

No Fees per Government Code 6103  
 RECORDING REQUESTED BY:            }  
 Sonoma County Community            }  
 Development Commission            }  
   }  
   }  
 WHEN RECORDED MAIL TO:            }  
 Sonoma County Community            }  
 Development Commission            }  
 Attn: Executive Director            }  
 P.O. Box 12025                        }  
 Santa Rosa CA 95406                }

**AFFORDABLE HOUSING SALES AGREEMENT**  
 (Name of Development Here)

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the County of Sonoma (hereinafter referred to as "County") and NAME OF DEVELOPER (hereinafter referred to as "Developer"). The Sonoma County Community Development Commission (hereinafter referred to as "Commission") shall administer and enforce this Agreement on behalf of County.

WHEREAS, Developer is the owner of that real property commonly known as SUBDIVISION NAME, located at ADDRESS , CITY, in the unincorporated area of Sonoma County, Sonoma County Assessor's Parcel No. XXX-XX-XXX and XXX (hereinafter referred to as "the Property"), consisting of approximately X.XX acres, and is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, Developer proposes to develop X new three-bedroom housing units and X new four-bedroom housing units on the property; and

WHEREAS, pursuant to Government Code section 65915, the Developer has proposed to construct and sell X housing units at prices affordable to lower income households and X housing units at prices affordable to moderate income households in exchange for a density bonus of X units and other concessions consisting of a LIST OF CONCESSIONS, all in accordance with the Housing Element of the 1989 Sonoma County General Plan; and

WHEREAS, the Developer's proposal ("the Development") was approved by County's Planning Commission by its resolution numbered XX-XXX and dated DATE OF APPROVAL; and

WHEREAS, based on the foregoing recitals and on the covenants and conditions contained herein, the parties hereto desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual terms and covenants hereinafter set forth, the parties hereto agree as follows:

1. Satisfaction of Tentative Subdivision Map Conditions. County hereby agrees that execution, recordation, performance of and compliance with this Agreement shall constitute performance of condition number XX of County Planning Commission Resolution No. XX-XXX dated DATE OF APPROVAL and shall be sufficient in that respect to permit the issuance of building permits subject to satisfaction of all other applicable conditions and compliance with all provisions of the law. Notwithstanding the foregoing, the conditions of approval of Resolution No. \_\_\_\_\_, including condition number ##, shall remain forever applicable to the Development, and shall survive any transfer of title to the Property (whether voluntary or the result of a trustee's sale, judicial foreclosure, or deed in lieu of foreclosure under or relating to any senior deed of trust or senior lien on the Property) or any assignment of Developer's interest in the Development, and shall remain in effect notwithstanding the subordination of this Agreement to any senior regulatory agreement recorded against the Property in connection with other financing on the Property.

2. Sale of Housing Units.

a. In consideration of the density bonus and the use permit approved by the County Planning Commission in Resolution No. XX-XXX, dated DATE OF APPROVAL, Developer agrees to sell each of the housing units identified as affordable, in a condition meeting the reasonable satisfaction of County and at prices not to exceed those established by Commission pursuant to this Agreement, to the buyers within the specified affordability classes.

b. At the time of initial sales, Developer shall demonstrate to the satisfaction of the County that the available fixed-rate mortgage financing will not result in the buyers' monthly housing costs exceeding thirty percent (30%) of eighty percent (80%) of median income for a lower income household and thirty percent (30%) of one hundred twenty percent (120%) of median income for a moderate income household. Monthly housing costs shall include home owner's insurance, property taxes, mortgage principal and interest payment on a fixed-rate, thirty (30) year mortgage, and, as applicable, private mortgage insurance and homeowner's association dues.

c. The maximum affordable sales price of the three (3) bedroom homes shall be calculated using the maximum eligible income of a four (4) person household. The maximum affordable sales price of the four (4) bedroom homes shall be calculated using the maximum eligible income of a five (5) person household. The Commission is authorized to adjust the maximum affordable sales prices in response to increases in the maximum eligible income limits that the U.S. Department of Housing and Urban Development may issue and to changes in the estimated housing costs listed in paragraph 2.b. of this Agreement.

