

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

El Dorado County
County Clerk
2850 Fairlane Court
Placerville, CA 95667

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

**AFFORDABLE HOUSING AGREEMENT
(Developer's Agreement)**

PROJECT NAME

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of this day of _____ 200_, by and between EL DORADO COUNTY, (the "County"), and LA CRESCENTA ASSOCIATION, LLC (the "Developer"), with reference to the following facts:

A. Developer is the owner of certain real property in El Dorado County, California described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Developer has received County approval to construct a residential condominium project known as SIERRA OAKS CONDOMINIUMS ("Residential Project").

C. On July 27, 2006 the Planning Commission approved a Tentative Vesting Subdivision Map TM 05-1394 for the conversion of a 72 unit apartment project on the Property into a condominium project. Condition 4 of the Planned Development ("PD05-0007") requires the Developer to provide four (4) units as affordable or inclusionary units and condition 5 requires the Developer to provide an affordable housing plan to the County prior to the final map recordation.

D. Developer is entering into this Agreement in order to satisfy conditions 4 and 5 of PD05-0007. Developer and County are entering into this Agreement to articulate the requirements for the certain units to be "deed restricted" as provided herein, and pursuant to the El Dorado County Human Services Department Deed Restrictions and Affordable Housing Projects Program Guidelines ("Program Guidelines"). The Program Guidelines, as may be amended from time to time, are fully incorporated herein by reference. Developer may obtain a current copy of the Program Guidelines at the address identified for the County under section 21 below. In the event of any conflict between the terms of this Agreement and the Program Guidelines, the terms of

this Agreement shall prevail. This Agreement shall serve as the affordable housing plan required in condition 5.

E. Developer is required to enter into this Agreement as a condition of the County's approval of development of the Residential Project to assure the development of the Affordable Housing Units and sale of the required Affordable Housing Units to Moderate Income Households.

F. Developer intends to meet the requirements of the Conditions No. 4 and No. 5 by constructing four (4) units (Deed Restricted Units) which will be sold to Moderate Income Households as defined in Paragraph 1(e) herein at Affordable Purchase Prices as specified herein.

G. This Agreement is consistent with Section 6 of the Housing Element of the El Dorado County General Plan.

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

1. **Definitions.** In addition to those terms defined in the Recitals to this Agreement, the following terms have the following meanings in this Agreement:

(a) "Affordable" means average total monthly housing expenses during the first calendar year of a household's occupancy, including but not limited to property taxes, homeowner's insurance, homeowner's association dues, if any, mortgage loan principal and interest, mortgage insurance, and Mello Roos or other applicable assessments, which are equal to or less than one-twelfth (1/12th) of thirty-five percent (35%) of no greater than one hundred and twenty percent (120%) of Median Family Income, adjusted for household size based on an occupancy standard of one-person per bedroom, plus one additional person (for example, a three-bedroom home will be priced based on the income of a four-person family). The monthly housing cost factors required to be included in the calculation of the Affordable Housing Price shall be provided by the County.

(b) "Deed Restricted Unit" means the four (4) units that are to be sold to Moderate Income Households pursuant to this Agreement for a period of twenty (20) years.

(c) "Eligible Buyer" means a Moderate Income Household who is eligible to purchase a Deed Restricted Unit as provided herein and the Program Guidelines.

(d) "Household Income" means the combined adjusted gross income for all adult persons living in a unit, as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

(e) "Moderate Income Household" means a household with an annual income between 80 and 120 percent of the area median family income for El Dorado County adjusted by household size.

(f) "Maximum Initial Sales Price" means the purchase price for a Deed Restricted Unit that is Affordable to Moderate Income Households as provided in this Agreement.

(g) "Median Family Income" means the median household income in El Dorado County published periodically by the State of California pursuant to California Code of Regulations, Title 25, Section 6932 (or successor provisions).

