

8) **Mary McDonald Riley Street Senior Apartments Project Budget, Loan Agreement (ARPA), expenditure of Low- and Moderate-Income Housing Asset Funds (LMIHAF) and Affordability Covenants for the Project Located at 200 North Riley Street**

Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, ACTING AS HOUSING SUCCESSOR TO THE FORMER REDEVELOPMENT AGENCY, APPROVING A CONSTRUCTION BUDGET, AN ARPA LOAN AGREEMENT WITH RIVERSIDE COUNTY AND THE EXPENDITURE OF UP TO \$3,687,500 FROM THE CITY'S LOW AND MODERATE INCOME HOUSING ASSET FUND (LMIHAF) FOR CONSTRUCTION AND DEVELOPMENT OF THE MARY McDONALD RILEY STREET SENIOR APARTMENTS PROJECT AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH INCLUDING APPROVAL OF LONG-TERM USE AND AFFORDABILITY COVENANTS.



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Barbara Leibold, City Attorney

Date: July 23, 2024

Subject: Mary McDonald Riley Street Senior Apartments Project Budget, Loan Agreement (ARPA), expenditure of Low- and Moderate-Income Housing Asset Funds (LMIHAF) and Affordability Covenants for the Project Located at 200 North Riley Street

Recommendation

Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, ACTING AS HOUSING SUCCESSOR TO THE FORMER REDEVELOPMENT AGENCY, APPROVING A CONSTRUCTION BUDGET, AN ARPA LOAN AGREEMENT WITH RIVERSIDE COUNTY AND THE EXPENDITURE OF UP TO \$3,687,500 FROM THE CITY'S LOW AND MODERATE INCOME HOUSING ASSET FUND (LMIHAF) FOR CONSTRUCTION AND DEVELOPMENT OF THE MARY McDONALD RILEY STREET SENIOR APARTMENTS PROJECT AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH INCLUDING APPROVAL OF LONG-TERM USE AND AFFORDABILITY COVENANTS.

Background

On May 17, 2022, the Planning Commission approved Planning Application No. 2021-02 (Planning Design Review No. 2021-03) for the construction of a 16-Unit apartment complex and related improvements located at 200 N. Riley Street (APN: 374-162-036) ("Project").

The Project site is vacant land owned by the City, in its capacity as Housing Successor, and is located at the northeast corner of the intersection of Riley St. and Heald Avenue more specifically referred to as 200 North Riley Street (Assessor Parcel Number: 374-162-036) (the "Property").

The Project totals 17,372 sq. ft. with two (2) buildings including 16 one-bedroom units which will be restricted to extremely low income senior households with incomes less than 30% of area median income at affordable rents. Additional improvements consist of recreational amenities including a picnic and BBQ area, parking lot, trash enclosure and other ancillary and related improvements. Frontage and landscape improvements along both Heald and North Riley, including a retrofit of the historic Mary McDonald Gazebo are also be included as part of the Project.

City staff has prepared a budget for the development of the Project totaling \$8,687,500 (copy attached as Attachment 4 ("Budget")). To fund construction of the Project, the City applied for and received an award of American Rescue Plan Act ("ARPA") funds in the amount of \$5,000,000 from the County of Riverside ("County") ("ARPA Loan") for construction and development costs of the Project. The form of the ARPA Loan Agreement between the City and the County has been approved by the City Attorney and is attached as Attachment 5 ("ARPA Loan Agreement").

Construction and development costs in excess of the ARPA Loan are proposed to be funded by the City, as Housing Successor, from the Low and Moderate Income Housing Asset Fund (LMIHAF). Accordingly, staff proposes using \$3,687,500 in LMIHAF, along with the ARPA Loan funds, to develop the Project. The City Manager, or his designee, will oversee the construction of the Project and the disbursement of ARPA Loan funds and LMIHAF, and enter into construction and other contracts in aggregate amounts not to exceed the Budget.

As required by applicable law governing the use of LMIHAF, the City proposes to record a Use Restriction With Affordability Covenants in the form attached as Attachment 7 ("Use Restriction") restricting the use and occupancy of the Project to 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). The Use Restriction also requires that the units in the Project be rented at an "affordable rent," in an amount not to exceed the amount permitted by applicable law.

In addition, the Project has been awarded fifteen Project Based Section 8 Vouchers ("Vouchers"), for a 20-year period, by the Housing Authority of the County of Riverside. A copy of the award letter is attached as Attachment 8. The Vouchers will serve as an operating subsidy for the Project, assisting the City in operating a financially feasible Project restricted to occupancy by Extremely Low Income Senior Households.

Discussion

ARPA Loan Documents

The attached Loan Agreement for the Use of American Rescue Plan Act (ARPA) Funds ("Loan Agreement") between the County of Riverside ("County") and the City obligates the County to provide the City with \$5,000,000 in ARPA funds ("ARPA Loan") to finance a portion of the development of the Project. The Loan Agreement requires that the City execute a promissory note ("Note") in the amount of the ARPA Loan, as well as a deed of trust ("Deed") to be recorded against the Property. In addition, the City must execute a Covenant Agreement to be recorded against the Property. The City must also provide the County with an Environmental Indemnity (Attachment 6). The Loan Agreement, Note, Deed, Covenant Agreement and Environmental Indemnity are collectively referred to as the "ARPA Loan Documents."

The ARPA Loan Documents require that fifteen (15) of the units to be constructed in the Project be restricted to occupancy by seniors 62 or over whose household income does not exceed 30% of area median income for the County of Riverside as published by HCD adjusted for actual family size ("Extremely Low Income Senior Households") for 55 years. The sixteenth unit is required to house a residential manager for the Project.

The ARPA Loan is repayable upon the later to occur of July 1, 2079, or 55 years from the date of recordation of the Covenant Agreement. The ARPA Loan does not bear any interest. The ARPA Loan will be forgiven at the end of the term if the City and the Project have complied with the ARPA Loan Documents and the law and guidelines applicable to the ARPA program.

The ARPA Loan Agreement also requires that the County be permitted to provide input regarding all Project media releases, and that any City publicity regarding the Project refer to the County's contribution. Further, the County's name shall be prominently displayed on all signs and similar printed materials regarding the Project.

Budget and Expenditure of LMIHAF

Staff has worked closely with the City's construction consultant to prepare a development and construction budget in the aggregate amount of \$8,687,500. The Budget excludes operating reserves and related operating expenses, which will be finalized and presented to the City Council at a later date.

Staff recommends that the City Council authorize the City Manager to enter into construction and other development contracts in an aggregate amount not to exceed \$8,687,500, and to draw down and disburse ARPA Loan funds in connection therewith in compliance with the ARPA Loan Agreement, subject to the review and approval of the City Manager.

Staff further recommends that the City Council appropriate and authorize the expenditure of up to \$3,687,500 from the LMIHAF for construction and development costs of the Project, subject to the review and approval of the City Manager prior to any expenditure thereof.

The expenditure of LMIHAF for the development of units restricted to occupancy by senior households earning not more than 30% of AMI will assist the City in complying with the proportionality requirements of the California Health & Safety Code (HSC). Section 34176.1(a)(3)(A) of the HSC requires that the City, as Housing Successor, expend at least 30% of LMIHAF (after expenditure for certain administrative expenses) for the development of rental housing affordable to and occupied by households earning 30% or less of the area median income.

Use Restriction With Affordability Covenants (LMIHAF)

California law requires that LMIHAF be used primarily for affordable housing and that a covenant be recorded against the Project restricting the use and occupancy of the Project. The attached Use Restriction requires that 15 units be restricted to occupancy by senior (62+) households whose gross income does not exceed 30% of AMI for the County of Riverside adjusted for actual family size for 55 years. The remaining Unit in the Project will be occupied by the on-site manager. The Covenant further restricts the rent that can be charged to the Extremely Low Income Senior Households to a monthly amount not to exceed 30% of 30% of AMI, adjusted for household size appropriate to the unit.

Timing

Upon the approval of the ARPA Loan Documents, Budget, expenditure of LMIHAF and Use Restriction, City staff will work with the County to close the ARPA Loan within 30-45 days, and commence construction of the Project shortly thereafter. The Deed, Covenant Agreement, and Use Restriction will be recorded against the Project upon closing of the ARPA Loan. The ARPA Loan Documents require that construction be completed within 24 months from the effective date of the ARPA Loan Agreement.

