

## DEED RESTRICTION AND DECLARATION OF RESTRICTIVE COVENANT

### GUARANTEE OF AFFORDABILITY PROTECTION

This Declaration of Restrictive Covenants (The “Agreement”) is dated as of **Insert date Covenant is Recorded** (the “Effective Date”), by and between the County of Nevada, a political subdivision of the State of California (the “County”), in its capacity as the administrator of Permanent Local housing Allocation (PLHA) grant funds for the City of Nevada City, the City of Grass Valley, and the County of Nevada, and Nevada County Habitat for Humanity, (the Developer).

#### RECITALS

These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

1. The Developer owns the Property. The Property is more particularly described as 120 Orchard Way, Grass Valley, CA and bears the Assessor Parcel No. 009-208-054-000
2. The County and the Developer have entered into a contract in order for the County to provide grant funds to the Developer for the construction of the Development.
3. The County has agreed to provide grant funds to the Developer on the condition that the Development be maintained and operated in accordance with the restrictions concerning affordability as specified in this Agreement.
4. In order to ensure that the Property will be used and operated in accordance with these conditions and restrictions, the County and Developer wish to enter into this Agreement.

THEREFORE, the County and Developer (each a “Party”, and collectively, the “Parties”) hereby agree as follows:

#### ARTICLE 1. DEFINITIONS

1. 1. Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.
  - a) “Agreement” shall mean this Deed Restriction and Declaration of Restrictive Covenants.
  - b) “Buyer” shall mean the initial home buyer or purchaser of property through Nevada County Habitat for Humanity.

- c) "County" shall mean the County of Nevada, a political subdivision of the State of California, acting in its capacity as the administrator of Permanent Local Housing Allocation (PLHA) grant funds.
- d) "Developer" shall mean Nevada County Habitat for Humanity.
- e) "Development" shall mean the Property and the Improvements to the Property as defined in this Agreement.
- f) "Effective Date" shall mean the date Agreement is recorded in County's Official Records.
- g) "Grant Funds" shall mean Permanent Local Housing Allocation funds provided by Nevada County to Developer.
- h) "Improvements" shall mean the improvements to be constructed by the Developer on the Property, including the Unit, and appurtenant landscaping and improvements.
- i) "Low Income" shall have the U.S. Department of Housing and Urban Development definition of a family income that does not exceed fifty (50) percent AMI.
- j) "Lower Income" shall have the meaning set forth by the State of California Health and Safety Code – HCS Section 50079.5(a), which generally states that Lower-income Households are persons and families with a maximum income of eighty (80) percent of the area median income (AMI), adjusted for family size and revised annually.
- k) "Moderate Income" shall have the meaning set forth by the State of California Health and Safety Code – HCS Section 50079.5(a), which generally states that Moderate Income households are persons and families with a maximum income of one hundred twenty (120) percent of the area median income (AMI), adjusted for family size and revised annually.
- l) "Official Records" shall mean the official records of the County of Nevada.
- m) "Property" shall mean the Developer's leasehold interest in the real property described in Recitals and incorporated herein.
- n) "Restrictive Period" shall mean the thirty (30) years outlined in this Agreement for affordability covenants.
- o) "Term" shall mean the term of this Agreement which shall commence on the Effective Date, and shall continue until the thirtieth (30<sup>th</sup>) anniversary of the Effective Date.
- p) "Very Low Income" shall have the U.S. Department of Housing and Urban Development definition of a family income that does not exceed fifty (50) percent AMI.

## ARTICLE 2.

### AFFORDABILITY COVENANTS

2. 1. A Restrictive Covenant (Agreement) shall be recorded upon Property providing Developer shall cause the Property to qualify for and to remain occupied by Lower Income household persons only, and to be used to provide and to remain as Lower Income housing. This Restrictive Covenant shall remain in full force and effect for a period of thirty (30) years, from the date of the Restrictive Covenant is recorded (herein "Restrictive Period"), and shall provide:
  - a) During the Restrictive Period, Buyer and Buyer's successors and assigns or Developer may lease, transfer, or convey said Property only to a person or persons qualified as a member of a Lower Income household and shall not lease, sell, transfer, or convey

property to a person, persons, or household not fully qualified under the terms of this Restrictive Covenant.

- b) During the Restrictive Period, if the Buyer desires to sell said Property, Developer will work with Buyer to aggressively market and sell Property at an affordable cost to a qualified Lower Income or Moderate Income Household according to Developer's guidelines, including filing and approving the "Request for Release of Affordability Restrictions" through Developer.
- c) If, after aggressive marketing of the property to HUD qualified buyers for a period of not less than six (6) months after approval of the "Request for Release of Affordability Restrictions", Developer concludes that the Buyer has complied with the provisions of this Deed of Trust, Developer shall approve the sale of the property to a non HUD income qualified buyer with approval and appeals processes outlined by Developer.
- d) Upon sale of Property, Developer and County shall share in the equity of the sale according to the Equity Sharing Agreement outlined in the contract between Developer and County, which states that County shall be entitled to a percentage of the equity that is proportional to the County's investment in the Property.

### ARTICLE 3.

#### BREACH OF COVENANT

- 3. 1. During the Restrictive Period, in the event of a lease, sale, or transfer, or conveyance of the Property to other than a qualified Lower Income household or shall fail to be sued to provide or remain as Lower Income housing, such event shall be deemed for all purposes a material breach of this Restrictive Covenant. In such an event:
  - a) Such lease, sale, transfer, conveyance, or encumbrance, if occurring, shall be null and void, and of no effect, and may be avoided upon a proper action commenced in a court of competent jurisdiction.
  - b) County shall be entitled to reasonable attorney fees, costs, and expenses incurred in securing the enforcement of the terms hereof; and in furtherance thereof, may utilize in-house counsel or employ outside counsel to prosecute any breach or violation of Agreement.

The intent of this Restrictive Covenant is that it shall both benefit and burden the subject Property; is intended to run with the land; and shall be binding upon the parties hereto and their respective heirs, successors, and assigns.