

PETITION

To the Rancho Santa Fe Association Board of Directors: Courtney Le Beau, President; Jeff Simmons, Vice President; Phil Trubey, Treasurer; Skip Atkins, Director; David Gamboa, Director; Mark Simpson, Director; and Scott Thurman, Director

Cc: Dominique Albrecht, Chief Administrative Officer and Manager, Rancho Santa Fe Association

Art Jury: Bruce Jordan, President; Kelli Hillard, Vice President; Janet McVeigh, Secretary; Stephanie Kilkenny, Member; and Raymond Rippy, Member

Joel Levantz, Building Commissioner, Rancho Santa Fe Association

The undersigned individually and collectively petition **that the Rancho Santa Fe Association Board of Directors call for a vote of Rancho Santa Fe Association members to determine if not less than two-thirds of such members agree to amend the Rancho Santa Fe Protective Covenant to accommodate the proposed Silvergate Rancho Santa Fe senior housing project;** and

Further petition **that until such vote is finalized neither the Rancho Santa Fe Art Jury nor the Rancho Santa Fe Association Board of Directors is authorized to act relating to the project other than to conduct such vote.**

A. Definitions:

1. "Art Jury" shall mean the Rancho Santa Fe Art Jury.
2. "Board" shall mean the Board of Directors of RSFA.
3. "Covenant" shall mean the Rancho Santa Fe Protective Covenant.
4. "Developer" shall mean AmeriCare Health and Retirement Inc.
5. "Project" shall mean the Silvergate Rancho Santa Fe senior housing project consisting of forty-four (44) cottages, ninety-four (94) apartments, twenty-four (24) memory care units, clubhouse, restaurant and wellness center as proposed by Developer.
6. "Property" shall mean four (4) parcels owned by Developer and located at the northeast corner of the intersection of Via de la Valle and Calzada del Bosque, San Diego County, and as further defined below.
7. "RSFA" shall mean the Rancho Santa Fe Association.

B. Written and statutory authority in support of this Petition:

1. The Property "...consists of approximately 28 acres of which approximately 14 acres are subject to the Protective covenant and double-zoned for multifamily housing (Use Class 'C') and horse keeping (Use class 'L'). The remainder 14 acres are non-Covenant. The entire site is zoned 'estate residential' with the County of San Diego. The site contains four County parcels, two of which contain Covenant portions, and three Covenant-recognized parcels zoned Use Class "C" and "L"..... The entire 28 acre site is located within the Covenant boundaries." [Then-Planning Director, Keith Behner, RSFA Board Packet Memorandum, Item 8, November 6, 2003, RSFA Board Agenda, p. 1]
2. The Covenant states: "There shall never at any time be erected, permitted, maintained or carried on upon said property, or any part thereof,...institutions for the care...of the mentally impaired...or a building for other business or industrial use not specifically mentioned herein unless such is approved by the Association and is located in a use district permitting the same...." [Article 1, Par. 1, Sec. 1, entitled "Uses of Property Prohibited"]