Environmental Determination

The Project is exempt from the California Environmental Quality Act (Cal. Publ. Res. Code §§21000 et seq.: "CEQA") and the State CEQA Guidelines (14. Cal. Code Regs §§15000 et seq.), specifically pursuant to Section 15332 (Class 32 – In-Fill Development Projects) because the Project is consistent with the applicable General Plan designation and policies, as well as zoning designation and regulations, the Project is within the City's boundaries and on a site less than five acres surrounded by urban uses, the Property has no value as habitat, and approval of the Project will not result in any significant effects relating to traffic, noise, air quality, or water quality and the Project is adequately served by all required utilities and public services.

Resolution

Adoption of the attached Resolution approves the following in connection with the Mary McDonald Riley Street Senior Apartments affordable housing project:

- (1) That certain Loan Agreement for the Use of American Rescue Plan Act (ARPA) Funds and Related Agreements in substantially the form attached to the Staff Report and authorize the City Manager and City Attorney to jointly make necessary and appropriate revisions without increasing the City's financial commitment.
- (2) The expenditure of up to \$3,687,500 from the Low and Moderate Income Housing Asset Fund (LMIHAF) for construction and development costs, approval of a development and construction budget in an aggregate amount not to exceed \$8,687,500, and authorize the City Manager to enter into construction and other development contracts up to the amount of the budget.

- (3) That certain Use Restriction With Affordability Covenants for the Mary McDonald Riley Street Senior Apartments affordable housing project in substantially the form attached and authorize the City Manager and City Attorney to jointly make necessary and appropriate revisions without increasing the City's financial commitment.

Fiscal Impact

The time and costs related to this project will be covered by the County ARPA Loan and City LMIHAF funding. No General Funds have been allocated, nor will they be used in the development of the Project.

Attachments

Attachment 1 - Vicinity Map

Attachment 2 - Aerial Map

Attachment 3 - Resolution

Attachment 4 - Development Budget

Attachment 5 - Loan Agreement for the Use of American Rescue Plan Act (ARPA) Funds between the County of Riverside and the City of Lake Elsinore

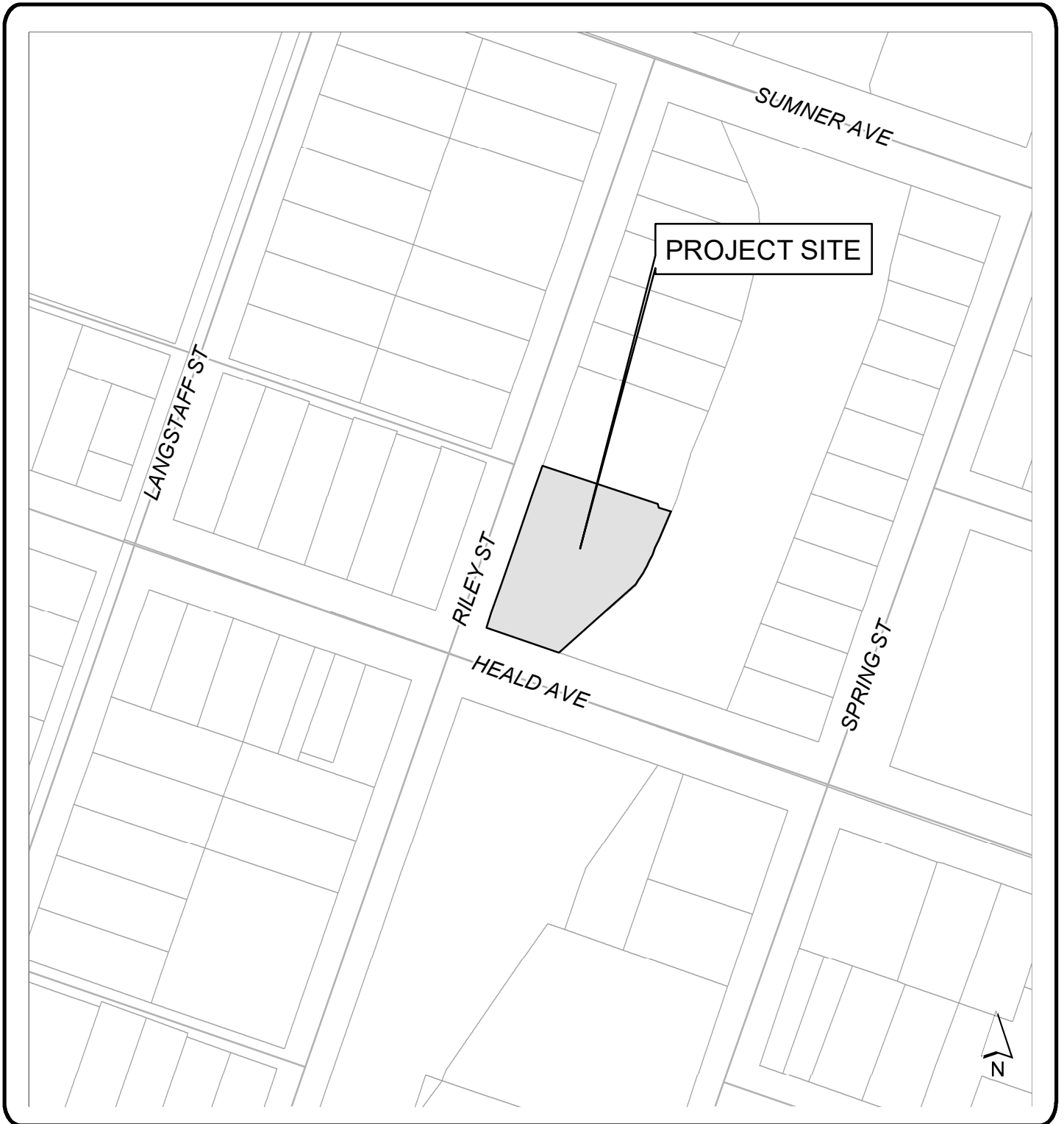
Attachment 6 - Environmental Indemnity

Attachment 7 - Use Restriction With Affordability Covenants (Low and Moderate Income Housing Asset Funds) for the Mary McDonald Riley Senior Apartments Affordable Housing Project

Attachment 8 - Housing Authority of the County of Riverside Award Letter – Section 8 Project Based Vouchers

Attorney's Office

Mary McDonald Riley Street Senior Apartments
Project Site
VICINITY MAP



Mary McDonald Riley Street Senior Apartments
Project Site
AERIAL MAP



RESOLUTION NO. 2024-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, ACTING AS HOUSING SUCCESSOR TO THE FORMER REDEVELOPMENT AGENCY, APPROVING A CONSTRUCTION BUDGET, AN ARPA LOAN AGREEMENT WITH RIVERSIDE COUNTY AND THE EXPENDITURE OF UP TO \$3,687,500 FROM THE CITY'S LOW AND MODERATE INCOME HOUSING ASSET FUND (LMIHAF) FOR CONSTRUCTION AND DEVELOPMENT OF THE MARY McDONALD RILEY STREET SENIOR APARTMENTS PROJECT AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH INCLUDING APPROVAL OF LONG-TERM USE AND AFFORDABILITY COVENANTS

WHEREAS, the City of Lake Elsinore ("City") is a municipal corporation organized and

WHEREAS, as of February 1, 2012, the City elected to act as the successor to the housing assets and functions of the former Redevelopment Agency of the City of Lake Elsinore in accordance with HSC Section 34176.1(a)(3)(A) ("Housing Successor"); and

WHEREAS, an approximately 5,641 square foot portion of APN 374-162-036 located on the northeast corner of Heald Avenue and Riley Street is home to the Mary McDonald historic landmark and was previously conveyed to the City for historic preservation purposes following approval by the Riverside Countywide Oversight Board and the California Department of Finance; and

WHEREAS, the remainder portion of APN 374-162-036 comprised of approximately 17,775 square feet (the "Property") was purchased by the City in its capacity as the Housing Successor for affordable senior housing; and