(h) "Resale Restriction" means an Affordable Housing Buyer's Occupancy and Resale Restriction Agreement (Buyer's Agreement), in the form provided by the County, to be executed by each buyer of a Deed Restricted Unit and recorded against the Deed Restricted Unit at the time of purchase by the buyer.

2. **Development of Project.** Developer shall construct the Residential Project in accordance with the entitlements and permits approved and issued by the County and shall sell the Deed Restricted Units at an Affordable Price to Moderate Income Households in accordance with this Agreement.

3. **Covenants.**

(a) This Agreement shall be recorded against the Deed Restricted Units. This agreement shall run with the land and shall be binding on the Developer and its successors and assigns for twenty (20) years from the recording date of transfer for each Deed Restricted Unit to an Affordable Buyer .

(b) This Agreement, as it applies to individual units, shall terminate upon each unit's transfer to an Affordable Buyer and Developer shall thereafter have no obligation with respect to such unit as it relates to affordability and the terms of this Agreement.

4. **RECORDING OF AGREEMENT.** THIS AGREEMENT SHALL BE RECORDED CONCURRENTLY WITH THE RECORDING OF A FINAL MAP FOR TM05-1394.

5. **Number of Deed Restricted Units.** As a condition to the satisfaction of condition 4 of PD05-0007, Developer shall construct, or cause to be constructed, four (4) Deed Restricted Units for Moderate Income Households consisting of one (1) one bedroom units and three (3) two bedroom units.

6. **Location of Deed Restricted Units.** The Deed Restricted Units shall be as follows: Units _____ [to be listed by Developer prior to recordation] as depicted on the attached Exhibit "B" dated _____.

7. **Appearance, Size and Bedroom Count.** The Deed Restricted Units shall be of the same general design and exterior appearance as the Market Rate Units and of comparable quality of construction. Interior features of the Deed Restricted Units shall be durable, of good quality, and consistent with contemporary standards for condominium conversion housing.

8. **Schedule for Developing Deed Restricted Units.** The Deed Restricted Units shall be offered for sale concurrently with the Market Rate Units and shall be released by the Developer proportionately with the Market Rate Units.

9. **Sale by Developer to Eligible Buyers.** Developer shall sell the Deed Restricted Units to eligible Moderate Income Households, at Affordable purchase prices as described herein. Developer shall create a list of potential buyers and qualify them for purchase. Potential buyers for the initial sale must be first-time homebuyers as defined in the Program Guidelines. The Buyer shall enter into an Affordable Housing Buyer's Occupancy and Resale Restriction Agreement (Buyer's Agreement) which is attached hereto as Exhibit "C".

10. **Affordable Purchase Prices.** The sales price that the affordable unit will be offered to the prospective qualified purchasers ("Affordable Purchase Price") will be established at the time each affordable unit(s) is offered for sale to prospective qualified purchasers (a "Release"). How many affordable units are in each Release and when the Releases are offered to the prospective qualified purchasers will be at the sole discretion of the Developer except as provided in Paragraph 8 above. The Affordable Purchase Price shall not exceed the price for which a Moderate Income Household can qualify under the financing program offered by Developer's preferred lender or similar lending institutions. Developer acknowledges that this amount will vary with time and will be approved by the County in accordance with income limits for the Sacramento PMSA as published pursuant to California Code of Regulations, Title 25, Section 6932 (or successor provisions).

No later than 45 days prior to each Release, Developer will submit their calculation of the proposed Affordable Purchase Price for the Release based on a calculation provided by the Developer's preferred lender conforming to the criteria described herein and Section 1(a). Within 14 days of receipt of these calculations the County shall either approve the proposed Affordable Purchase Price(s) or require an appropriate adjustment in the Affordable Purchase Price if the financing program offered by Developer's preferred lender or similar lending institutions does not, in the County's discretion, qualify for purchase of the Affordable Unit.

