

NF

REQUESTED BY
DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

Assessor's Parcel Number: N/A

2003 OCT -9 AM 9:45

Date: OCTOBER 8, 2003

WERNER CHRISTEN
RECORDER

Recording Requested By:

\$ 0 PAID KJ DEPUTY

✓ Name: TOM PERKINS/DA'S OFFICE

Address: _____

City/State/Zip: _____

Restrictive Covenant
~~CONTRACT #2003-204~~

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)
This cover page must be typed or legibly hand printed.

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RESTRICTIVE COVENANT
(Affordable Housing Agreement)

OCT -8 P12 27

THIS RESTRICTIVE COVENANT (this "Agreement") is made this 2d day of October 2003, by and between DOUGLAS COUNTY, (the "County"), on the one part, and Crestmore Townhomes Limited Partnership (the "Owner"), on the other part.

BARBARA REED
CLERK

RECITALS

A. The Owner is the record owner of that certain real property (the "Property") located in Douglas County, State of Nevada, legally described in Exhibit "A", attached hereto and incorporated herein by reference, the address of which is set forth in Section 1.(b) of this Agreement.

B. There exists within the County a shortage of housing that is affordable to low income households, and the normal provision of housing is not adequate to satisfy low income housing needs.

C. Such housing shortage is detrimental to the public health, safety and welfare. Therefore, the County adopted a density bonus program to provide for affordable housing in new projects by increasing densities and modifying transferred development rights provisions. This program will serve an important public purpose and mitigate the impact of the high cost of housing.

D. According to the Land Use Element of the 1996 Douglas County Master Plan, approximately 8.26 acres of the Property is designated as Receiving Area. This designation allows the Owner to develop approximately 72 residential townhome units on the Property under a Planned Development Permit. In connection therewith, the Owner has received from the County approval for the Project with a total of 72 units, 72 units of which transfer of development rights have been waived, as set forth in Planned Development Permit (PD 98-07), which was recommended for approval by the Planning Commission of the County on October 13, 1998 and granted final approval by the Board of Commissioners on November 5, 1998, with conditions. The 72 approved units are referred to herein as the "Units."

E. It is the desire of the County and the Owner to enter into this Agreement for the implementation of affordable housing as required by the Douglas County Code.

F. As part of the conditions of approval of the Owner's Development Application and for the construction and sale for the Units, the Owner has agreed to encumber the Property with this Agreement by which all of the Units shall be limited to being sold to buyers whose total household income is eighty percent (80%) or less of the County median income.

NOW, THEREFORE, the parties agree as follows:

1. Fundamental Provisions:

- (a) Owner's Name: Crestmore Townhomes Limited Partnership
- (b) Property Address: 1331 Stodick Parkway
- (c) Assessor's Parcel No.: 1220-03-000-015
Development Application No.: PD 98-07
Date of Planning Commission Approval: October 13, 1998
Date of Board of Commissioners Approval: November 5, 1998
- (d) Total number of residential units in the Project: 72 units
- (e) Total number of Density Bonus Units within the Project: 72
- (f) Total number of transferred development rights waived: 72
- (g) Owner's Address for Notices: C/O Tom Kostosky, 2380
Science Parkway Suite 101, Okemos, MI 48864

2. Term of Agreement. This Agreement shall become effective upon recordation hereof. It shall continue from such date through the date that is fifteen (15) years after the date that the last of the Units subject to this Agreement is first occupied. For each Unit occupied, the Unit will be encumbered by the terms of this Agreement for a period of fifteen (15) years from the date it is first occupied. Such period is referred to herein as the "Term." The parties may, but shall not be required to, record a supplement hereto confirming the termination date as to any Unit, and also as to the Agreement as a whole.

3. Use Requirements.

- (a) The Owner covenants and agrees that one-hundred percent (100%) of the Units shall be sold only to households whose total household income is eighty percent (80%) or less of the County median income (as determined by the U.S. Department of Housing and Urban Development, or its successor).
- (b) The persons or families who meet the criteria described herein are referred to as "Qualified Households."

