

NO FEE COUNTY BUSINESS

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

El Dorado County
Department of Health and Human Services Agency
Attn: HCED Programs
3057 Briw Road, Suite A
Placerville, CA 95667

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

**DRAFT FOR BOARD OF SUPERVISORS AGENDA ITEM
NOT YET APPROVED BY BOARD OF SUPERVISORS
COUNTY OF EL DORADO
AFFORDABLE HOUSING AGREEMENT
(Developer's Agreement)
Lesarra Attached Homes
CAP VI – Lesarra, LLC**

AMENDMENT II

This Amendment ~~2~~II is to that Affordable Housing Agreement dated December 5, 2006 (Developer's Agreement), entered into and recorded by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and CAP VI – Lesarra, LLC a California limited liability company ~~and Lesarra Attached Homes, LP, a Nevada limited partnership~~ (the "Developer");

WITNESSETH

WHEREAS, a Trustee's Deed Upon Sale dated May 24, 2011, recorded May 25, 2011, on Document DOC- 2011-0023817-00 of official records of El Dorado County, California, grants title to the project formerly known as Lesarra Attached Homes and real property as described in Exhibit A of the Developer's Agreement, incorporated herein and made by reference a part hereof, to CAP VI – Lesarra LLC, a California limited liability company, hereinafter known as the "Developer"; and

WHEREAS, Developer has agreed to fulfill the obligations of the Developer's Agreement to provide twelve (12) deed restricted units which will be sold to moderate income households at affordable purchase prices in accordance with the Developer's Agreement dated December 5, 2006 and recorded January 4, 2007 on Document DOC-2007-0000872-00, and as modified by Amendment ~~1~~I recorded November 21, 2007, as Document No. 2007-0072871-00 of official

records of El Dorado County, California, incorporated herein and made by reference a part hereof; and

WHEREAS, on August 27, 2009, in accordance with Paragraph 12 (b) of the Developer's Agreement, ~~unit 912 and unit 918~~two (2) units were released from the affordable restriction leaving a remainder of ten (10) Deed Restricted Units for Moderate Income Households consisting of two (2) one bedroom units and eight (8) two bedroom units; and

WHEREAS, Developer wishes to designate restricted units located in new construction standing stock, not previously sold, and agrees to restrict thirteen (13) units, identified by unit number in Paragraph 6, to provide the remaining total bedrooms and satisfy the conditions of Paragraph 5; and

WHEREAS, the parties hereto have mutually agreed to amend ~~Section~~Paragraph 5 – Number of Deed Restricted Units, ~~Section~~Paragraph 6 - Location of Deed Restricted Units, ~~Section~~Paragraph 10 – Affordable Purchase Prices, Paragraph 12 – Resale of Deed Restricted Units and ~~Section~~Paragraph ~~and~~-20 - Notices of the ~~original~~ Developer's Agreement as follows;

NOW THEREFORE, the parties do hereby agree that Developer's Agreement shall be amended as follows:

This AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into by and between ~~EL DORADO~~the COUNTY OF EL DORADO (the "County"), and CAP VI – LESARRA LLC, a California limited liability company (the "Developer"), with reference to the following facts:

5. Number of Deed Restricted Units. As a condition to the satisfaction of the Prior Agreement, Developer shall construct, or cause to be constructed, thirteen (13) Deed Restricted Units for Moderate Income Households consisting of eight (8) one bedroom units and five (5) two bedroom units.

~~ten (10) Deed Restricted Units for Moderate Income Households consisting of two (2) one bedroom units and eight (8) two bedroom units.~~

6. Location of Deed Restricted Units. The Deed Restricted Units shall be as follows: Units 221, 223, 225, 237, 912, 918, 921, 922, 923, 925, 928, 1022, 1023~~Units 531, 533, 535, 631, 632, 633, 637, 731, 735 and 738~~ as depicted on the attached Exhibit "B" dated December 6, 2006.

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 new housing. The Deed Restricted Units shall be eight (8) one bedroom units and five (5) two bedroom units.

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 release of a group of affordable units 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 of three living in the Sacramento PMSA 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 in the Federal Register or the most recent available circular distributed by the U.S. Department of Housing and Urban Development.

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. 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 a Moderate Income Household 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. 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. 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 or 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. If any other seller cannot sell the Deed Restricted Unit 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 Seller shall pay the County a percentage of Profit, if any, as provided in this section. ~~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 Owned Residence	Current Owner	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

20. **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~~ [Health and Human Services Agency](#)
 ATTN: HCED [Programs](#)
 3057 Briw Road, Suite A
 Placerville, CA 95667

TO THE DEVELOPER:

CAP VI – Lesarra LLC,
275 Battery Street, Suite 500
San Francisco, CA 94111

Except as herein amended, all other parts and sections of that Developer’s Agreement shall remain unchanged and 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:

