

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO:

City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530
Attn: City Clerk

Project: Mary McDonald Riley Street
Senior Apartments

Above Space for Recorder's Use

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 27383

**USE RESTRICTION WITH
AFFORDABILITY COVENANTS**
(Low and Moderate Income Housing Asset Funds)

This Use Restriction with Affordability Covenants (Low and Moderate Income Housing Asset Funds) (this "Agreement") is dated for identification purposes only as of July 23, 2024, and made by the City of Lake Elsinore, in its capacity as Housing Successor to the former Redevelopment Agency of the City of Lake Elsinore (the "City") with respect to that certain real property located at 200 N. Riley Street (APN: 374-162-036), Lake Elsinore, CA 92530 (as legally described in Exhibit A hereto, the "Property").

RECITALS

A. The City has adopted a Housing Element to its General Plan pursuant to Government Code § 65580, *et seq.*, which sets forth the City's policies, goals and objectives to provide housing to all economic segments of the community, including the preservation and development of rental housing affordable to extremely low, very low, low and moderate income households. In furtherance of the City's affordable housing goals and activities, City utilized Low and Moderate Income Housing Asset Funds ("LMIHAF") to purchase the Property for the development and operation of affordable housing.

B. Monies in the LMIHAF are held by the City in its capacity as the Housing Successor to the former Redevelopment Agency of the City of Lake Elsinore pursuant to Health and Safety Code Section 34176(a) and are restricted to use in accordance with applicable law. The City Council approved the use of LMIHAF to purchase the Property on the condition that the Property be developed, maintained and operated in accordance with Health and Safety Code Sections 33334.2 *et seq.*, and in accordance with additional restrictions concerning affordability, operation, and maintenance of the Improvements. City currently holds fee title to the Property.

C. Since acquiring title to the Property, the City Council has approved the additional expenditure of LMIHAF for the purposes of providing decent, safe, and sanitary housing to

extremely low income senior households, a group that is vulnerable and at risk of homelessness and that has been disproportionately affected by the COVID-19 pandemic. Together with funding from the County of Riverside under the American Rescue Plan Act of 2021 (Pub.L. 117-2), amending Title VI of the Social Security Act (42 U.S.C. 801 et seq.), the City Council has approved the additional expenditure of LMIHAF for the development and construction of an affordable senior housing apartment complex on the Property. The proposed apartment complex totals approximately 17,372 sq. ft. consisting of two (2) buildings with sixteen (16) one-bedroom units. Fifteen (15) of the units will be restricted to occupancy by senior households (62+) whose Gross Income does not exceed 30% of Area Median Income (AMI), as published annually by the California Department of Housing and Community Development (HCD), adjusted for actual family size, at an Affordable Rent. Capitalized terms not defined in these Recitals shall have the meaning set forth in Article 1 below.

D. As a condition to the use of LMIHAF, City is required to record this Agreement in the official records of the County Recorder of Riverside County (“Official Records”) against the Property memorializing the use restrictions and affordability covenants required by applicable law and City’s agreement to observe all the terms and conditions set forth herein for itself and all successors and assigns to title to the Property.

E. To ensure that the Property will be used and operated in accordance with all applicable conditions and restrictions of the California Health & Safety Code (HSC), the City desires to record this Agreement in the Official Records and thereby bind the Property for the Term hereof (as defined below).

THEREFORE, the City, on behalf of itself and all successors and assigns thereof to title to the Property, hereby covenants and agrees 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 the Recitals and this Article 1.

(a) “Actual Household Size” shall mean the actual number of persons in the applicable household.

(b) “Affordable Rent” shall mean the maximum allowable rent for an Extremely Low Income Household pursuant to Section 2.2 below.

(c) “Agreement” shall mean this Use Restriction with Affordability Covenants (LMIHAF), including all Recitals and attachments hereto, which are incorporated herein by this reference, and any modifications or amendments thereof.

(d) “Assumed Household Size” shall have the meaning set forth in Section 2.2.

(e) “City” shall mean the City of Lake Elsinore, in its capacity as the housing successor to the Redevelopment Agency of the City of Lake Elsinore.

(f) “City Indemnitees” shall mean the City of Lake Elsinore, the City in its capacity as Housing Successor to the Redevelopment Agency of the City of Lake Elsinore, and the Successor Agency to the former Redevelopment Agency of the City of Lake Elsinore, and their respective directors, officials, employees, contractors and agents.