WHEREAS, on May 17, 2022, the Planning Commission approved Planning Application No. 2021-02 (Planning Design Review No. 2021-03) for the construction of a 16-Unit apartment complex and related improvements located at 200 N. Riley Street (APN: 374-162-036) ("Project"); and

WHEREAS, City staff has prepared a budget totaling \$8,687,500 ("Budget") and a proposed financing plan for the for the development of the Project; and

WHEREAS, the City has applied for and received an award of American Rescue Plan Act ("ARPA") funds in the amount of \$5,000,000 from the County of Riverside ("County") ("ARPA Loan") for construction and development costs of the Project as set forth in the ARPA Loan Agreement in such form as approved by the City Attorney and to be presented to the Riverside County Board of Supervisors on July 30, 2024; and

WHEREAS, in accordance with the Dissolution Law, the Housing Successor has established a Low and Moderate Income Housing Asset Fund ("LMIHAF"), the proceeds of which can only be used for affordable housing purposes; and

WHEREAS, there are sufficient funds in the LMIHAF to allocate the expenditure of up to \$3,687,500 for the development of the Project on the Property; and

WHEREAS, development of the Project on the Property for affordable housing purposes serves the common benefit of the functions of the Housing Successor and assists the City in meeting the State mandate to provide its regional fair share of housing affordable to extremely low income households; and

WHEREAS, staff desires that the City Manager, or his designee, be authorized to enter into construction and other development contracts for the Project in an aggregate amount not to exceed the Project Budget, disburse ARPA Loan funds in connection therewith in an aggregate amount not to exceed \$5,000,000, in compliance with the ARPA Loan Agreement, and expend up to \$3,687,500 from the LMIHAF for construction and development costs of the Project; and

WHEREAS, in accordance with California law, the City Attorney has prepared a Use Restriction With Affordability Covenants (Low and Moderate Income Housing Asset Funds) ("Use Restriction"), restricting the use and occupancy of 15 units in the Project to 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) and requiring the 15 restricted units in the Project be rented at an "affordable rent" for a period of 55 years; and

WHEREAS, the proposed Project is exempt from the California Environmental Quality Act (Cal. Publ. Res. Code §§21000 et seq.: "CEQA") and the State CEQA Guidelines (14. Cal. Code Regs §§15000 et seq.), specifically pursuant to Section 15332 (Class 32 – In-Fill Development Projects) because the Project is consistent with the applicable General Plan designation and policies, as well as zoning designation and regulations, the Project is within the City's boundaries and on a site less than five acres surrounded by urban uses, the Property has no value as habitat, and approval of the Project will not result in any significant effects relating to traffic, noise, air quality, or water quality and the Project is adequately served by all required utilities and public services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, ACTING AS SUCCESSOR TO THE HOUSING ASSETS AND FUNCTIONS OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF LAKE ELSINORE UNDER HEALTH & SAFETY CODE SECTION 34176(a)(1), DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The Recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2. That certain Loan Agreement for the Use of American Rescue Plan Act (ARPA) Funds by and between the City and the County and related agreements in substantially the forms presented to the City Council, with such minor changes as may be mutually agreed upon by the City Manager (or his duly authorized representative), in consultation with the City Attorney, and the loan set forth therein for \$5,000,000 to be secured by the Property, are approved.

SECTION 3. The Budget for development and construction of the Project on the Property in the form presented to the City Council is approved.

SECTION 4. Allocation of \$3,687,500 from the LMIHAF to fund the development of the Project is approved, and the City Manager (or his duly authorized representative), is authorized

and directed to to disburse such funds from the LMIHAF as needed to pay contracts and other expenses incurred in connection with the Project in accordance with the Budget.

SECTION 5. The Use Restriction in substantially the form presented to the City Council, with such minor changes as may be mutually agreed upon by the City Attorney, is approved.

SECTION 6. The Project is exempt from the California Environmental Quality Act (Cal. Publ. Res. Code §§21000 et seq.: "CEQA") and the State CEQA Guidelines (14. Cal. Code Regs §§15000 et seq.), specifically pursuant to Section 15332 (Class 32 – In-Fill Development Projects), because the Project is consistent with the applicable General Plan designation and policies, as well as zoning designation and regulations, the Project is within the City's boundaries and on a site less than five acres surrounded by urban uses, the Property has no value as habitat, and approval of the Project will not result in any significant effects relating to traffic, noise, air quality, or water quality and the Project is adequately served by all required utilities and public services..

SECTION 7. Upon approval by the City Council, the City Manager (or his duly appointed designee) is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the ARPA Loan Agreement on behalf of the City, including documents in the form of Attachments to the ARPA Loan Agreement, and the Use Restriction. In such regard, the City Manager (or his duly appointed designee) is authorized to sign the final versions of the ARPA Loan Agreement and Use Restriction after completion of any such non-substantive, minor revisions agreed to by the City Attorney. Copies of the final form of the Agreements, when duly executed and attested, shall be placed on file in the office of the City Clerk.

SECTION 8. In addition, the City Manager is authorized and directed to do any and all things, including, without limitation, the draw down and expenditure of ARPA Loan funds and LMIHAF, and to execute any and all additional documents, including, without limitation, construction contracts, which he may deem necessary or advisable to effectuate this Resolution, including all contracts and documents, which, in consultation with the City Attorney, he may deem necessary or advisable in order to carry out and implement the development of the Project on the Property and otherwise effectuate the purposes of this Resolution and to administer the City's obligations, responsibilities and duties to be performed under the ARPA Loan Agreement and Use Restriction. The City Manager is further authorized and directed to do any and all things, and to execute any and all documents, to insure that the Property shall be utilized by the City in accordance with the Community Redevelopment Law (Part 1(commencing with Section 33000)), as amended by Health and Safety Code Section 34176.1, and, in particular, for the development of affordable housing in accordance with Health and Safety Code Section 34176.1(a)((3)(A).

SECTION 9. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

SECTION 11. This Resolution shall take effect immediately upon its adoption.

Passed and Adopted at a regular meeting of the City Council of the City of Lake Elsinore, California, this 23rd day of July 2024.

Steve Manos
Mayor

Attest:

Candice Alvarez, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Resolution No. 2024-____ was adopted by the City Council of the City of Lake Elsinore, California, at the Regular meeting of July 23, 2024 and that the same was adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Candice Alvarez, MMC

Mary McDonald Riley Street Senior Housing Construction Costs

Environmental/Surveyor/ Design/Engineering/PM Professional Services	\$624,000
Earthwork	\$250,000
Site Utilities	\$300,000
Roads Sidewalks (Paving)	\$400,000
Landscape, Irrigation, (LV Lighting)	\$350,000
	<u>\$1,300,000</u>
Concrete	\$325,000
Masonry	\$175,000
Metals	\$175,000
Carpentry	\$750,000
F Carpentry	\$100,000
Insulation	\$350,000
Roofing	\$400,000
Doors	\$50,000
Windows	\$480,000
Stucco	\$400,000
Drywall	\$400,000
Tile Work	\$160,000
Flooring	\$225,000
Paint	\$175,000
Cabinets	\$225,000
Fire Suppression System	\$200,000
Appliances	\$160,000
Blinds Shades	\$72,000
Elevators	\$185,000
Plumbing	\$340,000
HVAC	\$300,000
Electrical	\$450,000
	<u>\$6,097,000</u>
FF&Es	\$166,500
Contingency	\$500,000
Total	<u><u>\$8,687,500</u></u>

1 NO FEE FOR RECORDING PURSUANT

2 TO GOVERNMENT CODE SECTION 6103

3 Order No.

4 Escrow No.

5 Loan No.

6 RECORDING REQUESTED BY AND
7 WHEN RECORDED MAIL TO:

8 County of Riverside

9 Housing and Workforce Solutions

10 3403 10th Street, Suite 300

11 Riverside, CA 92501

12 Attn: Juan Garcia

13 SPACE ABOVE THIS LINE FOR RECORDER'S USE

14 LOAN AGREEMENT FOR THE USE OF
15 AMERICAN RESCUE PLAN ACT (ARPA) FUNDS

16 This LOAN AGREEMENT FOR THE USE OF AMERICAN RESCUE PLAN ACT FUNDS
17 ("Agreement") is made and entered into this _____ day of _____ 2024 by and between
18 the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("COUNTY")
19 and CITY OF LAKE ELSINORE, a California municipal corporation within the geographical
20 boundaries of the COUNTY ("BORROWER"). The COUNTY and BORROWER may be
21 individually referred to herein as a "Party" and collectively as the "Parties." This Agreement, for
22 the use of funding under the American Rescue Plan Act of 2021 (Pub.L. 117-2), amending Title
23 VI of the Social Security Act (42 U.S.C. 801 et seq.), hereinafter "ARPA" or "Act", is made and
24 entered into as of the Effective Date (defined herein).