d. The County has prepared and the Developer has accepted Exhibit B, attached hereto and incorporated herein by reference, a chart stating the maximum affordable sales prices for the homes in the Property. The maximum affordable sales prices stated on the chart are calculated using a range of 30-year fixed interest rates for the first mortgages. The Developer may not sell any home at a price that exceeds the maximum affordable sales price corresponding to the actual 30-year fixed interest rate mortgage obtained by the buyer of that home.

e. The buyer's first mortgage amount shall not exceed the amount needed to finance the purchase of the home and the buyer's closing costs. The buyer may not refinance any other debt or receive funds at close of escrow except to reimburse the buyer for over-payment of estimated buyer closing costs.

f. At the time of the initial sale of the housing units, using the formula described above, County shall review and revise, as necessary, the maximum affordable sales prices listed in Exhibit B. The Developer shall cooperate with County by providing to County for County's review, approval and use the fixed interest rate(s) that will be available to the buyers in the affordability classes, appraisals of the housing units and the monthly housing costs listed at paragraph 2.b. of this Agreement.

g. Notwithstanding the foregoing, the maximum affordable sales prices may not exceed the appraised value of the unit. Upgrades to a home may not increase either the applicable maximum affordable sales price specified in this paragraph or the amount of the subsidy described in paragraph 4 of this Agreement.

h. The locations of the lower income units may be revised only with the approval of the Sonoma County Permit and Resource Management Department. If the Developer records the subdivision in phases and/or constructs the units in phases, a minimum of 20% of the units built in each phase

must be designated for and affordable to lower income buyers. At any time during the sales of the units, 20% of the units sold must be designated for and sold to lower income buyers.

3. *Sales Limited To First-Time Homebuyers.* Developer further agrees to sell all housing units that are subject to this Agreement to first-time homebuyers who will be owner-occupants of the units they purchase. A first-time homebuyer shall mean a buyer who has not owned a home within the three years immediately prior to the close of escrow on the purchase of a housing unit subject to this Agreement. A single parent who has legal custody of one or more minors, need not be a first time homebuyer to be certified or selected as a homebuyer of ownership housing. Ownership of a mobile home shall constitute home ownership regardless of whether the mobile home was located on rented or owned land. Each person who will share title to a home shall meet this definition of first-time homebuyer.

Notwithstanding the foregoing, a person who, for the purpose of securing a first mortgage loan to a buyer eligible under this Agreement, executes first-mortgage loan documents on behalf of the eligible buyer and/or is named on the grant deed transferring title to the eligible buyer, shall not be required to comply with this definition of first-time homebuyer if said person executes a Co-Borrower Disclaimer of Possessory Interest prepared by Commission. At least five (5) business days prior to the date of close of each escrow, Developer or homebuyer's primary lender shall provide to Commission written certification that the prospective homebuyer meets the definition of "first-time homebuyer" set forth in this section.

4. *Assurance of Continued Affordability of Lower Income Homes.* The concessions made to Developer by County and recited in this Agreement constitute a subsidy for affordable housing. The amount of the subsidy is the appraised value of the housing unit at the time of sale less the maximum affordable sales price established for the unit. In order for County to meet the requirement of Government Code section 65917 that it ensure the continued affordability of housing units priced for sale to lower income households by this Agreement, Developer agrees that it will not sell the housing units on lots 2 and 8 identified by this Agreement without:

a. First securing from the homebuyer a promise to pay to County an amount equal to the subsidy which promise shall be evidenced by a promissory note and secured by a deed of trust approved by County's Counsel, delivered to County and subordinate to the homebuyer's note and deed of trust. At the time that the homebuyer executes the purchase agreement to purchase the home, Developer shall provide the homebuyer a copy of the promissory note.

b. Requiring each homebuyer to grant to County an option to purchase the homebuyer's housing unit, in a form approved by County's Counsel, at a price equal to the appraised value of the housing unit at the time of the first resale and for a term of 30 years for housing units designated by this Agreement as being priced for low income households. At the time that the homebuyer executes the purchase agreement to purchase the home, Developer shall provide the homebuyer a copy of the option agreement.