CAP VI - Lesarra, LLC,
a California limited liability company

By: **Reliant - CAP VI, LLC**
California limited liability company

Its: Sole Member

By: **The Reliant Group, Inc.,** a
California corporation

Its: Manager

By: _____
Joseph L. Sherman

Title: President

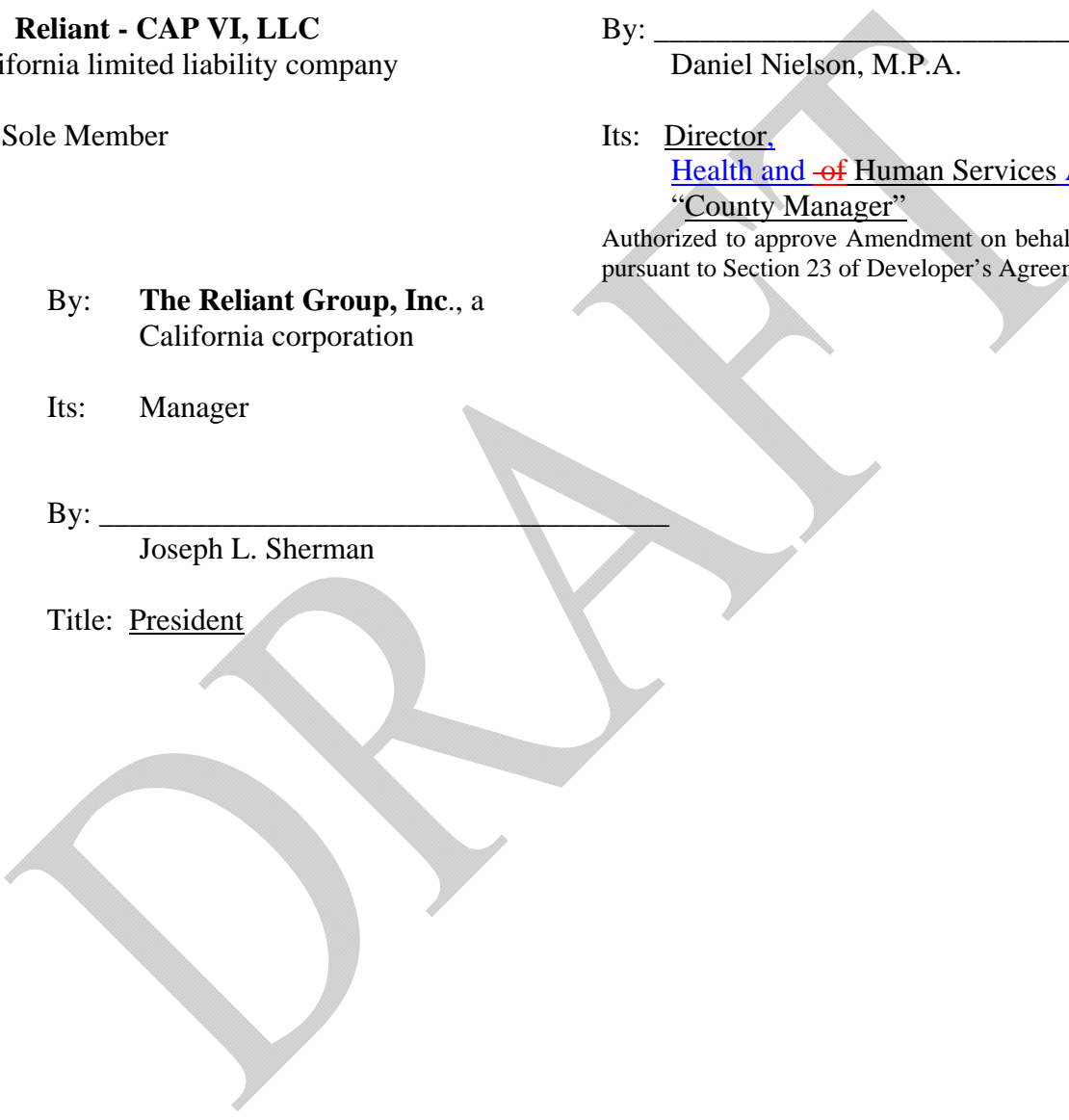
COUNTY:

El Dorado County

By: _____
Daniel Nielson, M.P.A.

Its: Director,
Health and ~~of~~ Human Services Agency
“County Manager”

Authorized to approve Amendment on behalf of County pursuant to Section 23 of Developer’s Agreement



NOTICE:

A CERTIFICATE OF ACKNOWLEDGMENT 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 El Dorado

On _____ 2011, before me, _____, a notary public, personally appeared _____ 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.

Signature _____

(Seal)

Description of Notarized document:

NOTICE:

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

ACKNOWLEDGMENT

State of California

County of El Dorado

On _____ 2011, before me, **Shirley Hodgson**, a notary public, personally appeared **Daniel Nielson** 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 executed the same in his authorized capacity(ies), and that by his signature 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.

Signature _____

(Seal)

Description of Notarized document:

EXHIBIT "B"

LESARRA SITE PLAN

DRAFT