25 W I T N E S S E T H:

26 WHEREAS, the Act provides that ARPA funds may be used to cover costs that are
27 necessary expenditures incurred due to the public health emergency with respect to the COVID-
28 19 pandemic;

29 WHEREAS, on October 19, 2021, via Minute Order 3.5, the Board of Supervisors of the
30 County of Riverside approved allocating \$50,000,000 in ARPA funds to increase shelter
31 capacity, permanent supportive housing units, and affordable housing to help address
32 homelessness;

1
2 WHEREAS, the purpose of this Agreement is, among other things, for COUNTY to
3 provide financial assistance to BORROWER in the maximum amount of Five Million Dollars
4 (\$5,000,000.00) consisting of ARPA funds, to pay a portion of the costs to develop and construct
5 a multi-family affordable rental housing project for seniors whose household incomes do not
6 exceed 30% of the area median income for the County of Riverside, consisting of a total of
7 sixteen (16) units, including fifteen (15) affordable rental housing units and one (1) residential
8 manager's unit ("Project"), on an approximately 17,755 square feet of vacant land situated at
9 the southeast corner of Riley Street and Heald Avenue, in the City of Lake Elsinore in the County
10 of Riverside, formerly identified as a portion of Assessor's Parcel Number ("APN") 374-162-
11 036 as more specifically described in the legal description and depicted on the site map attached
12 hereto as **Exhibit A** and incorporated herein by this reference ("Property"); and

13 WHEREAS, the ARPA-assisted activities described herein comply with the objectives
14 required under the ARPA in that they are necessary to assist populations experiencing food and
15 housing insecurity as a result of impacts due to the COVID-19 public health emergency.

16 NOW, THEREFORE, based upon the foregoing Recitals and for good and valuable
17 consideration, the receipt and sufficiency of which is acknowledged by all Parties, the COUNTY
18 and BORROWER hereby agree as follows:

19 1. PURPOSE. The aforementioned Recitals are true and correct and incorporated
20 herein by this reference. COUNTY has agreed to lend up to appraised amount of the Property
21 and no more than a maximum total amount of Five Million Dollars (\$5,000,000.00) in ARPA
22 Act funds ("ARPA Loan") to BORROWER upon the satisfaction of the terms and conditions set
23 forth herein, including but not limited to the conditions precedent to distribution of the ARPA
24 Loan set forth in **Section 11** below. Subject also to **Section 48** below, BORROWER shall
25 undertake and complete the ARPA activities required herein and as set forth in **Exhibits A and**
26 **A-1**, and shall utilize the ARPA Loan, as required herein and pursuant to the Act, ARPA Final
27 Rule that became effective April 1, 2022, and the regulations as set forth in 31 CFR 35
28 (collectively, "ARPA Rules"). The Project will serve seniors 62 years and older whose

household incomes do not exceed 30% of the area median income for the County of Riverside adjusted for actual family size ("Qualified Population").

2. BORROWER'S OBLIGATIONS. Upon the commencement of the Effective Date (defined in **Section 55** below), BORROWER hereby agrees to undertake and complete the following activities within the time period(s) set forth herein and in **Exhibit A-1**:

- a. Satisfy the conditions precedent to distribution of the ARPA Loan set forth in **Section 11** below.
- b. Acquire the Property in accordance with the timeline set forth in **Exhibit A and A-1**.
- c. Operate the Project in such a manner so that it will remain available to Qualified Populations for the Affordability Period as defined in **Section 13** below without regard to (i) the term of the promissory note or (ii) transfer of ownership.
- d. Maintain the Project in compliance with ARPA Rules, applicable local, state, federal laws, codes and regulations as further described in **Section 17** below until the expiration of the Term of this Agreement set forth in **Section 6** below, and the Affordability Period set forth in **Section 13** below.

3. RESERVED.

4. ARPA ACT LOAN. Subject to BORROWER's satisfaction of the conditions precedent to disbursement of the ARPA Loan set forth in **Section 11** below, COUNTY shall provide financing to BORROWER in the form of a loan in the amount of \$5,000,000.00 ("ARPA Loan"), pursuant to the following terms and conditions:

- a. Term of ARPA Loan. The maturity date of the ARPA Loan shall be the later to occur of (i) July 1, 2079, or (ii) fifty-five (55) years from the recordation of the Covenant Agreement in the Official Records upon close of escrow for acquisition of the Property (the "ARPA Loan Term"). The term, "Official Records" used herein shall mean the Official Records of the Recorder's Office of the County of Riverside.

- 1 b. Principal. The total amount of the ARPA Loan shall not exceed
2 \$5,000,000.00, and shall be evidenced by a Promissory Note, substantially
3 conforming in form and substance to the Promissory Note attached hereto and
4 incorporated herein as **Exhibit C** (“ARPA Note”), which note shall be secured
5 by a Deed of Trust, Security Agreement and Fixture Filing (with Assignment
6 of Rents), substantially conforming in form and substance to the Deed of Trust,
7 Security Agreement and Fixture Filing (with Assignment of Rents) attached
8 hereto and incorporated herein as **Exhibit B** (“ARPA Deed of Trust”).
- 9 c. Interest. The interest rate shall be zero percent (0%) simple interest per annum.
- 10 d. Repayment. The terms of the ARPA Note shall be as follows:
- 11 i. That the ARPA Loan will accrue simple interest at a rate of zero
12 percent (0%) per annum, as more specifically set forth in the ARPA
13 Note.
- 14 ii. The ARPA Note shall be deferred and forgiven at the end of the Term
15 of the Agreement if the BORROWER has complied with the terms of
16 the ARPA Loan and the ARPA Rules.
- 17 iii. Security. The Covenant Agreement, ARPA Deed of Trust and this
18 Agreement shall be respectively in a first, second, and third priority
19 lien position, each for the benefit of COUNTY, securing a loan in the
20 amount of \$5,000,000 (“ARPA Loan”).
- 21 e. Prepayment. Prepayment of principal and/or interest under the ARPA Note
22 may occur at any time without penalty; provided, however (i) the requirements
23 of **Section 17**, “Compliance with Laws and Regulations”, shall remain in full
24 force and effect for the term of the Agreement specified in **Section 6** below;
25 and (ii) the requirements set forth in the Covenant Agreement, attached hereto
26 as **Exhibit E**, shall remain in effect until the expiration of the Affordability
27 Period.
28

1 5. PRIOR COUNTY APPROVAL.

- 2 a. Except as otherwise expressly provided in this Agreement, approvals required
3 of the COUNTY shall be deemed granted by the written approval of the
4 Director of Housing and Workforce Solutions, or designee. Notwithstanding
5 the foregoing, the Director may, in their sole discretion, refer to the governing
6 body of the COUNTY any item requiring COUNTY approval; otherwise,
7 “COUNTY approval” means and refers to approval by the Director of
8 HHPWS, or designee.
- 9 b. The Director of HWS, or designee, shall have the right to make changes to the
10 attachments to this Agreement in order to ensure that all such attachments are
11 consistent with the terms and provisions of this Agreement.

12 6. TERM OF AGREEMENT. This Agreement shall become effective upon the
13 Effective Date, as defined in **Section 55** below, and unless terminated earlier pursuant to the
14 terms hereof, shall continue in full force and effect until the later to occur of (i) July 1, 2079 or
15 (ii) fifty-five (55) years from the recordation of the Notice of Completion in the Official Records
16 for the last building for which rehabilitation is completed for the Project (“Term of Agreement”).

