

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

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**NOTICE: THIS DOCUMENT IS RECORDED IN THE CHAIN OF TITLE AND
IMPOSES COVENANTS, CONDITIONS, AND RESTRICTIONS ON THE PROPERTY
AND ANY OWNER/BUYER OF THE PROPERTY THAT REMAIN FOR SEVERAL
YEARS, INCLUDING RESTRICTIONS ON THE SALE/RE-SALE AND USE OF THE
PROPERTY**

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This AFFORDABLE HOUSING BUYER'S OCCUPANCY AND RESALE
RESTRICTION AGREEMENT (the "Buyer's Agreement") is entered into as of this ____ day
of _____, 200__, by and between EL DORADO COUNTY, a political subdivision of
the State of California (the "County"), and _____
(the "Buyer"), with reference to the following recitals of fact:

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A. Buyer intends to purchase the property commonly known as
(the "Subject Deed Restricted Unit"), which is the subject of an Affordable Housing
Agreement between the County and developer as more particularly described below. The Legal
Description of the Subject Deed Restricted Unit is attached hereto as Exhibit "A". The County
and Buyer are entering into this Buyer's Agreement in order to memorialize the terms of
ownership of the Subject Deed Restricted Unit as required by the Affordable Housing
Agreement entered by County and Developer, and pursuant to the El Dorado County Human
Services Department Deed Restrictions and Affordable Housing Projects Program Guidelines
("Program Guidelines"). A copy of the Program Guidelines are attached hereto as Exhibit "B"
and incorporated herein by reference. In the event of any conflict between the terms of this
Buyer's Agreement and the Program Guidelines, the terms of this Buyer's Agreement shall
prevail. The Program Guidelines may be amended from time to time by the County. Upon
Buyer's request, County shall provide written notice of any changes to the Program Guidelines
to Buyer.

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Subject Deed Restricted Unit is attached
hereto as Exhibit "A".

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Buyer's Affordable Housing Agreement

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B. On or about _____, County and Developer entered into an Affordable Housing Agreement regarding the residential project of which the Subject Deed Restricted Unit is a part (the "Affordable Housing Agreement"). This Affordable Housing Agreement provides that the Subject Deed Restricted Unit is to be retained for a period of twenty (20) years as a residence affordable to moderate income buyers, as more particularly described below.

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C. The parties intend by entering into this Buyer's Agreement to provide the terms upon which the Subject Deed Restricted Unit may be utilized and sold.

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

1. **Recitals.** The above referenced recitals are true and correct and incorporated herein by reference.

2. **Definitions.** In addition to those terms defined in the Recitals to this Buyer's Agreement, the following terms have the following meanings in this Agreement:

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(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.

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(b) "Deed Restricted Unit" means the unit that is to be sold to Moderate Income Households pursuant to this Buyer's 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.

(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.

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(e) "Moderate Income Household" means a household with an annual income between 80 and 120 percent of the area Median Family Income adjusted by household size.

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(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 Buyer's Agreement.

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(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).

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(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.

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3. Covenants. This Buyer's Agreement shall be recorded against the Subject Deed Restricted Unit, shall run with the land, and shall be binding on the Buyer and its successors and assigns for twenty (20) years from the date of recording of this Buyer's Agreement.

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4. Restriction on Sale and Re-Sale.

a) Subject to the terms of the Affordable Housing Agreement, and this Buyer's Agreement, the Subject Deed Restricted Unit shall only be sold and/or re-sold to eligible Moderate Income Households, as described in this Buyer's Agreement.

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b) The Subject Deed Restricted Unit shall be subject to the following restrictions:

(i) After the initial sale of the Subject Deed Restricted Unit at a price affordable to the target income level group, the Subject Deed Restricted Unit shall remain affordable to subsequent income eligible buyers for a period of not less than twenty (20) years, as provided herein.