Subject to the County's approval of the proposed Affordable Purchase Price as described above the County has approved the following assumptions to be used in the calculations for the proposed Affordable Purchase Price:

- 1.) Down payment shall be three (3%) percent of the Affordable Purchase Price.
- 2.) The minimum loan term shall be 30 years.
- 3.) Property taxes shall not exceed 1.25% of the Affordable Purchase Price.

12. **Resale of Deed Restricted Units.** After the initial sale of Deed Restricted Units, such Units shall remain affordable to subsequent Income Eligible Buyers pursuant to a Resale Restriction. Subsequent buyers are not required to be first-time homebuyers. The Deed Restricted Units shall be restricted for a twenty-year period and the restriction shall run from the date applicable to the Developer as set forth above in Section 3(a). The Resale Restriction shall require that the unit will be sold by any subsequent Owner at an Affordable price for Moderate Income Households.

The following provisions shall apply to the resale of Deed Restricted Units and these provisions shall be disclosed to the Initial Buyer and contained in the Resale Restriction:

(a) If any Owner, including Developer, is unable to sell the Deed Restricted Unit within sixty (60) days of good faith offering, marketing and advertising the unit for sale, the owner may offer to sell the Unit to the County at the Affordable Housing Price at the time of offer. If the County or its assignee does not complete the purchase of the Unit within ninety (90) days of the Owner's offer of sale to the County, the resale obligations and Deed Restrictions for the Unit shall terminate; however, the provisions of this section relating to Recapture Upon Sale shall continue to apply and remain in full force and effect. In no event may a Deed Restricted Unit be sold at above an Affordable price without full and complete compliance with this section.

(b) **Recapture Upon Sale.** If the Deed Restricted Unit does not sell within sixty 60 days of good faith advertising, offering and marketing the Unit for sale and if the County does not acquire the Deed Restricted Unit as specified in this section, the Deed Restricted Unit may be sold at the current market price, and the Developer shall pay to the County Housing Trust Fund all proceeds from the sale of the Unit less the affordable purchase price as defined herein. For any other sale, the Seller shall pay the County a percentage of Profit, if any, as provided in this section. County shall place all such proceeds in a trust fund to be used solely for the purpose of creating affordable housing in El Dorado County. For purposes of any other sale, "Profit" is defined as the net proceeds from the sale after deducting loan(s), ordinary expenses attributed to the seller, including real estate commissions not to exceed six (6) percent, and after deducting the current Affordable Housing Price. Improvements to the home shall not constitute ordinary expenses and are not deducted for purposes of identifying Profit.

(c) The percentage of Profit retained by the Owner in the event the Unit does not sell as provided above, shall vary according to the number of years an Owner owns the Residential Unit. The percentage of Profit to be allocated to the owner is provided as follows:

Years Current Owner Owned Residence	Percentage of Profit to Current Owner	Percent Profit Paid to the County's Housing Trust Fund
less than 1	10	90
less than 2	20	80
less than 3	30	70
less than 4	40	60
5 or more	50	50

13. **Homebuyer Documents and Security Instruments.** Prior to the initial sale of each Deed Restricted Unit, Developer shall ensure that:

(a) The Eligible Buyer and the County shall execute a Resale Restriction. The Resale Restriction shall be recorded against the Deed Restricted Unit at close of escrow on the Sale to the Eligible Buyer. The Resale Restriction shall be recorded junior only to the lien of the Deed of Trust securing the Eligible Buyer's first mortgage loan, unless otherwise approved in writing by the County.

(b) The Eligible Buyer shall execute a Homebuyer/County Note that obligates the Eligible Buyer to pay the County any excess sales proceeds received by the Eligible Buyer if the Eligible Buyer fails to comply with the Resale Restriction on rental or resale of the Deed Restricted Unit.

14. **County Approval of Documents.** The following documents are to be approved in writing by the County and shall be used in connection with the development and sale of the Deed Restricted Units. County must approve such documents prior to the sale of the first Deed Restricted Unit. If the County fails to approve these documents in writing prior to the sale of the first Deed Restricted Unit Developer may proceed with sale using documents of Developers choosing:

(a) Form of Purchase and Sale Agreements for sale of the Deed Restricted Units (to be prepared by Developer and submitted to the County).