17 7. BORROWER’S REPRESENTATIONS. BORROWER represents and warrants
18 to COUNTY as follows:

- 19 a. Authority. BORROWER has full right, power and lawful authority to enter
20 into this Agreement and accept the ARPA Loan and undertake all obligations
21 as provided herein. The execution, performance, and delivery of this
22 Agreement by BORROWER have been fully authorized by all requisite
23 actions on the part of BORROWER.
- 24 b. No Conflict. To the best of BORROWER’s knowledge, BORROWER’s
25 execution, delivery and performance of its obligations under this Agreement
26 will not constitute a default or a breach under contract, agreement or order to
27 which BORROWER is a party or by which it is bound.
- 28 c. No Bankruptcy. BORROWER is not the subject of a bankruptcy proceeding.

1 d. Prior to Closing. BORROWER shall, upon learning of any fact or condition
2 which would cause any of the warranties and representations in this **Section 7**
3 not to be true as of close of escrow, immediately give written notice of such
4 fact or condition to COUNTY. Such exception(s) to a representation shall not
5 be deemed a breach by BORROWER hereunder, but shall constitute an
6 exception which COUNTY shall have the right to approve or disapprove if
7 such exception would have an effect on the value and/or operation of the
8 Project.

9 8. COMPLETION SCHEDULE. BORROWER shall proceed consistent with the
10 Implementation Schedule set forth in **Exhibit A-1**, as such schedule may be amended pursuant
11 to **Section 10**, and subject to Force Majeure Delays as defined in **Section 9**.

12 9. FORCE MAJEURE DELAYS. "Force Majeure" means event(s) beyond the
13 reasonable control of BORROWER, and which could not have been reasonably anticipated,
14 which prevent(s) BORROWER from complying with any of its obligations under this
15 Agreement, including, but not limited to: acts of God, acts of war, acts or threats of terrorism,
16 civil disorders, strikes, labor disputes, pandemics such as COVID-19, flood, fire, explosion,
17 earthquake or other similar acts.

18 "Force Majeure Delay" is delay due to Force Majeure that, in each case, (i)
19 materially adversely affects the performance by BORROWER of its obligations hereunder, (ii)
20 is not reasonably foreseeable and is beyond BORROWER's reasonable control, (iii) despite the
21 exercise of reasonable diligence, cannot be prevented, avoided or removed by BORROWER and
22 is not attributable to the negligence, willful misconduct or bad faith of BORROWER, and (iv) is
23 not the result of the failure of BORROWER to perform any of its obligations under this
24 Agreement. Notwithstanding the foregoing, a Force Majeure Delay shall not be deemed to have
25 occurred unless BORROWER has notified COUNTY in writing of such occurrence within thirty
26 (30) days after such occurrence, and has provided COUNTY with the details of such event and
27 the length of the anticipated delay within an additional fifteen (15) days thereafter.
28 BORROWER shall diligently attempt to remove, resolve, or otherwise eliminate such event,

1 keep COUNTY advised with respect thereto, and shall commence performance of its obligations
2 hereunder immediately upon such removal, resolution or elimination. During the occurrence
3 and continuance of a Force Majeure Delay, BORROWER shall be excused from performance of
4 its obligations under this Agreement to the extent the Force Majeure prevents BORROWER
5 from performing such obligations.

6 10. EXTENSION OF TIME. COUNTY may grant an extension to the
7 Implementation Schedule set forth in **Exhibit A-1** for the purpose of completing BORROWER's
8 activities which cannot be completed as outlined in **Exhibit A-1**. BORROWER shall request
9 said extension in writing, stating the reasons therefore, which extension must be first approved
10 in writing by the COUNTY in its reasonable discretion. The Director of HWS, or designee, may
11 extend all pending deadlines in the Implementation Schedule on two (2) or fewer occasions, so
12 long as the aggregate duration of such administrative time extensions is no greater than ninety
13 (90) days. Every term, condition, covenant, and requirement of this Agreement shall continue
14 in full force and effect during the period of any such extension.

15 11. CONDITIONS PRECEDENT TO DISTRIBUTION OF ARPA ACT LOAN
16 FUNDS. COUNTY, through its Department of HWS, shall: (1) make payments of the ARPA
17 Loan funds to BORROWER as designated in **Exhibit A** subject to Borrower's satisfaction of the
18 conditions precedent set forth below, and (2) monitor the Project to ensure compliance with
19 applicable federal regulations and the terms of this Agreement. COUNTY shall not disburse any
20 ARPA Loan funds pursuant to this Agreement until the following conditions precedent have
21 been satisfied:

- 22 a. BORROWER has completed the National Environmental Policy Act (NEPA)
23 process, including the Environmental Assessment (EA) Report and Findings
24 incorporated in the EA and in the Finding of No Significant Impact (FONSI)
25 for the Project, and has been approved by COUNTY as the responsible entity
26 for purposes of the subject NEPA review;
- 27 b. BORROWER executes this Agreement and delivers it to COUNTY for
28 recordation in the Official Records;

- 1 c. BORROWER provides COUNTY with evidence of insurance as required
2 herein;
- 3 d. BORROWER executes the ARPA Deed of Trust, substantially conforming in
4 form and substance to the Deed of Trust, Security Agreement and Fixture
5 Filing (with Assignment of Rents) attached hereto as **Exhibit B**, in recordable
6 form, and delivers such document to the County of Riverside for recordation
7 in the Official Records;
- 8 e. BORROWER executes the ARPA Note, substantially conforming in form and
9 substance to the Promissory Note attached hereto as **Exhibit C** and delivers to
10 COUNTY;
- 11 f. BORROWER executes the Covenant Agreement, substantially conforming in
12 form and substance to the Covenant Agreement attached hereto and
13 incorporated herein as **Exhibit E**, in recordable form, and delivers to the
14 County of Riverside for recordation in the Official Records;
- 15 g. COUNTY executes and records the Requests for Notice of Default,
16 conforming in form and substance to **Exhibit F** attached hereto;
- 17 h. BORROWER provides, at its expense, an American Land Title Association
18 (ALTA) lender's policy in favor of COUNTY, insuring the Covenant
19 Agreement as a first priority lien against the Property; and
- 20 i. BORROWER is not in default under the terms of this Agreement or any other
21 agreement related to the financing of the Project;
- 22 j. If Davis Bacon and/or prevailing wages are required to be paid, BORROWER
23 hires a qualified professional firm to review and monitor Davis Bacon and/or
24 prevailing wage compliance for all submissions of contractors certified
25 payrolls to COUNTY. In the event that the Project requires prevailing wages,
26 BORROWER shall comply with, and shall require its contractors and
27 subcontractors performing work on the Project, to pay prevailing wages, use a
28 skilled and trained workforce, and adhere to any applicable labor regulations

1 and all State laws in connection with the construction of the Project, including
2 but not limited to Chapter 1 (commencing with Section 1720) of Part 7 of
3 Division 2 of the Labor Code, and Chapter 2.9 (commencing with Section
4 2600) of Part 1 of Division 2 of the Public Contract Code. BORROWER
5 agrees and acknowledges that it is the responsibility of BORROWER to obtain
6 a legal determination, at BORROWER's sole cost and expense, as to whether
7 prevailing wages must be paid during the construction of the Project. If the
8 Project is subject to prevailing wages, then BORROWER shall be solely
9 responsible to pay its contractors and subcontractors the required prevailing
10 wage rates. BORROWER agrees to indemnify, defend, and hold COUNTY
11 harmless from and against any and all liability arising out of and related to
12 BORROWER's failure to comply with any and all applicable Davis Bacon
13 and/or State prevailing wage requirements;

- 14 k. BORROWER agrees to verify that BORROWER, and its principals, or any/all
15 persons, contractors, consultants, businesses, etc. ("Developer Associates"),
16 that BORROWER is conducting business with, are not presently debarred,
17 proposed for debarment, suspended, declared ineligible, or voluntarily
18 excluded from participation or from receiving federal contracts or federally
19 approved subcontracts or from certain types of federal financial and
20 nonfinancial assistance and benefits with the Excluded Parties Listing System
21 ("EPLS"). EPLS records are located at www.sam.gov; and
- 22 l. BORROWER shall search and provide a single comprehensive list of
23 Developer Associates (individuals and firms) and print and maintain evidence
24 of the search results of each Developer Associate as verification of compliance
25 with this requirement, as provided in **Exhibit G**, "Contractor Debarment
26 Certification Form", which is attached hereto and incorporated herein by this
27 reference.