(g) “City of Lake Elsinore” shall mean the City of Lake Elsinore, a municipal corporation.

(h) “Extremely Low Income Household” shall mean a Household with an Gross Income less than thirty percent (30%) of Median Income as determined in accordance with Health and Safety Code Section 34176.1(a)(3)(A), adjusted for Actual Household Size.

(i) “Gross Income” shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor California housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the City shall provide a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(j) “HCD” shall mean the State of California Department of Housing and Community Development.

(k) “Household” means one or more persons applying for or occupying a Restricted Unit.

(l) “Improvements” shall mean the 16-unit affordable senior apartment complex to be constructed on the Property and related improvements located on and to be developed on the Property, including appurtenant landscaping and improvements.

(m) “Management Agent” shall mean the professional property management company retained by Owner for the day-to-day operation of the Project.

(n) “Median Income” shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size, as specified herein, in the County of Riverside, California, as published from time to time by HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall utilize other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(o) “Owner” means the City and all successors in interest and assigns to title to the Property.

(p) “Property” shall mean the real property located at 200 N. Riley Street (APN: 374-162-036), Lake Elsinore, CA and legally described in Exhibit A attached hereto and incorporated herein.

(q) “Project” shall mean the Property and the Improvements.

(r) “Qualified Tenant” shall mean a Senior Household that also qualifies as an Extremely Low Income Household.

(s) “Rent” shall mean the total of monthly payments by the Tenant of a Restricted Unit for the following: use and occupancy of the Restricted Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all Tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the Tenant (as established by the City of Lake Elsinore, or such other appropriate agency), including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

(t) “Rental Agreement” shall mean an agreement between Owner and Tenant for the occupancy of a Restricted Unit for at least one year. The term “Rental Agreement” shall include leases to Qualified Tenants for at least one year.

(u) “Restricted Units” shall mean all residential rental Units existing or developed on the Property, except one (1) manager unit.

(v) “Senior Household” means a Household(s) with at least one member 62 years of age or older and otherwise meeting the requirements of California Civil Code Section 51.3.

(w) “Tenant” shall mean a one or more persons occupying a Restricted Unit.

(x) “Term” shall mean the term of this Agreement, which shall commence on the recordation of this Agreement in the Official Records, and shall continue until the fifty-fifth anniversary of the issuance of a Certificate of Occupancy for the Project.

(y) “Unit(s)” shall mean one or more of the residential rental units (including one (1) manager unit) to be developed and maintained by the Owner on the Property.

ARTICLE 2.

CONSTRUCTION; AFFORDABILITY COVENANTS

2.1 Construction. Owner covenants and agrees to complete the construction and development of the Project on the Property subject to the terms and conditions of all applicable land use approvals and in accordance with the Lake Elsinore Municipal Code.

2.2 Occupancy Requirements. Owner covenants and agrees, that at all times during the Term, the Restricted Units shall be rented to and occupied by or, if vacant, held available for occupancy by, Extremely Low Income Households who also qualify as Senior Households.

2.3 Allowable Rent. Monthly rent, including a reasonable utility allowance, shall not exceed the maximum allowable rent, as follows:

(a) Extremely Low Income Rent. Subject to Section 2.3 below, the Rent charged to Tenants of the Restricted Units, if any, shall not exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of Median Income, adjusted for Assumed Household Size.

(b) Assumed Household Size. In calculating the Allowable Rent for the Restricted Units, an Assumed Household Size of two persons shall be utilized for each one-bedroom Restricted Unit.

(c) City Approval of Rents. Rents for all Restricted Units shall be approved by the City prior to occupancy. The Owner shall provide the City an annual written report setting forth the proposed annual rent increase, if any, for the subsequent year on such date mutually acceptable to the parties. The City shall have fifteen (15) days following the receipt of such report to either approve or disapprove of such rent increase. The City shall approve such rent increase if such increase complies with the requirements of this Agreement. The City's failure to either approve or disapprove of such proposed rent increase within such fifteen (15) days shall be deemed approval.

(d) Relationship to Other Restrictions. In the event a Restricted Unit is subject to restrictions set forth in a covenant agreement or similar restrictions recorded against the Property in connection with the financing of a portion of the costs of developing the Project, Owner shall be required to comply with the most restrictive covenant as to the Restricted Units.