4. Federal and State Laws. Notwithstanding the above provisions, nothing contained herein shall require the Owner or the County to do anything contrary to or refrain from doing anything required by federal and state laws and regulations promulgated thereunder applicable to the construction, management, maintenance, sales and rental of low and moderate income housing units in the County.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the County and the Owner, and their respective successors, owners and assigns. The County reserves the right to designate another public agency to perform the County's obligations or to exercise the County's rights under this Agreement.

6. Covenant Restricting Sales, Rentals and Transfers of Units. All deeds to a Unit shall contain a covenant which refers to this Restrictive Covenant by date and recording information stating that the owner and his or her successors in interest shall not sell, rent, lease, sublet, assign or otherwise transfer any interest in the same without the written approval of the County confirming that the buyer of the Unit meets the criteria established for affordable housing as set forth in Paragraph 3 of this Agreement.

7. Federal and State Laws. Notwithstanding the above provisions, nothing contained herein shall require the Owner or the County to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, management, maintenance, and rental of low and moderate income housing units in Douglas County.

8. Identification of Units. The Units to be included within the terms of this Agreement are identified on Exhibit "B," attached hereto and incorporated by this reference. The land division map or maps that result in the creation of the parcels upon which such Units are or shall be constructed will include a designation of such Units with a reference to this Agreement by date and recording information. The reference may be in a simplified form, such as a note that "the Unit is encumbered by a Restrictive Covenant dated _____ recorded in the Official Records of Douglas County, Nevada, File No. _____, Book _____, Page _____."

9. County Right of First Refusal.

(a) If the Owner desires to accept an offer of a third party to purchase the Property, or any part thereof, then the Owner shall first give written notice to the County offering to sell the Property or part thereof to the County at the same price and on the same terms and conditions as offered by the third party ("Owner's Offer"). The Owner's Offer shall include a copy of the third party offer, and the County shall have thirty (30) days after receipt of the Owner's Offer within which to elect to purchase the Property by written notice of acceptance to County. If so accepted, the parties shall promptly proceed with the purchase and sale, establishing an escrow for such purposes with a closing date of sixty (60) days after escrow is opened unless another closing date is mutually agreed upon by the Owner and the County. If the County does not timely accept the Owner's Offer, then the Owner shall be free to conclude the sale during the ensuing one hundred eighty (180) days to the third party at the price and on the terms and conditions set forth in the Owner's offer to the city, failing which conclusion the County's rights under this paragraph shall again become applicable. For purposes of this paragraph, the terms "purchase" and "sale" include, without limitation, any sale or other transfer of fee title to the Property of any part thereof for consideration (except in connection with an eminent domain proceeding or a dedication in favor of a public entity), a lease or substantially all of the Property, a lease with an option to purchase, and any other non-gratuitous arrangement whereby fee title to the Property or any part thereof may become vested in a person other than the Owner. The terms "purchase" and "sale" exclude circumstances of foreclosure and deed in lieu of foreclosure, but the purchaser on foreclosure or deed in lieu of foreclosure takes subject to the provisions of this agreement. The foregoing right of first refusal shall run with the land and shall bind and inure to the benefit of County's and the Owner's respective successors and assigns, provided, however, that the County's rights shall be subject to and subordinate to the rights of the Nevada Housing Division, if any, under its land use restriction agreement

(b) The foregoing right of first refusal will lapse and be of no further force or effect with respect to the Property or part thereof referenced in the County's Offer if the County does not accept in a timely manner the Owner's Offer, properly given.

(c) No termination of the right of first refusal herein granted, whether in whole or in part, shall affect the condition subsequent that the Property be used and occupied solely by Qualified Households and governed by the provisions of paragraph 3 hereof.

(d) Time is of the essence of each provision hereof in which time is a factor.

