C-DUP

JULIE RODEWALD
San Luis Obispo County – Clerk/Recorder
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Titles: 1 Pages: 17

Fees	0.00
Taxes	0.00
Others	0.00
PAID	$0.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
CO. CLERK

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day August 5th, 2008

PRESENT: Supervisors Harry L. Ovitt, Bruce S. Gibson, Jerry Lenthall, K.H. 'Katcho' Achadjian, and Chairperson James R. Patterson

ABSENT: None

RESOLUTION NO. 2008-262

RESOLUTION APPROVING AND ACCEPTING AN OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT TO THE COUNTY OF SAN LUIS OBISPO BY VILLA PARK PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

The following resolution is now offered and read:

WHEREAS, the County of San Luis Obispo has been duly requested to approve and accept a certain grant and offer to dedicate to the County of San Luis Obispo as open-space that certain real property described in the open-space agreement attached hereto and made a part hereof; and

WHEREAS, the Director of Planning and Building by letter dated August 5, 2008, has duly recommended that the Board of Supervisors approve and accept such offer of dedication to the County of San Luis Obispo, and has further recommended that such action is consistent with the County's general plan.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. The Board of Supervisors finds and determines that the preservation of land offered for dedication to the County of San Luis Obispo as open-space in the attached agreement is consistent with the County's general plan; that the land is essentially unimproved and if retained in its natural state has scenic value to the public and is valuable as a watershed, and the offer of dedication contained in said agreement contains appropriate covenants to that end; that it is in the public interest that the land be retained as open-space because such land will add to the amenities of living in neighboring urbanized areas; and that approval of the above agreement is categorically exempt from the requirements of the California Environmental Quality Act.

2. The Open-Space Agreement Granting An Open-Space Easement To The County of San Luis Obispo, a copy of which is attached hereto and is incorporated by reference herein as though set forth in full, is hereby approved and the dedication contained therein is hereby accepted by the County of San Luis Obispo and the Chairperson of the Board of Supervisors is hereby authorized and directed to execute said agreement on behalf of the County of San Luis Obispo.

3. The County Clerk is hereby authorized and directed to record the above agreement and a certified copy of this resolution in the office of the County Recorder of the County of San Luis Obispo, and file a copy of said agreement and resolution with the County Assessor of the County of San Luis Obispo.

Upon motion of Supervisor Achadjian, seconded by Supervisor Lenthall, and on the following role call vote, to-wit:

AYES: Supervisors Achadjian, Lenthall, Ovitt, Gibson, Chairperson Patterson

NOES: None

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted.

James R. Patterson

Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors
of the Board of Supervisors, County
of San Luis Obispo, State of California
By: CMChristensen Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

R. WYATT CASH.
County Counsel

BY: _____
Deputy County Counsel

DATED: June 26, 2008

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss

I, JULIE L. RODEWALD, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors this 8/11/08

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

By CMChristensen
Deputy Clerk

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN _____

OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT
TO THE COUNTY OF SAN LUIS OBISPO

THIS AGREEMENT is made and entered into this 5th day of August, 20~~12~~, by and between VILLA PARK PROPERTIES, LLC, a California limited liability company, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property (hereinafter referred to as the "Owner's Property") located in the unincorporated area of County of San Luis Obispo, State of California, which is more particularly described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, as a condition of approval of a development plan authorizing a cluster division of real property (S970128U) and as a condition precedent to the

approval of a final subdivision map for Tract 2262, Phase 2, by County for Owner's Property, Owner is required to enter into two agreements with the County, on behalf of himself and his successors in interest, whereby the Owner grants an open-space easement to the County for the benefit of the public, including the lots being created in said subdivision; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property") which is more particularly described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and the subsequent performance of its obligations by Owner and his successors in interest, will satisfy part of the requirement for dedication of open-space easements imposed by the County's general plan and land use regulations and made a condition of approval of the development plan and the tentative subdivision map referred to above; and