c. Fully advising homebuyers in writings signed by the homebuyers, with duplicate originals delivered to County, of the requirements of this Agreement; the writings shall be in substantially the same form as those entitled "OVERVIEW OF SECONDARY FINANCING" and "ADDENDUM TO RESIDENTIAL PURCHASE AGREEMENT AND RECEIPT OF DEPOSIT", true and correct copies of which are marked "Exhibit C" and "Exhibit D" and are attached hereto.

d. Providing County, at least five (5) business days prior to the close of escrow for each housing unit subject to this Agreement, a written certification by Developer of the total price for which such housing unit will be sold together with a copy of the purchase agreement between Developer and such homebuyer, and a copy of the appraisal meeting the conditions described at paragraph 6.

e. Requiring each purchaser's primary lender to provide to the Commission for Commission approval proof of their lower income status, including household size and gross annual income, and the amount of the purchaser's downpayment, at least five (5) business days prior to the date of close of escrow for the initial sale of each housing unit subject to this Agreement. As the Commission may determine, said proof may consist of but shall not be limited to, a letter accompanied by a copy of the purchaser's completed and verified loan application from purchaser's primary lender verifying purchaser's assets and that purchaser's income falls under the guidelines published by the Community Development Commission for lower income. At the time that the homebuyer executes the purchase agreement to purchase the home, Developer shall obtain from the homebuyer written authorization to release to the Commission a copy of the homebuyer's completed and verified loan application.

The maximum eligible incomes of the homebuyers shall fall within the limits published by the Community Development Commission and shall be adjusted by the homebuyer's household size. When the aggregate value of a homebuyer's assets exceeds \$5,000, Commission shall add to the homebuyer's certified income, income from assets at an imputed annual rate of thirty seven one-

hundredths of one percent (0.37%) unless adjusted by the U.S. Department of Housing and Urban Development. When the aggregate value of a homebuyer's assets falls below \$5,000, Commission shall add to the homebuyer's certified income, income from assets at their actual annual rate of return. Assets exclude necessary items such as household furniture and automobiles.

Commission shall provide the developer its written objections to a prospective homebuyer's eligibility within three (3) business days of receipt of all the information listed in paragraph 3 and in this paragraph 4.

5. Initial Sale of Moderate Income Homes. The concessions made to Developer by County and recited in this Agreement constitute a subsidy for affordable housing. In order for County to ensure the initial affordability of housing units priced for sale to moderate income households by this Agreement, Developer agrees that it will not sell the housing units on lots 1 and 3 through 7 identified by this Agreement without:

a. Fully advising homebuyers in writings signed by the homebuyers, with duplicate originals delivered to County, of the requirements of this Agreement; the writings shall be in substantially the same form as those entitled "OVERVIEW OF SPECIAL INITIAL SALE REQUIREMENTS", a true and correct copy of which is marked "Exhibit E" and is attached hereto.

b. Providing County, at least five (5) business days prior to the close of escrow for each housing unit subject to this Agreement, a written certification by Developer of the total price for which such housing unit will be sold, and a copy of the appraisal meeting the conditions described at paragraph 6 of this Agreement.

c. Requiring each purchaser's primary lender to provide to the Commission for Commission approval proof of their moderate income status, including household size and gross annual income, at least five (5) business days prior to the date of close of escrow for the initial sale of each housing unit subject to this Agreement. As the Commission may determine, said proof may consist of but shall not be limited to, a letter accompanied by a copy of the purchaser's completed and verified loan application from purchaser's primary lender verifying purchaser's assets and that purchaser's income falls under the guidelines published by the Community Development Commission for moderate income. The maximum eligible incomes of the homebuyers shall fall within the limits published by the Community Development Commission and shall be adjusted by the homebuyer's household size. When the aggregate value of a homebuyer's assets exceeds \$5,000, Commission shall add to the homebuyer's certified income, income from assets at an imputed annual rate of thirty seven

one-hundredths of one percent (0.37%) unless adjusted by the U.S. Department of Housing and Urban Development. When the aggregate value of a homebuyer's assets falls below \$5,000, Commission shall add to the homebuyer's certified income, income from assets at their actual annual rate of return. Assets exclude necessary items such as household furniture and automobiles.