2.4 Increased Income of Tenants.

(a) Above Extremely Low Income Household. If the Owner determines that a former Extremely Low Income Household's Gross Income has increased and exceeds the qualifying income for an Extremely Low Income Household set forth above, then, upon expiration of the Tenant's Rental Agreement:

(1) Such Tenant's Unit shall be considered a Restricted Unit occupied by an Extremely Low Income Household;

(2) Subject to any lower rent required by any other program applicable to the Project, such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent not to exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household size; and

(3) The Owner shall rent the next available Restricted Unit to an Extremely Low Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(b) Above Very Low Income Household. If upon recertification of a Tenant's income, the Owner determines that a former Extremely Low Income Household's Gross Income has increased and exceeds the qualifying income for a Very Low Income Household set forth above, then, upon expiration of the Tenant's Rental Agreement:

(1) Such Tenant's Unit shall be considered a Restricted Unit occupied by an Extremely Low Income Household;

(2) Subject to any lower rent required by any other program applicable to the Project, such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent not to exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household size; and

(3) The Owner shall rent the next available Restricted Unit to an Extremely Low Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(c) Above Low Income Household. If upon recertification of a Tenant's income, the Owner determines that a former Extremely Low Income Household's Gross Income has increased and exceeds the qualifying income for a Low Income Household set forth in above, then, upon expiration of the Tenant's lease:

(1) Such Tenant's Unit shall continue to be considered a Restricted Unit occupied by an Extremely Low Income Household;

(2) Subject to any lower rent required by any other program applicable to the Project, such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent not to exceed, the lesser of: (i) the market rate rent for a similar unit of comparable quality to the Unit, or (ii) one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Median Income, adjusted for Assumed Household Size if the Household's Gross Income does not exceed one hundred twenty percent (120%) of Median Income, adjusted for Assumed Household Size, or thirty percent (30%) of the Household's Actual Income if the Household's Gross Income does exceed one hundred twenty percent (120%) of Median Income, adjusted for Assumed Household Size; and

(3) The Owner shall rent the next available Restricted Unit to an Extremely Low Income Household, at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

2.5 Tenant Selection.

(a) Tenant Selection Plan. Before leasing any vacant Restricted Units in the Project, the Owner must provide to the City for its review and approval the Owner's written Tenant selection plan.

(b) Nondiscrimination. Owner covenants and agrees for itself and any successors and assigns to the Owner or the Property that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any Restricted Unit or the Property or the construction or development thereof nor shall the Owner, or any person claiming under or through him or her, 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, sublessees, subtenants, contractors, subcontractors,

or vendees of any Restricted Unit or the Property or in connection with the employment of persons for the construction, operation and management of the Property.

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

All deeds, rental agreements, leases, subcontracts or contracts made or entered into by the Owner as to the Restricted Units, the Project or the Property or any portion thereof, shall contain and be subject to the following nondiscrimination and nonsegregation clauses:

(1) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

(3) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in connection with the performance of this contract nor shall the contracting party himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, contractors, subcontractors or vendees with respect to the premises.”

Notwithstanding the foregoing paragraph, with respect to familial status, the foregoing paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing paragraph.

The covenants established in this Regulatory Agreement shall, without regard to technical classification and designation, be binding on Owner and any successor in interest to Owner or the Property, or any part thereof, for the benefit and in favor of City and its successors and assigns. The covenants against discrimination shall run with the land and remain in effect in perpetuity.

(c) Source of Income. The Owner shall not discriminate on the basis of source of income or rent payment (for example, TANF or SSI) or poor credit history.

(d) Qualified Tenants. All of the Restricted Units shall be available for occupancy on a continuous basis to Qualified Tenants who are Extremely Low Income Senior Households. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Restricted Unit nor shall Owner or any person claiming under or through the Owner, 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, sublessees, subtenants, or vendees of any Restricted Unit or in connection with the employment of persons for the operation and management of the Project. All deeds, leases or contracts made or entered into by Owner as to the Restricted Units or the Project or portion thereof, shall contain covenants concerning discrimination as prescribed hereby.

2.6 Tenant Protections.

(a) Rental Agreement. Owner shall include in Rental Agreements for all Restricted Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as an Extremely Low Income Household and/or Senior Household. The lease shall provide that the Household is subject to annual certification in accordance with Section 3.1 below, and that, if the Household's income increases above the applicable limits, such household's Rent may be subject to increase.