28 BORROWER agrees to submit the following documentation to COUNTY, 180 days from

close of escrow:

- 1) Service Plan;
- 2) Management Plan; and
- 3) Funding commitments and sources and uses for the proposed modifications to the existing buildings for the proposed intended use.

12. DISBURSEMENT OF FUNDS. COUNTY'S Board of Supervisors shall determine the final disbursement and distribution of all funds received by COUNTY under the ARPA Act. Disbursement of ARPA Act funds shall occur upon the satisfaction of conditions set forth in **Section 11**. COUNTY shall deposit the sum specified in **Section 1** into escrow upon receipt of escrow instructions and wire.

13. TERMS OF AFFORDABILITY. The Project shall remain occupied and available to Qualified Populations, pursuant to **Section 18** below, **Exhibit A**, and the Covenant Agreement attached hereto as **Exhibit E**, until the later of (i) fifty-five (55) years from the recordation of the Notice of Completion in the Official Records, or (ii) July 1, 2079 ("Affordability Period").

14. INSURANCE. Without limiting or diminishing BORROWER'S obligation to indemnify or hold COUNTY harmless, BORROWER or its general contractor for the Project ("General Contractor"), shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the Term of this Agreement.

- a. Builder's All Risk (Course of Construction) Insurance. BORROWER shall cause General Contractor to provide a policy of Builder's All Risk (Course of Construction) insurance coverage including (if the work is located in an earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the COUNTY, BORROWER, General Contractor and every subcontractor, of every tier, for the entire Project, including property to be used in the construction of the work while such property is at off-site storage locations or while in transit or temporary off-site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting

1 expense, fire department service charges, valuable papers and records, trees,
2 grass, shrubbery and plants. If scaffolding, false work and temporary buildings
3 are insured separately by the General Contractor or others, evidence of such
4 separate coverage shall be provided to COUNTY prior to the start of the work.
5 Such policy shall be written on a completed value form. Such policy shall also
6 provide coverage for temporary structures (on-site offices, etc.), fixtures,
7 machinery and equipment being installed as part of the work. BORROWER
8 shall require that General Contractor shall be responsible for any and all
9 deductibles under such policy. Upon request by COUNTY, BORROWER ,
10 on behalf of General Contractor, shall declare all terms, conditions, coverages
11 and limits of such policy. If the COUNTY so provides, in its sole discretion,
12 the All Risk (Course of Construction) insurance for the Project, then
13 BORROWER shall cause the General Contractor to assume the cost of any and
14 all applicable policy deductibles (currently, \$50,000 per occurrence) and shall
15 insure its own machinery, equipment, tools, etc. from any loss of any nature
16 whatsoever.

- 17 b. Workers' Compensation Insurance. If BORROWER or General Contractor
18 have employees as defined by the State of California, BORROWER or General
19 Contractor, as applicable, shall maintain statutory Workers' Compensation
20 Insurance (Coverage A) as prescribed by the laws of the State of California.
21 Policy shall include Employers' Liability (Coverage B) including
22 Occupational Disease with limits not less than \$1,000,000 per person per
23 accident. The policy shall be endorsed to waive subrogation in favor of The
24 County of Riverside.
- 25 c. Commercial General Liability Insurance. Borrower shall maintain
26 Commercial General Liability insurance coverage, including but not limited
27 to, premises liability, contractual liability, products and completed operations
28 liability, personal and advertising injury, and cross liability coverage, covering

claims which may arise from or out of BORROWER'S performance of its obligations hereunder. Policy shall name the County of Riverside, its Agencies, Boards, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

- d. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then BORROWER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Boards, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured or provide similar evidence of coverage approved by COUNTY's Risk Manager.

- e. General Insurance Provisions – All Lines.

- (i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by COUNTY Risk Manager. If COUNTY's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

1 (ii) BORROWER, or Borrower on behalf of General Contractor, must
2 declare its insurance self-insured retentions. If such self-insured
3 retentions exceed \$500,000 per occurrence such retentions shall have
4 the prior written consent of COUNTY Risk Manager before the
5 commencement of operations under this Agreement. Upon notification
6 of self-insured retention unacceptable to COUNTY, and at the election
7 of COUNTY's Risk Manager, BORROWER's or General
8 Contractor's, as applicable, carriers shall either: (a) reduce or eliminate
9 such self-insured retention as respects this Agreement with COUNTY,
10 or (b) procure a bond which guarantees payment of losses and related
11 investigations, claims administration, and defense costs and expenses.

12 (iii) BORROWER shall cause BORROWER's and General Contractor's
13 insurance carrier(s) to furnish the County of Riverside with copies of
14 the Certificate(s) of Insurance and Endorsements effecting coverage as
15 required herein, and 2) if requested to do so orally or in writing by
16 COUNTY Risk Manager, provide copies of policies including all
17 Endorsements and all attachments thereto, showing such insurance is
18 in full force and effect. Further, said Certificate(s) and policies of
19 insurance shall contain the covenant of the insurance carrier(s) that
20 thirty (30) days written notice shall be given to the County of Riverside
21 prior to any material modification, cancellation, expiration or reduction
22 in coverage of such insurance. In the event of a material modification,
23 cancellation, expiration, or reduction in coverage, this Agreement shall
24 terminate forthwith, unless the County of Riverside receives, prior to
25 such effective date, another Certificate of Insurance and copies of
26 endorsements, including all endorsements and attachments thereto
27 evidencing coverages set forth herein and the insurance required herein
28 is in full force and effect. BORROWER shall not commence or

1 continue construction of the Project until COUNTY has been furnished
2 Certificate(s) of Insurance and copies of endorsements and if
3 requested, copies of policies of insurance including all endorsements
4 and any and all other attachments as required in this Section. An
5 individual authorized by the insurance carrier on its behalf shall sign
6 the original endorsements for each policy and the Certificate of
7 Insurance.

8 (iv) It is understood and agreed to by the parties hereto that BORROWER's
9 insurance shall be construed as primary insurance, and COUNTY's
10 insurance and/or deductibles and/or self-insured retentions or self-
11 insured programs shall not be construed as contributory.

12 (v) If, during the term of this Agreement or any extension thereof, there is
13 a material change in the scope of services; or, there is a material change
14 in the equipment to be used in the performance of the scope of work
15 which will add additional exposures (such as the use of aircraft,
16 watercraft, cranes, etc.); or, the term of this Agreement, including any
17 extensions thereof, exceeds five (5) years, COUNTY reserves the right
18 to adjust the types of insurance required under this Agreement and the
19 monetary limits of liability for the insurance coverages currently
20 required herein, if, in COUNTY Risk Manager's reasonable judgment,
21 the amount or type of insurance carried by BORROWER has become
22 inadequate.

23 (vi) BORROWER shall pass down the insurance obligations contained
24 herein to all tiers of subcontractors working under this Agreement.