(ii) During the twenty (20) year period following recording of this Buyer's Agreement, the Subject Deed Restricted Unit shall only be sold by Buyer and any subsequent owner at the Affordable Housing Price for a Moderate Income Household at the time of resale. Prior to offering the Subject Deed Restrict Unit for sale, Buyer shall notify the County in writing at the address provided below stating a) the Buyer's intention to sell; b) the address of the property; c) date of original purchase by Buyer; and d) original purchase price. After receiving written notice of Buyer's intent to sell, the County will determine the Affordable Purchase Price applicable to the Subject Deed Restricted Unit. The County may choose to purchase the Subject Deed Restricted Unit at this Affordable Purchase Price. Within

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30 days after receipt of Buyer's written notice of intent to sell described in this paragraph, County will respond in writing to Buyer stating its intent with respect to the proposed resell of the Subject Deed Restricted Unit (iii) If the owner of the Subject Deed Restricted Unit is unable to sell the Subject Deed Restricted Unit within sixty (60) days of a good faith offering 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 re-sale obligations of this section shall terminate; however, the provisions of this section relating to recapture of equity upon resale set forth in Section 4.c below shall continue to apply and remain in full force and effect.

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Deleted: The calculation shall be based on the assumptions provided by the County which shall at a minimum include the elements contained in Section 1(a) of this Agreement with a down payment of _____ percent (%) of the Affordable Purchase Price and a minimum term of thirty (30) years. The County will provide additional information for use in calculating the Affordable Purchase Price which shall be made available to Buyer upon request. The County shall review Buyer's proposed Affordable Purchase Price and either approve the proposed Affordable Purchase Price or provide to Buyer a calculation of the Affordable Purchase Price within 14 days of receipt of Buyer's proposal.¶

c) If the Subject Deed Restricted Unit does not sell within sixty (60) days of a good faith offering and advertising the unit for sale and if the County does not acquire the Subject Deed Restricted Unit as specified in this section, the Subject Deed Restricted Unit may be sold at the current market price, and the seller shall pay to the County all proceeds from the sale of the unit less a percentage of profit, if any, as provided in this section. For purposes of this section, 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. If the owner has made improvements to the home, profit shall be determined by deducting the adjusted basis of the home, or the current Affordable Housing Price, whichever is higher. The percentage of profit retained by the owner 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
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

5. **Release of Property From Agreement.** The covenants, conditions and restrictions herein contained shall apply to and bind, during their respective periods of fee ownership of the Subject Deed Restricted Unit, Buyer and his/her/its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Subject Deed Restricted Unit and shall run with and burden the Subject Deed Restricted Unit until terminated in accordance with the provisions of this Buyer's Agreement. Until the Subject Deed Restricted Unit is released from the burdens of this Buyer's Agreement, the owner(s) of fee title to the Subject Deed Restricted Unit shall expressly make the conditions and covenants contained in this Buyer's Agreement a part of any deed or other instrument conveying any interest in Subject Deed Restricted Unit. In the event that the Subject Deed Restricted Unit is resold to a non-qualifying party as provided in Section 4.c, above, the

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County shall provide to the escrow opened for such resale a release of this Buyer's Agreement in recordable form which shall be recorded upon the close of escrow and the payment of the allocable share of proceeds to the County.

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6. Default and Remedies.

a) Violation of Restrictive Covenants. Should Buyer and/or any person sell or transfer any interest in the Subject Deed Restricted Unit in violation of the restrictive covenants set forth herein, in addition to any other remedy available to the County, the County shall have the right to seek to set aside the sale and/or transfer of the interest in the Subject Deed Restricted Property and may seek such relief in any court or tribunal of competent jurisdiction.

b) Additional Remedies. In addition to any other remedy available to the County at law, equity, or otherwise, whether provided by virtue of this Buyer's Agreement or otherwise, the County shall also have the following remedies available for a violation of the terms of this Buyer's Agreement:

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(i) Instituting against the Developer, Buyer, and/or other parties, as appropriate, a civil action for declaratory relief, injunction and/or any other equitable relief, and/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;

(ii) Where one or more persons have received financial benefit as a result of violation of this Buyer's Agreement, 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;

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7. Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Buyer's 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 Buyer and/or 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.