(b) Rental Agreement. The Owner shall execute or cause to be executed a written Rental Agreement with each Household occupying a Restricted Unit identifying by name all permitted occupants. The Rental Agreement must be in a form approved by the City. The standard Rental Agreement shall state that occupation of the Restricted Units is subject to the income and other restrictions described herein. The standard Rental Agreement shall not be amended without prior City approval.

(c) Prohibited Rental Agreement Terms. The Rental Agreement shall not contain any of the following provisions:

(1) Agreement to be Sued. Agreement by the Tenant to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the Rental Agreement;

(2) Treatment of Property. Agreement by Tenant that the Owner may take, hold, or sell personal property of Household members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the Restricted Unit after the Tenant has moved out of the Restricted Unit. The Owner may dispose of this personal property in accordance with state law;

(3) Excusing Owner from Responsibility. Agreement by the Tenant not to hold Owner or Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) Waiver of Notice. Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

(5) Waiver of Legal Proceedings. Agreement by the Tenant that the Owner may evict the Tenant or household members without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) Waiver of a Jury Trial. Agreement by the Tenant to waive any right to a trial by jury;

(7) Waiver of Right to Appeal Court Decision. Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the Rental Agreement; and

(8) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by the Tenant to pay attorneys' fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay attorneys' fees and other legal costs if the Tenant loses.

2.7 Condominium Conversion; Prohibited Uses. The Owner shall not convert the Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement. Owner shall not permit any of the Units (including the Restricted Units) to be utilized on a transient basis, or as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, trailer court or park, or any other non-residential use.

ARTICLE 3. INCOME CERTIFICATION AND REPORTING

3.1 Income Certification. The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy, income and Household size certifications from each Tenant occupying any of the Restricted Units. The lease for each restricted Unit shall require annual recertification of a Tenant's income and household size certifications. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate in accordance with City policies and applicable law. City relies upon the information contained in such certifications to satisfy its reporting and record keeping requirements pursuant to applicable law. In the event the Owner fails to submit to City all of the documentation required by this Agreement, upon receipt of written notice of failure to provide such documentation from City and failure by the Owner to cure such default within forty-five (45) days after written notice from City, Owner shall be in default of this Agreement and City may seek all available remedies as set forth in this Agreement.

3.2 Additional Information. Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to any Unit.

3.3 Records. Owner shall maintain complete, accurate and current records pertaining to the Project pursuant to this Agreement and applicable law. Owner shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and Household size of Tenants during normal business hours upon no less than seventy-two (72) hours prior notice. All Tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City upon no less than seventy-two (72) hours' prior notice. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Restricted Units for a period of at least ten (10) years, including:

- (a) Initial and annual Tenant income certifications;
- (b) Records which demonstrate compliance with the Tenant protections as specified in this Agreement;
- (c) Records which verify that the Project continues to meet Restricted Unit affordability requirements as provided herein; and
- (d) Any other records reasonably required by City to verify that Owner is in compliance with the provisions of this Agreement.

3.4 On-Site Inspection. The City shall have the right to perform an on-site inspection of the Project at least one time per year, during normal business hours upon ten (10) business days' notice. The Owner agrees to cooperate in such inspection, without charges or fees to the City, so long as City representatives comply with all safety rules, and so long as, upon Owner's request, representatives of Owner are permitted to accompany the City representative. In the event of an emergency, a City representative may immediately enter upon the Property.

ARTICLE 4. OPERATION OF THE DEVELOPMENT

4.1 Residential Use. The Project shall be used only as multifamily rental housing for Qualified Tenants in accordance with this Agreement and applicable law.

4.2 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

4.3 Women and Minority Business Requirements. Owner shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) with regard to equal employment opportunities.

4.4 No Nuisance. During the Term, Owner shall not maintain, cause to be maintained, and shall use commercially reasonable efforts to not allow to be maintained on or about the Property any public or private nuisance, including, without limitation, the conduct of criminal activities set forth in the nuisance abatement provisions of the Uniform Controlled Substances Act (Health and Safety Code § 11570, *et seq.*) as currently exists or as may be amended from time to time, or the Street Terrorism Enforcement and Prevention Act (Penal Code § 186.22, *et seq.*), as currently exists or as may be amended from time to time.

4.5 Hazardous Materials. During the Term, Owner shall comply with all provisions of applicable state and local laws related to hazardous materials.

