97-10, Poinsettia Properties, in the City of Carlsbad, County of San Diego, State of California, according to the Map thereof No. 13785, filed in the Office of the County Recorder of San Diego County on May 21, 1999.

ATTACHMENT B

**LOCATION, SIZE, AND BEDROOM COUNT
OF AFFORDABLE UNITS**

Twelve Affordable Multi-family Units will be located above commercial uses in the building on the east side of Embarcadero Lane (Building 1). See Site Development Plan (SDP 04-09). These 12 stacked flat units will each contain no less than 825 square feet of living space. Each of the units is designed with one (1) bedroom and one (1) bathroom within an open floor plan for maximum flexibility.