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

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

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10. **Hold Harmless.** Buyer will defend, indemnify and hold harmless (without limit as to amount) County and its elected officials, officers, employees and agents in their official County capacity (hereinafter collectively referred to as "Indemnities"), 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 Subject Deed Restricted Units and/or Buyer's performance or non-performance under this Buyer's Agreement, and Buyer shall protect and defend Indemnities, 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 Buyer's Agreement or any release of part or all of the Subject Deed Restricted Unit from the burdens of this Buyer's Agreement, and the provisions of this section shall remain in full force and effect.

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11. **Notices.** All notices required pursuant to this Buyer's 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:

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TO THE COUNTY:

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

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Administrative Office¶
330 Fair Lane ¶
Placerville, CA 95667¶
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Copies to:

El Dorado County
County Counsel
330 Fair Lane
Placerville, CA 95667

TO THE BUYER(S):

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.

12. **Integrated Agreement.** This Buyer's 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.

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13. **Duration and Amendment of Agreement.** This Buyer's Agreement shall remain in effect for so long as the Subject Deed Restricted Unit is subject to the obligations of this Buyer's Agreement. This Buyer's Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written agreement by an authorized agent of all parties.

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14. **Applicable Law.** This Buyer's Agreement shall be governed by California law.

15. **Waivers.** Any waiver by the County of any obligation or condition in this Buyer's 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 Buyer or to pursue any remedy allowed under this Buyer's Agreement or applicable law. Any extension of time granted to Buyer to perform any obligation under this Buyer's Agreement shall not operate as a waiver or release from any of its obligations under this Buyer's Agreement. Consent by the County to any act or omission by Buyer 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.

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

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

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18. **Recording of Agreement.** The Buyer shall cause this Buyer's Agreement to be recorded against the Subject Deed Restricted Unit in the Official Records of the County of El Dorado, as provided herein. This recorded Buyer's Agreement may be recorded junior only to the lien of the Deed of Trust or other similar instrument of security securing the Buyer's first mortgage loan on the Subject Deed Restricted Unit, and shall be senior to all other liens and/or encumbrances on the Subject Deed Restricted Property, unless otherwise expressly approved in

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writing by the County. In no case shall the Subject Deed Restricted Unit be occupied prior to the recordation of this Buyer's Agreement against the Subject Deed Restricted Unit.

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19. **Acknowledgment of Buyer's Agreement by Subsequent Purchasers.** Any person or entity who purchases the Subject Deed Restricted Unit during the effective term of the restrictive covenants, conditions, and restrictions imposed by this Buyer's Agreement shall execute an acknowledgment, in a form acceptable to the County and recorded against the Subject Deed Restricted Unit, acknowledging this Buyer's Agreement and its binding effect on the Subject Deed Restricted Property and the owner of the Subject Deed Restricted Property. It shall be Buyer's obligation to ensure that such acknowledgment is executed and recorded.

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

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21. **Exhibits.** The following exhibits are attached to this Buyer's Agreement:

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Exhibit A Legal Description of the Subject Deed Restricted Unit

Exhibit B El Dorado County Human Services Department Deed Restrictions and Affordable Housing Projects Program Guidelines

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

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BUYER(S):

COUNTY:

El Dorado County

By: _____

Dated: _____

Title: _____

El Dorado County

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Approved As To Form:

By: _____
El Dorado County Date

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Buyer's Affordable Housing Agreement

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EXHIBIT "A"

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LEGAL DESCRIPTION OF THE SUBJECT DEED RESTRICTED UNIT

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That certain real property located in the County of El Dorado, State of California described as follows:

Lot _____, inclusive, as shown on the Map entitled " _____ " filed for record in the Office of the Recorder of El Dorado County, State of California, on _____, 20__, in Book _____ of Map Page _____.

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EXHIBIT "B"

El Dorado County Human Services Department
Deed Restrictions and Affordable Housing Projects Program Guidelines

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Buyer's Affordable Housing Agreement

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