WHEREAS, the Subject Property has certain natural scenic beauty and existing openness, and both Owner and County desire to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition and present state of use of said property of the Owner; and

WHEREAS, Owner is willing to grant to County the scenic use, as hereinafter expressed, of the land and thereby protect the present scenic beauty and existing openness of the Subject Property by the restricted use of said property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, both Owner and County intend that the terms, conditions, and restrictions of the open-space easement granted in this agreement are in compliance

with Government Code sections 51070 through 51097, inclusive, hereinafter referred to as the "Open-Space Easement Act of 1974," so as to be an enforceable restriction under the provisions of Revenue and Taxation Code section 422; and

WHEREAS, Owner has supplied County with a current title company preliminary title report or preliminary subdivision guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on the Subject Property.

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 51070 through 51097, inclusive, and in further consideration of the mutual promises, covenants, and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Grant of open-space easement. Owner hereby grants to County, for the term specified in paragraph 8 below, an open-space easement in and to the Subject Property described above. The open-space easement granted herein conveys to County an estate and interest in the real property of the nature and character specified in the Open-Space Easement Act of 1974, which is subject to the express conditions and restrictions imposed herein upon the use of the property by Owner. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts

which Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property except for agriculture accessory buildings as permitted by Section 22.22.140 [old Section 22.04.036] of the San Luis Obispo County Code, and as otherwise authorized by the approved development plan and subdivision map referred to above.

(b) No advertising of any kind or nature shall be located on or within the Subject Property.

(c) Owner shall not plant or permit to be planted any vegetation upon the Subject Property except for crop production, range land grasses, natural or ornamental landscaping, and as otherwise authorized by the approved development plan and subdivision map referred to above, and as necessary for erosion control.

(d) Except for the construction, alteration, relocation, and maintenance of public roads, private access roads, or driveways, if any, as shown on the approved development plan or final subdivision map referred to above, the general topography of the landscape shall be maintained in its present condition and no grading, excavation, or topographic changes shall be made.

(e) No use of the Subject Property which will or does materially alter the landscape or other attractive scenic features of the property, other than those specified herein, shall be done or suffered.

(f) Owner shall not extract natural resources from the Subject Property, except for development of Owner's underlying water rights.

(g) Owner shall not cut timber, trees, or other natural growth, except as may be required for agricultural use of the Subject Property and fire protection, thinning, elimination of diseased growth, and similar protective measures.

(h) Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property.

(i) Owner shall not cover or cause the Subject Property to be covered in whole or in part with any asphalt, stone, concrete, or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land unless otherwise authorized by the provisions of this agreement.

(j) Except for a resubdivision involving all of this Tract, no land division of a legal parcel within the Subject Property shall occur or be applied for by Owner or his successors in interest, nor shall Owner or his successors in interest otherwise convey (other than under threat of condemnation) a portion of a legal parcel within the Subject Property less than the whole to one or more parties or convey a legal parcel within the Subject Property to two or more parties each of whom acquire title to less than the whole of said parcel. Any such conveyance or transfer of a legal parcel within the Subject Property or a portion thereof by Owner or his successors in interest shall be considered null and void.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from this grant and are expressly reserved to Owner:

(a) The right to maintain all existing private roads, trails, and structures lawfully erected and maintained upon the Subject Property.

(b) The right to construct, develop, and maintain all roads, utilities, trails, and other improvements authorized in the approved development plan and final subdivision map referred to above, and any amendments or modifications thereto which may be approved by the County.

(c) The right to construct, develop, and maintain private water sources and water systems on the Subject Property for the use and benefit of the Subject Property and the clustered lots authorized to be created by the approved development plan and final subdivision map referred to above.

(d) The right to undertake any of those uses (including agricultural cultivation) permitted by Section 22.22.140 [old Section 22.04.036] of the San Luis Obispo County Code.

4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all applicable County ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein or as authorized in the Open-Space Easement Act of 1974. Provided, however, nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County or the Public Utilities Commission.