Commission shall provide the developer its written objections to a prospective homebuyer's eligibility within three (3) business days of receipt of all the information listed in paragraph 3 and in this paragraph 5.

6. Independent Appraisal. Prior to the sale of any of the housing units that are the subject of this Agreement, County will determine the fair market value of each unit and determine the amount of the note required by paragraph 4a of this Agreement. Developer shall cooperate with County by providing County with a post-construction appraisal of each unit prepared by a person holding a current general certificate pursuant to the Real Estate Appraisers' Licensing and Certificate Law (Business & Professions Code sections 11300 et seq.), all relevant appraisal information and other information that is available to Developer.

7. Limited Construction. Nothing contained herein shall be deemed compliance with or waiver of any provision of law or conditions of approval except as expressly stated herein.

8. Opinion of Counsel. At Commission's options, concurrent with the execution hereof, Developer shall provide to County a letter opinion from its legal counsel stating that in the opinion of counsel this Agreement constitutes a valid and binding contract upon Developer and its successors in interest with respect to the property.

9. Agreement Binding. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto, any successors or assignees and any persons claiming under them.

10. Waiver. The waiver by any party of any breach or violation of any term, covenant or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law.

11. Costs and Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement

may recover its reasonable costs and witness, expert and attorneys' fees expended in connection with such an action from the other party.

12. Recordation. Developer shall execute this Agreement, cause the same to be acknowledged and deliver said executed and acknowledged document to the County in such form as to permit its recordation in the Office of the County Recorder of the County of Sonoma. This Agreement shall be recorded contemporaneously with the recordation of the final subdivision map for Gloria Park Subdivision.

13. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856.

14. Ownership of the Property. Developer represents and warrants that it is the owner of the property and has full authority to execute this Agreement.

15. Monitoring Expenses. For the purpose of covering administrative expenses associated with this Agreement, a sum equal to one half of one percent of the affordable sales price of each of the two (2) homes sold to lower income homebuyers and, for each of the six (6) homes sold to moderate income homebuyers, the sum of one hundred dollars (\$100.00) shall be delivered to the Commission at the time of transfer of title of each unit to the first homebuyer.

16. Additional Damages. In addition to any other remedy available to the County by law, in the event that the Developer:

a. Charges occupants of the housing units subject to this Agreement initial affordable sales prices in excess of those allowed by this Agreement, the Developer shall be liable to the County for damages in an amount equal to the sales price charged or collected in excess of the maximums allowed herein and interest thereon compounded at the maximum rate allowable for judgments; or

b. Rents any of the housing units subject to this agreement, it shall be liable to County for damages in the amount of the rent charged or collected, whichever is greater, and interest compounded thereon at the maximum rate allowable for judgments.

17. Risk of Market Conditions. Developer shall bear sole responsibility for developing, constructing and marketing the homes covered by this Agreement, pursuant to the approvals that the County of Sonoma has issued for the Gloria Park development and the requirements contained in this Agreement. The County of Sonoma shall have no obligation to amend this Agreement in response to changing market conditions, except as permitted in paragraph 2 of this Agreement regarding changes in maximum affordable sales prices pursuant to changes in income limits, first mortgage interest rates and the housing costs listed in paragraph 2.b. of this Agreement. The Developer shall reimburse the County for all administrative costs associated with any modification of this Agreement which shall require the approval of the Board of Supervisors of Sonoma County.

COUNTY OF SONOMA

Dated:

By: \_\_\_\_\_

KATHLEEN H. KANE,  
Executive Director  
Sonoma County Community  
Development Commission

DEVELOPER:

Dated:

By: \_\_\_\_\_

NAME

and

Dated:

By: \_\_\_\_\_

NAME

Approved as to substance for  
County of Sonoma:

By: \_\_\_\_\_

PETE PARKINSON, Director  
Permit and Resource Management  
Department

Approved as to form by  
County Counsel:

\_\_\_\_\_

STEVE SHUPE  
Deputy County Counsel