10. Duties and Requirements of the Owner and Successors.

(a) The Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Project and/or a Unit, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or a Unit, nor shall the Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, or vendees of the Project or a Unit.

(b) The Owner and its successors and assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the project and/or a Unit on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation of any person. All such deeds, leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The owner herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the real property herein conveyed. The foregoing covenants shall burden and run with the land."

(ii) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that this lease is made and accepted upon the subject to the following conditions: That there shall be no discrimination against or segregation of, any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the real property herein leased, nor shall the lessee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the real property herein leased."

(iii) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the real property described herein, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the real property."

(c) The operation of the Units as an affordable housing project shall not be considered a violation of this Section.

11. Hold Harmless. As between the County and the Owner, the Owner is deemed to assume responsibility and liability for, and the Owner shall indemnify, protect, defend, and hold harmless, the County and its Board of Commissioners, boards and commissions, officers, attorneys, agents, servants or employees, from and against any and all inability, claims, loss, damage, charges or expense, whether direct or indirect, to which County Board of Commissioners, boards and commissioners, officers, agents, servants or employees may be put or subjected, occurring in, on or about the Property or any portion thereof, or by reason of any damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from or in connection with any negligent or wrongful act or action, or any neglect, omission or failure to act when under a duty to act, on the part of the Owner or any of its officers, agents, servants, employees or subcontractors in its or their performance hereunder.

12. General Provisions.

(a) Modification. Only the County, its successors, and assigns, and the Owner and the successors and assigns of the Owner in and to all or any part of the fee title to the property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or other restrictions contained in this Agreement, or to subject the property, to additional covenants, easements or other restrictions.

(b) Joint and Several Liability of Owner. The obligations of the parties identified as the "Owner" shall be joint and several.

(c) Survival of Covenants. The covenants and conditions herein contained shall run with and burden the Units until terminated in accordance with the provisions hereof. The Owner shall expressly make the conditions and covenants in this Agreement a part of any deed or other instrument conveying any interest in the Units.

(d) Transfer of Obligations and Liability. Owner and its successors shall be liable for performance hereof only during their respective period of ownership of the Project, provided the transferee has in writing assumed and agreed to perform the Owner's obligations hereunder or such obligations.

(e) Default. If the Owner defaults with regard to any of the provisions of this Agreement, then the County shall serve written notice of such default upon the Owner. If the default is not cured by the Owner within thirty (30) days after service of the notice of default, or if the default is not reasonably curable within thirty (30) days, then if the Owner fails to commence to cure such default within thirty (30) days after service of the notice of default and the default is not cured promptly within a reasonable period of time after commencement, then the Owner shall be liable to the County for damages caused by such default, and the County may seek an injunction against the sale of the Units until the Owner is in compliance with the terms hereof.

(f) Notices. All notices to be delivered to the parties pursuant to the terms hereof shall be in writing and shall be delivered in person or by U.S. Mail or other delivery service to the addresses listed below. Any of the following addresses may be changed by written notice. If notice is given it shall be deemed effective upon three (3) business days after deposit of same, postage, prepaid, in the U.S. Mail, or the date of actual receipt as evidenced by personal acknowledgement, return receipt or other comparable means.

If to the Owner: Crestmore Townhomes Limited Partnership
C/O Tom Kostosky
2380 Science Parkway Suite 101
Okemos, MI 48864

With a copy to: ALLING & JILLSON, LTD
276 Kingsbury Grade, Suite 2000
P.O. Box 3390
Stateline, NV 89449
Attention: Ken Jillson, Esq.

If to the County: Douglas County
Community Development Department
P.O. Box 218
Minden, NV 89423

(g) Attorney's Fees. In the event an action is brought between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorney's fees and other expenses in connection with such action or proceeding, in addition to its recoverable court costs.

(h) Governing Law: This Agreement shall be governed by and interpreted and enforced in accordance with the internal laws of the State of Nevada without regard to conflicts of laws principles.