4.6 Operating Budget. During the Term, Owner shall annually submit to City for its reasonable and timely approval a budget for the operation of the Project (the “**Operating Budget**”). The Operating Budget shall contain a line item for each component of gross income and operating expenses. The fees and payments budgeted to be paid to Management Agent shall not exceed prevailing market rates for the services performed. During the calendar year covered by the approved Operating Budget, Owner shall not disburse any expenses of operating the Project (individually or in the aggregate) in excess of the Operating Expenses approved by City pursuant to the Operating Budget submitted by Owner pursuant to this Section, except in the case of emergency repairs. The annual Operating Budget shall have attached a schedule of proposed maximum monthly rents for the coming year calculated in accordance with the Rents permitted under this Agreement. All subsequent rent schedules shall be submitted to City in substantially the form set forth in the Operating Budget. The Owner shall make available its books and records to the City for inspection and copying, upon reasonable advance notice during its normal hours of business.

4.7 Costs of Operations. All costs of operating the Project, including the Restricted Units, shall be the sole responsibility of Owner, including without limitation, the following costs and expenses:

(a) All costs in connection with utilities, real estate taxes and assessments, and liability, fire, and hazard insurance;

(b) Payments of interest and principal, fees and charges in accordance with construction or permanent financing evidenced by deeds of trust and any payments required thereby or any other loans made to Owner; and

(c) All other expenses and operating costs incurred, including without limitation estimated expenses and funding of reserves.

4.8 Financial Reports, Books and Records. The books and accounts of the Project shall be kept in conformity with modified accrual basis accounting principles consistently applied. The fiscal year for the Restricted Units shall be from July 1 to June 30.

(a) Financial Statements; Organizational Documents. Unless otherwise agreed to in writing by City and Owner, during the Term, Owner shall annually prepare, and on or before June 30 of each year, shall submit to City copies of such entity’s annual financial statements for the immediately preceding calendar year and revised organizational and/or governing corporate documents if any changes to such documents were effected during the fiscal year.

(b) Other Reports. No later than June 30 of each calendar year, Owner shall file with City the following reports for the previous calendar year in a form satisfactory to City and verified by the signatures of appropriate officers of Owner:

(1) A statement of the fiscal condition of the Project, including a financial statement indicating surpluses or deficits in operating accounts, a listing of income and expenses, and amounts of any reserves;

(2) A report on the actual operating expenses for the prior year indicating, for each reserve account, the amount of any reserves disbursed, and the remaining balance;

(3) A certification, signed by the appropriate officers of Owner, that Owner is not in violation or default under this Agreement.

(c) Audit Rights of City. Owner shall maintain accurate records with respect to all operations of the Restricted Units in accordance with the terms of this Agreement. City may, upon no less than thirty (30) days prior written notice to Owner and not more than once each twelve (12) month period, cause an independent Certified Public Accountant to inspect the records of the Project during normal business hours reasonably related to the requirements of this Agreement. The fees and expenses charged by such Certified Public Accountant in connection with such inspection shall be paid by City unless the calculations made by Owner are determined to be less than ninety five percent (95%) of the amount reported to City on a report required to be prepared or a calculation required to be made pursuant to this Agreement in any consecutive twelve (12) month period, in which case the Owner shall be responsible for the payment of the reasonable fees and expenses for such inspection.

ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Owner shall be responsible for all management functions with respect to the Project, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Owner shall operate or cause the operation of the Project at all times in accordance with this Agreement. At all times during the Term, the Owner may retain a Management Agent to perform its management duties hereunder. Any changes to the identity of the Management Agent shall be approved by the City in its reasonable discretion. Owner shall require, in its written Agreement with any Management Agent, that the Project be operated at all times in accordance with this Agreement.

Owner shall engage an experienced Management Agent reasonably acceptable to the City, with demonstrated experience and ability to operate residential facilities for Qualified Tenants in a manner that will provide decent, safe, and sanitary housing. Prior to engaging any Management Agent or replacement Management Agent, Owner shall submit for the City's approval the identity of the proposed Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, the proposed Management Agent shall be deemed approved. If the proposed Management Agent is disapproved by the City for failing to meet the standard for a qualified Management Agent set forth above, the

Owner shall submit for the City's approval a new proposed Management Agent within thirty (30) days following the City's disapproval. The Owner shall continue to submit proposed Management Agents for City approval until the City approves a proposed Management Agent.