(b) Forms of Resale Restriction and Homebuyer/County Note (to be prepared by the County, following Developer's request).

15. **Release of Property From Agreement.** The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, 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 Property and shall run with and burden such portions of the Property until terminated in accordance with the provisions of this Agreement. Until portions of the Property are released from the burdens of this Agreement, the owners of fee

title to the Property 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.

16. **Default and Remedies.** Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the County will constitute a default under this Agreement. No notice of default shall be required if the County has previously notified the Developer of the same breach on a prior occasion. Should Developer fail to satisfy or adhere to the terms of this Agreement, the County may exercise any and all legal remedies available to it, including, but not limited to:

(a) Withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Residential Project, including, without limitation, final inspections for occupancy and/or certificates of occupancy;

(b) Instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including, without limitation, an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(c) Where one or more persons have received financial benefit as a result of violation of this Agreement or of any requirement imposed under the Ordinance, the County may assess, and institute legal action to recover, as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(d) Any other means authorized under El Dorado County Municipal Code.

17. **Remedies Cumulative.** No right, power, or remedy given to the County by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such document, ordinances of the County, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

18. **Attorneys Fees and Costs.** The County shall be entitled to receive from the Developer or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including, without limitation, reasonable attorneys' fees and the costs of County staff time.

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

20. **Hold Harmless.** Developer will indemnify and hold harmless (without limit as to amount) County 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 the Residential Project, the Deed Restricted Units, or Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the gross negligence or willful misconduct of the County. 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 shall remain in full force and effect.

21. **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 address set forth below:

TO THE COUNTY:

El Dorado County
Department of Human Services
Housing Programs
550 Main Street, Suite C
Placerville, CA 95667
Attn: Affordable Housing Programs

TO THE DEVELOPER:

GRE Management Services
4220 Rocklin Road, Suite 7
Rocklin, CA 95677
Attn: La Crescenta Association, LLC

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.

22. **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.

23. **Duration and Amendment of Agreement.** This Agreement shall remain in effect for so long as the Property is subject to obligations of the Deed Restricted Units. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the Director of Housing Authority who shall have authority to approve or disapprove amendments on behalf of the County.

24. **Applicable Law.** This Agreement shall be governed by California law.

25. **Waivers.** Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Developer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

26. **Title of Parts and Sections.** Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

27. **Multiple Originals; Counterpart.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

28. **Recording of Agreement.** The Developer shall cause this Agreement to be recorded against the Deed Restricted Units in the Official Records of the County of El Dorado.

29. **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.

30. **Exhibits.** The following exhibits are attached to this Agreement:

Exhibit "A" Legal Description of the Property

Exhibit "B" Project Site Plan

Exhibit "C" Affordable Housing Buyer's Occupancy and Resale Restriction Agreement (Buyer's Agreement)

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

DEVELOPER:

LA CRESCENTA ASSOCIATION, LLC
Project: SIERRA OAKS CONDOMINIUMS

By: _____

Its: _____

COUNTY:

EL DORADO COUNTY

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____
 , Deputy County Counsel

ATTEST:

By _____
 , County Clerk

NOTICE:

A CERTIFICATE OF ACKNOWLEDGEMENT IN ACCORDANCE WITH THE PROVISIONS OF CIVIL CODE SECTION 1189 MUST BE ATTACHED FOR EACH PERSON EXECUTING THIS AGREEMENT ON BEHALF OF DEVELOPER

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____ the undersigned notary public, personally appeared _____, personally known to me, (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEAGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "B"
(PROJECT NAME) SITE PLAN

EXHIBIT "C"

**AFFORDABLE HOUSING BUYER'S OCCUPANCY AND RESALE RESTRICTION
AGREEMENT (BUYER'S AGREEMENT)**