(i) No Joint Venture: Nothing in this Agreement shall be deemed or construed to make either party the employee, agent, joint venturer, partner or legal representative of the other party for any purpose whatsoever. Except as specifically provided for herein, neither party shall have the right or authority to assume or otherwise create an obligation or responsibility, express or implied, on behalf of or in the name of the other party, or bind the other party in any manner whatsoever without the written approval of the party to be charged.

(j) Construction: All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Any reference to a "*person*" herein shall include an individual, firm, corporation, partnership, trust, governmental authority or any other entity. Unless otherwise expressly provided, the word "*including*" does not limit the preceding words or terms. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in one or more counterparts, each, when taken together, shall form one and the same agreement.

COPY

Exhibit "A"

LEGAL DESCRIPTION OF
CRESTMORE TOWNHOMES

(TO BE ATTACHED)

Description
Parcel 3

(a portion of A.P.N. ~~1220-03-000-007~~
1220-03-202-001)

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within portions of the Northwest one-quarter (NW¼) and Southwest one-quarter (SW¼) of Section 3, Township 12 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the West 1/16 corner of Section 3, T.12N., R.20E. and Section 34, T.13N., R.20E., M.D.M. a found 5/8" rebar with aluminum cap stamped "Do.Co." in well as shown on Record of Survey No. 23 for Douglas County recorded January 4, 1991 in the office of Recorder, Douglas County, Nevada as Document No. 242238;

thence South 00°28'21" West, 1302.20 feet to a found 5/8" rebar with tag RLS 5665; thence along an existing fence line, the property boundary, as described in Affidavit of Acknowledgement of Property Boundary recorded October 20, 1997 in the office of Recorder, Douglas County, Nevada in Book 1097, at Page 3757 and Book 1097, at Page 3760, North 89°19'44" West, 1291.78 feet to a point on the east right-of-way of Elges Avenue per Grant of Easement and Right-of-way recorded January 21, 1998 in the office of Recorder, Douglas County, Nevada in Book 198, at Page 3077;

thence along said east right-of-way, South 00°21'36" West, 967.32 feet to the northwest corner of Parcel 3 as shown on the Parcel Map for Herbig Properties Limited recorded September 14, 1999 in the office of Recorder, Douglas County, Nevada as Document No. 476559, THE POINT OF BEGINNING;

thence along the easterly right-of-way of Waterloo Lane as shown on said Parcel Map, North 61°07'36" East, 432.20 feet;

thence along the arc of a curve to the right having a radius of 30.00 feet, central angle of 87°43'30", and arc length of 45.93 feet;

thence South 31°08'54" East, 569.69 feet;

thence South 00°23'56" East, 346.14 feet;

thence North 86°36'53" West, 455.58 feet;

thence North 00°23'56" West, 422.11 feet;

thence North 66°48'16" West, 33.08 feet;

thence North 84°09'09" West, 229.72 feet to a point on said east right-of-way of Elges Avenue;

EXHIBIT A

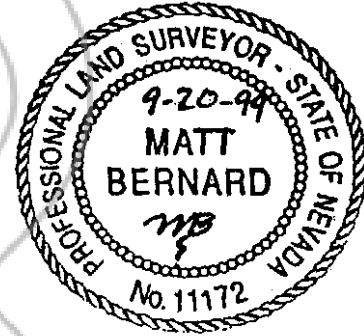
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Page 2 of 2
(Parcel 3)

thence along said east right-of-way, North 00°21'36" East, 150.32 feet to THE POINT OF BEGINNING, containing 8.26 acres, more or less.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared By: R.O. ANDERSON ENGINEERING, INC.
P.O. Box 2294
Minden, Nevada 89423



SEAL

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: October 5, 2003
B. KEEP Clerk of the Judicial District Court
of the State of Nevada, in and for the County of Douglas.
By: [Signature] Deputy

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