5.2 Periodic Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Project (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement and applicable law. The Owner shall cooperate with the City in such reviews.

5.3 Replacement of Management Agent. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Project is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Owner of such written notice, City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Project. If after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Owner is not operating and managing the Project in accordance with the material requirements and standards of this Agreement, the City may require replacement of the Management Agent in accordance with this Agreement.

If, after the above procedure, the City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the replacement management agent a person or entity meeting the standards for a management agent set forth above and approved by the City.

Any contract for the operation or management of the Project entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute an Owner Event of Default under this Agreement.

5.4 Approval of Management Plans and Policies. Owner shall annually submit its written management plan and policies with respect to the Project to the City for its review and approval (the "**Management Plan**"). If the Owner's proposed Management Plan sets forth the Owner's commitment and ability to operate the Project in accordance with this Agreement, and applicable laws, the City shall approve the proposed Management Plan by notifying the Owner in writing.

5.5 Maintenance and Replacement. Owner shall maintain the Project, including the Restricted Units, in good condition and in compliance with all applicable governmental requirements, including without limitation, the City of Lake Elsinore Municipal Code, at its sole cost and expense, as follows:

(a) Interior Maintenance. Owner shall maintain the interior of buildings, including carpet, drapes and paint, in clean and habitable condition.

(b) Exterior Building Maintenance. Owner shall maintain the Project in a clean and attractive condition at all times, including the immediately surrounding area to the curb line, and including keeping the Project and any balcony or patio adjacent to the Project free from graffiti and from an accumulation of belongings or of any debris or waste materials consistent with community standards.

(c) Landscaping. Owner shall maintain all landscaping within the Project in a good condition. Owner shall not permit any temporary structures to be constructed on the Property, except in connection with the rehabilitation or construction of the Project.

(d) Housing Quality Standards. Owner shall, at its sole cost and expense, from time to time, make all necessary and proper repairs, renewals and replacements to keep the Units, common areas, walkways, driveways, parking areas and landscaping within the Project in good condition and in a safe, decent and sanitary condition. Owner shall manage and maintain the Project in accordance with all applicable housing quality standards and local code requirements, concerning marketing, operation, maintenance, repair, security, rental policy and method of selection of Tenants.

5.6 Right To Enter To Cure. If at any time the Owner fails to maintain the Property in accordance with this Agreement and such condition is not corrected within (i) five (5) business days after written notice from the City with respect to graffiti, debris, waste material, broken windows, and general maintenance, or (ii) thirty (30) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the Project and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien upon the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Owner upon demand.

ARTICLE 6. MISCELLANEOUS

6.1 Term. The provisions of this Agreement shall apply to the Property and the Project for the entire Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

6.2 Insurance. During the construction and operation of the Project, Owner shall provide evidence to City of its maintenance of insurance in such amounts and with such coverage as may be reasonably required by the City. Upon completion of the Project and annually throughout the Term, Owner shall provide evidence to the City of its maintenance of insurance in such amounts and with such coverage as may be reasonably required by the City. City shall have the right to request that it be a named insured on any insurance policy for the Project.

6.3 Compliance with Other Programs. Owner, or any successor in interest, shall comply with all of the terms, conditions, obligations and other requirements of any other program

from which funds are used to finance the development, operation and/or maintenance of the Project.

6.4 Covenants to Run With the Land. The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in interest to title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement in a writing signed by the City Manager and City Attorney.

6.5 Restrictions on Transfer. Prior to the expiration of the Term, without the prior approval of the City, no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement by assignment, change of control, operation of law or otherwise, nor shall Owner make any total or partial sale, transfer, conveyance, encumbrance to secure financing (including, without limitation, the grant of a deed of trust to secure funds necessary for construction and permanent financing of the Project), distribution, assignment or lease of the whole or any part of the Property (except residential leases in accordance with the terms of this Agreement) or any material change in the management or control of Owner (including, without limitation, a change in the identity of the Owner, or a change in the management or control of Owner). All of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

6.6 Owner Default; Enforcement by the City. If Owner fails to perform any obligation under this Agreement, and fails to cure the default within forty-five (45) days after the City has notified the Owner in writing of the default, or, if the default cannot be cured within forty-five (45) days, failed to commence to cure within forty-five (45) days and thereafter diligently pursue such cure (in no event to exceed one hundred twenty (120) days from the date of the City's initial notice), the City shall have the right to enforce this Agreement by any or all remedy provided by law, including, without limitation, that the City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

6.7 Recording and Filing. The City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Riverside.

6.8 Rights of the City. This Agreement does not in any way infringe on the right or duties of the City to enforce any of the provisions of the Lake Elsinore Municipal Code including, but not limited to, the abatement of dangerous buildings. In addition to the general rights of enforcement, the City of Lake Elsinore shall have the right, through its agents and employees, to enter upon any part of the Property for the purpose of enforcing the Vehicle Code, and the ordinances and other regulations of the City of Lake Elsinore, and for maintenance and/or repair of any or all publicly owned utilities.