25 (vii) The insurance requirements contained in this Agreement may be
26 met with a program(s) of self-insurance acceptable to COUNTY.
27
28

(viii) BORROWER agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

16. FINANCIAL AND PROJECT RECORDS. BORROWER shall maintain financial, programmatic, statistical, and other supporting records of its operations and financial activities sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)), in accordance with the requirements of the ARPA, and the regulations as amended and promulgated thereunder, which records shall be open to inspection and audit by authorized representatives of COUNTY, the California Department of Finance, and the United States Department of the Treasury Office of Inspector General, during regular working hours. COUNTY, state, and federal representatives have the right of access, with at least forty-eight (48) hours prior notice, to any pertinent books, documents, papers, or other records of BORROWER, in order to make audits, examinations, excerpts, and transcripts. Said records shall be retained for such time as may be required by the ARPA, but in no event no less than five (5) years after the Project completion date as evidenced by recordation of the Notice of Completion, or after final payment is made, whichever is later, to support reported expenditures and to participate in COUNTY, state, and federal audits; except that records of individual income verifications, Project rents, and Project inspections must be retained for the most recent five (5) year period, until five (5) years after the Affordability Period terminates. If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

17. COMPLIANCE WITH LAWS AND REGULATIONS. By executing this Agreement, BORROWER hereby certifies that it will adhere to and comply with ARPA Rules and all federal, state and local laws, regulations and ordinances. In particular, BORROWER shall comply with the following as they may be applicable to BORROWER in connection with the ARPA Loan:

- 1 a. Compliance with Executive Order 11246 of September 24, 1965, entitled
2 "Equal Employment Opportunity", as amended by Executive Order 11375 of
3 October 13, 1967, and as supplemented in Department of Labor Regulations
4 (41 CFR Part 60). The BORROWER will not discriminate against any
5 employee or applicant for employment because of race, color, religion, sex, or
6 national origin. BORROWER shall ensure that all qualified applicants will
7 receive consideration for employment without regard to race, color, religion,
8 sex or national origin. The BORROWER will take affirmative action to ensure
9 that applicants are employed and the employees are treated during employment,
10 without regard to their race color, religion, sex, or national origin. Such actions
11 shall include, but are not limited to, the following: employment, up-grading,
12 demotion, or transfer; recruitment or recruitment advertising; rates of pay or
13 other forms of compensation; and selection for training, including
14 apprenticeship. The BORROWER agrees to post in a conspicuous place,
15 available to employees and applicants for employment, notices to be provided
16 by the County setting forth the provisions of this non-discrimination clause;
- 17 b. Executive Order 11063, as amended by Executive Order 12259, and
18 implementing regulations at 24 CFR Part 107;
- 19 c. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended,
20 and implementing regulations;
- 21 d. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and
22 implementing regulations;
- 23 e. The regulations, policies, guidelines and requirements of the Uniform
24 Administrative Requirements, Cost Principles, and Audit Requirements for
25 Federal Awards (2 CFR Part 200) as they relate to the acceptance and use of
26 federal funds under the federally-assigned program;
- 27 f. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing
28 regulations issued at 24 CFR Part 1;

- 1 g. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) as amended;
- 2 h. *Rights to Data and Copyrights*: Contractors and consultants agree to comply
- 3 with all applicable provisions pertaining to the use of data and copyrights
- 4 pursuant to 48 CFR Part 27.404-3, Federal Acquisition Regulations (FAR).
- 5 i. *Air Pollution Prevention and Control* (formally known as the *Clean Air Act*)
- 6 *(42 U.S.C.A. 7401 et seq.) and the Federal Water Pollution Control Act (33*
- 7 *U.S.C.A. Section 1251 et seq.)*, as amended: Contracts and subgrants of
- 8 amounts in excess of \$100,000 shall contain a provision that requires the
- 9 recipient to agree to comply with all applicable standards, orders or regulations
- 10 issued pursuant to the *Clean Air Act* (42 U.S.C.A. 7401 et seq.) and the *Federal*
- 11 *Water Pollution Control Act* as amended (33 U.S.C.A. Section 1251 et seq.).
- 12 Violations shall be reported to the Federal awarding agency and the Regional
- 13 Office of the Environmental Protection Agency (EPA).
- 14 j. *Anti-Lobbying Certification (31 U.S.C.A. 1352)*: The language of the
- 15 certification set forth below shall be required in all contracts or subcontracts
- 16 entered into in connection with this grant activity and all BORROWERS shall
- 17 certify and disclose accordingly. This certification is a material representation
- 18 of fact upon which reliance was placed when this transaction was made or
- 19 entered into. Submission of this certification is a prerequisite for making or
- 20 entering into this transaction imposed by. Section 1352, Title 31, U.S. code.
- 21 Any person who fails to file the required certification shall be subject to a civil
- 22 penalty of not less than \$10,000 and no more than \$100,000 for such failure.
- 23 “The undersigned certifies, to the best of his or her knowledge or belief, that:
- 24 No Federal appropriated funds have been paid or will be paid, by or on behalf
- 25 of it, to any person for influencing or attempting to influence an officer or
- 26 employee of any agency, a Member of Congress, an officer or employee of
- 27 Congress, or an employee of a Member of Congress in connection with the
- 28 awarding of any Federal contract, the making of any Federal grant, the making

1 of any Federal loan, the entering into of any cooperative agreement, and the
2 extension, continuation, renewal, amendment, or modification of any Federal
3 contract, grant, loan, or cooperative agreement;

4 If any funds other than Federal appropriated funds have been paid or will be
5 paid to any person for influencing or attempting to influence an officer or
6 employee of any agency, a Member of Congress, an officer or employee of
7 Congress, or an employee of a Member of Congress in connection with this
8 Federal contract, grant loan or cooperative agreement, he/she will complete and
9 submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in
10 accordance with its instructions.”

- 11 k. *Debarment and Suspension (Executive Orders (E.O.) 12549 and 12689)*: No
12 contract award shall be made to parties listed on the governmentwide exclusions
13 in the System for Award Management (SAM), in accordance with OMB
14 guidelines at 2 CFR 180 that implement Executive Orders (E.O.s) 12549 and
15 12689, “Debarment and Suspension.” SAM Exclusions contains the names of
16 parties debarred, suspended, or otherwise excluded by agencies, as well as
17 parties declared ineligible under statutory or regulatory authority other than
18 E.O. 12549. Contractors with awards that exceed the small purchase threshold
19 shall provide the required certification regarding its exclusion status and that of
20 its principal employees.

- 21 l. *Drug-Free Workplace Requirements*: The Anti-Drug Abuse Act of 1988 (41
22 U.S.C.A. Section 8101-8103) requires grantees (including individuals) of
23 federal agencies, as a prior condition of being awarded a grant, to certify that
24 they will provide drug-free workplaces. Each potential recipient must certify
25 that it will comply with drug-free workplace requirements in accordance with
26 the Act and with HUD's rules at 2 CFR Part 2424.

- 27 m. *Access to Records and Records Retention*: The BORROWER or Contractor,
28 and any sub-consultants or sub-contractors, shall allow all duly authorized

1 Federal, State, and/or County officials or authorized representatives access to
2 the work area, as well as all books, documents, materials, papers, and records
3 of the BORROWER or Contractor, and any sub-consultants or sub-contractors,
4 that are directly pertinent to a specific program for the purpose of making
5 audits, examinations, excerpts, and transcriptions. The BORROWER or
6 Contractor, and any sub-consultants or sub-contractors, further agree to
7 maintain and keep such books, documents, materials, papers, and records, on a
8 current basis, recording all transactions pertaining to this agreement in a form
9 in accordance with generally acceptable accounting principles. All such books
10 and records shall be retained for such periods of time as required by law,
11 provided, however, notwithstanding any shorter periods of retention, all books,
12 records, and supporting detail shall be retained for a period of at least five (5)
13 years after the expiration of the term of this Agreement, or final payment is
14 made, whichever is later.

- 15 n. *Federal Employee Benefit Clause*: No member of or delegate to the Congress
16 of the United States, and no Resident Commissioner shall be admitted to any
17 share or part of this agreement or to any benefit to arise from the same.
- 18 o. *Energy Efficiency*: Mandatory standards and policies relating to energy
19 efficiency which are contained in the State energy conservation plan issued in
20 compliance with the Energy Policy and Conservation Act (Pub. L. 94 - 163,
21 Dec. 22, 1975; 42 U.S.C.A. Section 6201, et. seq., 89 Stat.871).
- 22 p. *Procurement of Recovered Materials (2 CFR 200.322.)*: A non-Federal entity
23 that is a state agency or agency of a political subdivision of a state and its
24 contractors must comply with 42 U.S.C. Section 6002 of the Solid Waste
25 Disposal Act, as amended by the Resource Conservation and Recovery Act.
26 The requirements of Section 6002 include procuring only items designated in
27 guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247
28 that contain the highest percentage of recovered materials practicable,

1 consistent with maintaining a satisfactory level of competition, where the
2 purchase price of the item exceeds \$10,000 or the value of the quantity acquired
3 by the preceding fiscal year exceeded \$10,000; procuring solid waste
4 management services in a manner that maximizes energy and resource
5 recovery; and establishing an affirmative procurement program for
6 procurement of recovered materials identified in the EPA guidelines. The
7 requirements of 2 CFR 200.322, as amended effective November 12, 2020, are
8 hereby included in this Agreement as appropriate and to the extent consistent
9 with law.