6. No authorization for public trespass. The grant of easement contained herein and its acceptance by the County of San Luis Obispo does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put so that the property may be kept as near as possible in its natural condition for the benefit of the public, including the lots being created in the above subdivision.

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of easement. The grant of easement to County contained in this agreement shall be effective when it has been approved and accepted by resolution of the Board of Supervisors in the manner required by law, and it shall remain in effect in perpetuity unless abandoned or otherwise terminated by the Board of Supervisors in accordance with the provisions of the Open-Space Easement Act of 1974. Provided, however, no easement shall be abandoned or otherwise terminated without first obtaining approval of an amendment to the development plan (S970128U) authorizing such abandonment or termination.

9. Enforceable restriction. Upon acceptance of the open-space easement granted herein, the Subject Property shall be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code and section 8 of Article XIII of the Constitution of the State of California.

10. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any conveyance, transfer, or sale made by Subdivider of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

11. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

12. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

13. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

14. Enforceability. If any term, covenant, condition, or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to Owner shall be addressed as follows: Villa Park Properties, LLC, Attention: George Widmark, 2243 Signal Avenue, Santa Maria, California 93454.

Provided that any party may change such address by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

16. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation shall serve as constructive notice of the obligations contained herein to be performed by the Subdivider and the successors in interest to all or any portion of Subdivider's Property..

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

OWNER

VILLA PARK PROPERTIES, LLC,
a California limited liability company

By: _____
GEORGE WIDMARK, Member

By: _____
LYDIA WIDMARK, Member

By: _____
DONALD A. COUDRIET, Member

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged for me, a Notary Public, on this 19th **day of** June, **2008, by** Donald H. Coudriet and Joanne M. Coudriet.

Kelly L. Bradshaw

Notary Public

KELLY L. BRADSHAW
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-2649-2 - Expires November 13, 2011

My Commission Expires: 11/13/11

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Luis Obispo } ss.

On June 11, 2008 before me, Doreen Michelle Gomez, personally appeared George Widmark and Lydia Widmark, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SM01 DOREEN MICHELLE GOMEZ
COMM. #1513629
NOTARY PUBLIC-CALIFORNIA
SAN LUIS OBISPO COUNTY
My Comm. Expires September 16, 2008 SM01

(Seal)

Doreen Michelle Gomez
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ Individual
- ☐ Corporate Officer

Title

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Absent Signer (Principal) is Representing:

DESCRIPTION OF ATTACHED DOCUMENT

Open-Space Agreement Granting an Open-Space Easement to the County of San Luis Obispo

Title or Type of Document

Number of Pages

Date of Document

06/11/2008

Signer(s) Other Than Name(s) Above

By: Joanne M. Coudriet
JOANNE M. COUDRIET, Member

COUNTY OF SAN LUIS OBISPO

By: James R. Patterson
Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors

By: CMChristensen
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

R. WYATT CASH
County Counsel

By: [illegible]
Deputy County Counsel

Dated: June 26, 2008

[NOTE: This Open-Space Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

On 8/5/2008, before me, C.M. CHRISTENSEN, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared JAMES R. PATTERSON, who 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 person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-Recorder
and Ex-Officio Clerk of the
Board of Supervisors, County of
San Luis Obispo, State of California

By: CMChristensen
Deputy County Clerk-Recorder

[SEAL]

11343ktagr.doc

EXHIBIT A

All of Tract 2262, Phase 2, as shown on a map recorded in Book 31, Pages 67 through 72 inclusive of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

EXHIBIT B

Parcels 21, 38, 39, 40, 41, 42, 43, 44, 45, and 46 of Tract 2262, Phase 2, as shown on a map recorded in Book 31, Pages 67 through 72 inclusive of Maps, in the Office of the County Recorder of the County of San Luis Obispo, State of California.

11343ktagr.wpd-B

END OF DOCUMENT