6.9 Hold Harmless. Owner agrees to defend, indemnify and hold harmless the City Indemnitees from liability for damage or claims for any type of damage including, but not limited to, personal injury, death, and claims for property damage, which may arise from or in connection with the activities of Owner or those of Owner's contractors, subcontractors, agents, employees or other persons acting on Owner's behalf, which relate to the development, construction or operation of the Project, including, without limitation, any performance of or failure to perform the obligations of Owner set forth in this Agreement. Notwithstanding the foregoing, Owner shall not be required to indemnify City Indemnitees or any other person identified in this Section for active negligence or misconduct by such City Indemnitee or person.

6.10 Third Party Beneficiaries. Except for the City of Lake Elsinore, which is expressly made a third party beneficiary hereof, this Agreement is made and entered into for the sole protection and benefit of the City in its capacity as Housing Successor to the former Redevelopment Agency of the City of Lake Elsinore, and its successors and assigns, and Owner, and its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

The City of Lake Elsinore and its successors and assigns may enforce the conditions, covenants and restrictions contained herein governing the use, operation and maintenance of the Property as affordable housing to ensure that the Restricted Units qualify as affordable housing units pursuant to Sections 33334.2 and 33413 of the California Health & Safety Code. The City of Lake Elsinore shall have the right to enforce all of the provisions of this Agreement and any amendment to this Agreement. Except as expressly set forth herein, no other person or persons shall have any right of action on this Agreement.

6.11 Consequential Damages. Neither Owner nor City shall in any event be entitled to, and each hereby waives, any right to seek loss of profits, or any special, incidental or consequential damages of any kind or nature, however caused, from the other party arising out of or in connection with this Agreement, even if the other party has been advised of the possibility of the damages, and in connection with such waiver each party is familiar with and hereby waives the provision of § 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

6.12 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.13 Attorneys' Fees. In any action to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees and costs. As used herein, the terms “attorneys' fees” or “attorneys' fees and costs” means the fees and expenses of counsel to the parties hereto (including, without limitation, in-house or other counsel employed by City or Owner) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but

performing services under the supervision of an attorney. The terms “attorneys’ fees” or “attorneys’ fees and costs” shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

6.14 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of the County of Riverside.

6.15 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

City: City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attention: City Manager

With a copy to: Leibold McClendon & Mann
9841 Irvine Center Drive, Ste. 230
Irvine, CA 92618
Attn: Barbara Leibold

Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.16 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.17 Provision Not Merged with City Grant Deed. None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property from City to Owner or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

6.18 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

6.19 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Riverside.

6.20 City Approval. Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or his or her designee as designated in writing, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or

his or her designee as designated in writing, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager, or his or her designee as designated in writing, is also hereby authorized to approve, on behalf of the City, requests by the Owner for reasonable extensions of time deadlines set forth in this Agreement. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Owner made in connection with this Agreement.

6.21 Owner Obligations Prior to Expiration of Term. At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants in the Restricted Units containing: (1) the anticipated date of the expiration of the Term, (2) any anticipated rent increase upon the expiration of the Term, (3) a statement that a copy of such notice will be sent to the City, and (4) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager. In addition, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11, to the extent applicable.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the City, as holder of fee title to the Property, has executed this Agreement by its duly authorized representatives as of the date set forth above.

CITY:

CITY OF LAKE ELSINORE, in its capacity as Housing
Successor to the former Redevelopment Agency of the City
of Lake Elsinore

By: _____
Jason Simpson, City Manager

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

[SIGNATURE PAGE 1 OF 1]
[LMIHAF REGULATORY AGREEMENT]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, 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 of Notary

(Affix seal here)

EXHIBIT A
PROPERTY DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKE ELSINORE, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[TO BE INSERTED]

APN: 374-162-036

DRAFT