3. The Covenant states that “Amendment, change, modification or termination of any of the conditions, restrictions, reservations, covenants ... set forth and established in any part of this instrument ... may be made by mutual written agreement between the then owners of record of not less than two-thirds in area of said property and lot (sic not) less than two thirds in number of all of the then owners of the record title of said property, and the Association... [Article V, Par. 164, Sec. 2, entitled “Modification of Basics Restrictions”]
4. The Covenant states that none of the covenants may be changed or modified unless the “... owner or owners of record of two-thirds in the area of the property directly subject to said change or modification...” agree. This section further provides that not less than two-thirds in area of all of the property held in private ownership within five hundred (500) feet in any direction from the subject Property agree. [Article V, Par. 165, Sec. 3, entitled “Modification of Other Restrictions”]
5. Class C Conditions and Restrictions
 - a. The Covenant, states: “In Residence Districts of Class C, no building...shall be erected, constructed, ...to be used for any purpose other than an apartment house,... multiple dwelling, two-family dwelling and/or single family dwelling.” [Article IV, Par. 99, Sec. 5, entitled “Residence Districts of Class C—Apartments and Other Kinds of Dwellings”]
 - b. The Developer’s proposal does not fit within the definition of Class C as among other things, it contains a clubhouse, cottage homes, restaurant, wellness center, multiple apartment houses, and memory care units which are not described in Class C.
6. Class L Conditions and Restrictions
 - a. The Covenant, states: “In Business and Public Uses Districts of Class L, no building, structure or premises shall be erected...which shall be used or designed or intended to be used for any purpose other than that of a riding academy, stable, polo field or residence or lodging for persons employed on said premises.” [Article IV, Par. 110, Sec. 13, entitled “Business and Public Use Districts of Class L—Riding Academies and Polo Fields”]
 - b. Because the subject Property is zoned Class C and Class L, it therefore must meet the requirements of both classes.
7. “In order for the applicants to be able to develop the site for senior/”step-down” housing the applicants would have to obtain the separate permissions of both the County and the Association. Failure to obtain the permission of either jurisdiction would result in the failure of the proposal. In the case of differing requirements between the two jurisdictions, the more stringent would apply. As an assertive statement of fact, the failure of the proposed 28 acre project to receive Association support would mean that the project could not be developed, regardless of what the County did. (Underlining by the then-RSFA Planning Director, Keith Behner, in November 6, 2003 letter to the then applicant.)
8. In California, a HOA is not required to provide a retirement care facility. [Cal H&S Code § 1566.5]
9. Any retirement facility in California that provides memory care such as the 24 units Developer proposes must be licensed as a Residential Care Facility for the Elderly (RCFE) which Developer acknowledges. However, according to the California Department of Human Services, a mental impairment (note that mentally impaired is the exact wording employed in the Covenant) includes intellectual disabilities or organic brain syndrome that limits “major life activities” defined variously as caring for oneself, performing mental tasks, eating, walking, standing, lifting, speaking, learning, reading, concentration, thinking, and communicating. These “major life activities” go to the very heart of “memory care” as proposed by the Developer and are antithetical to the express provisions of the Covenant. [Article 1, Par. 1, Sec. 1, entitled “Uses of Property Prohibited” <https://eservices.calhr.ca.gov/Survey/NewEmployee/LifeActivity>; <https://eservices.calhr.ca.gov/Survey/NewEmployee/Impairments>]

C. Factual support for this Petition:

1. None of the parcels comprising the Property have been developed to date beyond an existing but now dilapidated equestrian residential property and a small old house on the corner.
2. Similar proposals to develop the Property, albeit far smaller in scope and changing the concept from ownership to rentals, have been made in the past almost quarter of a century. These proposals have not been approved by the Board, the Art Jury, the County or the San Dieguito Planning Group. Historically, the Chino family, Whispering Palms and Fairbanks Ranch have all opposed similar projects relating to the Property in question.
3. The proposed Project was modeled after another Silvergate property owned and operated by Developer in Rancho Bernardo, a much more densely populated suburban neighborhood of San Diego County, and fits neither the letter nor spirit of the RSFA's governing documents, nor the nature and/or use of any other existing property and/or structure in or near Rancho Santa Fe.
4. The Project as presently envisioned, is a for-profit business whose scale, density and metrics far exceed anything undertaken in Rancho Santa Fe's almost 100 year history and would drive a stake in the heart of all the RSFA's Governing Documents, especially the Covenant itself, and likely will lead to further similar large scale developments that will destroy historic Rancho Santa Fe.
5. It is in the best interest of the RSFA and its members, as mandated by the Covenant, that the Board grant this Petition to ascertain if not less than two-thirds of RSFA members wish to amend the Covenant before committing any more time, money and effort to the proposed Project.

Respectfully submitted,

<u>Printed Name</u>	<u>Signature</u>	<u>Member No</u>	<u>Date</u>	<u>E-mail or Phone</u>