10 q. Other Federal requirements and nondiscrimination. As set forth in 24 CFR part
11 5, sub part A, BORROWER is required to include the following requirements:
12 nondiscrimination and equal opportunity under Section 282 of the Act;
13 disclosure; debarred, suspended, or ineligible contractors; and drug-free
14 workplace.

15 r. Affirmative marketing and minority outreach program. BORROWER must
16 adopt affirmative marketing procedures and requirements. These must include:

17 (i) Methods for informing the public, owners, and potential tenants about
18 Federal fair housing laws and the affirmative marketing policy (e.g.,
19 the use of the Equal Housing Opportunity logotype or slogan in press
20 releases and solicitations for owners, and written communication to fair
21 housing and other groups).

22 (ii) Requirements and practices that BORROWER must adhere to in order
23 to carry out the affirmative marketing procedures and requirements
24 (e.g., use of commercial media, use of community contacts, use of the
25 Equal Housing Opportunity logotype or slogan, and display of fair
26 housing poster).

27 (iii) Procedures to be used by BORROWER to inform and solicit
28 applications from persons in the housing market area who are not likely

1 to apply without special outreach (e.g., use of community
2 organizations, employment centers, fair housing groups, or housing
3 counseling agencies).

4 (iv) Records that will be kept describing actions taken by BORROWER to
5 affirmatively market units and records to assess the results of these
6 actions.

7 (v) A description of how BORROWER will annually assess the success of
8 affirmative marketing actions and what corrective actions will be taken
9 where affirmative marketing requirements are not met.

10 (vi) BORROWER must prescribe procedures to establish and oversee a
11 minority outreach program to ensure the inclusion, to the maximum
12 extent possible, of minorities and women, and entities owned by
13 minorities and women, including, without limitation, real estate firms,
14 construction firms, appraisal firms, management firms, financial
15 institutions, investment banking firms, underwriters, accountants, and
16 providers of legal services, in all contracts entered into by
17 BORROWER with such persons or entities, public and private, in order
18 to facilitate the activities of COUNTY to provide affordable housing
19 authorized under this Act or any other Federal housing law. Section 24
20 CFR 85.36(e) provided affirmative steps to assure that minority
21 business enterprises and women business enterprises are used when
22 possible in the procurement of property and services. The steps
23 include:

24 (1) Placing qualified small and minority businesses and women's
25 business enterprises on solicitation lists.

26 (2) Assuring that small and minority businesses, and women's
27 business enterprises are solicited whenever they are potential
28 sources.

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
- (5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (1) through (5) above of this section.

- s. Displacement, relocation, and acquisition. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42. BORROWER must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of this Project.
- t. Lead-based paint. The ARPA-Assisted Units are subject to the lead-based paint requirements of 24 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.). The lead-based paint provisions of 24 CFR 982.401 (j), except 24 CFR 982.401 (j)(1)(i), also apply, irrespective of the applicable property standard under §92.251.
- u. Labor. Every contract for the construction of housing that includes twelve (12) or more units assisted with ARPA funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any

1 part of the housing. Such contracts must also be subject to the overtime
2 provisions, as applicable, of the Contract Work Hours and Safety Standards
3 Act (40 U.S.C. 327-332). BORROWER must apply most current wage rate
4 determination at the date of execution of this Agreement.

5 v. Model Energy Code published by the Council of American Building Officials.

6 w. Consultant Activities. No person providing consultant services in an employer-
7 employee type relationship shall receive more than a reasonable rate of
8 compensation for personal services paid with ARPA funds.

9 x. Uniform Administrative Requirements of 2 CFR Part 200 as now in effect and
10 as may be amended from time to time. Federal awards expended as a recipient
11 or a subrecipient, as defined therein, would be subject to single audit. The
12 payments received for goods or services provided as a vendor would not be
13 considered Federal awards.

14 y. BORROWER shall include written agreements that include all provisions of
15 **Section 17** if BORROWER provides ARPA funds to for-profit owners or
16 developers, non-profit owners or developers, sub-recipients, homeowners,
17 homebuyers, tenants receiving tenant-based rental assistance, or contractors.

18 z. Immigration requirements of Federal Register, Vol. 62, No. 221, Department
19 of Justice Interim Guidance on Verification of Citizenship, Qualified Alien
20 Status and Eligibility Under Title IV of the Personal Responsibility and Work
21 Opportunity Reconciliation Act of 1996 ("PRWORA"). Final Attorney
22 General's Order issued pursuant to PRWORA is specified under Federal
23 Register Vol. 66, No. 10, Department of Justice Final Specification of
24 Community Programs Necessary for Protection of Life or Safety Under Welfare
25 Reform Legislation.

26 aa. BORROWER shall comply with all applicable local, state and federal laws in
27 addition to the above-mentioned laws.
28

1 18. PROJECT REQUIREMENTS. BORROWER shall make the Project available to
2 persons and households whose incomes do not exceed 30% of the area median income for the
3 County of Riverside (“Qualified Population”).

4 If BORROWER intends to use the Project for a use other than to provide shelter and services to
5 the Qualified Populations, BORROWER shall utilize the Property for another ARPA-Eligible
6 Activity. BORROWER shall provide COUNTY with sixty (60) days notice of conversion for
7 another ARPA-Eligible Activity. The approval of the alternate ARPA- Eligible Activity shall not
8 be unreasonably withheld by COUNTY. If the Project is not used to provide shelter and services
9 to the Qualified Populations and BORROWER does not intend to use the Property for another
10 ARPA-Eligible Activity, then COUNTY and BORROWER mutually agree that this Agreement
11 will self-terminate and any ARPA Loan funds drawn shall be returned within thirty (30) calendar
12 days. Upon such termination, this Agreement shall become null and void. COUNTY and
13 BORROWER shall be released and discharged respectively from their obligations under this
14 Agreement. All cost incurred by each party on the Project will be assumed respectively.

15 19. INTENTIONALLY OMITTED

16 20. INTENTIONALLY OMITTED.

17 21. FEDERAL REQUIREMENTS. BORROWER shall comply with the provisions of
18 the ARPA Act and any amendments thereto and all applicable federal regulations and guidelines
19 now or hereafter enacted pursuant to the Act in addition to the federal provisions attached hereto
20 as **Exhibit H**.

21 22. SALE, ASSIGNMENT OR OTHER TRANSFER OF THE PROJECT.
22 BORROWER hereby covenants and agrees not to sell, assign, transfer or otherwise dispose of
23 the Project or any portion thereof, without obtaining the prior written consent of the COUNTY,
24 which consent shall be conditioned upon receipt by the COUNTY of reasonable evidence
25 satisfactory to the COUNTY that the transfer of the Project complies with ARPA Rules and
26 qualifies as an ARPA-Eligible Activity, that transferee has assumed in writing and in full, and is
27 reasonably capable of performing and complying with the BORROWER’s duties and obligations
28 under this Agreement, provided, however Borrower shall not be released of all obligations

Commented [A1]: FYI to City: Any transfer will still need to be in compliance with ARPA Rules and must be an ARPA eligible activity.

Commented [A2R2]: Okay

hereunder which accrue from and after the date of such sale unless agreed to in a writing signed by COUNTY .

23. INDEPENDENT CONTRACTOR. BORROWER and its agents, servants and employees shall act at all times in an independent capacity during the term of this Agreement, and shall not act as, shall not be, nor shall they in any manner be construed to be agents, officers, or employees of COUNTY.

24. NONDISCRIMINATION. Borrower shall abide by 24 CFR 570.602 which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Under the Act, Section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 CFR Part 6. In addition, BORROWER shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. BORROWER understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between BORROWER and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers. BORROWER shall comply with the provisions of the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended, and all Administrative Rules and Regulations issued pursuant to said Acts and Orders with respect to its use of the Property.

BORROWER herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that this Covenant is made and accepted upon and subject to the

1 following conditions: There shall be no discrimination against or segregation of any person or
2 group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the
3 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
4 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
5 in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall
6 the transferee itself or any person claiming under or through him or her, establish or permit any
7 such practice or practices of discrimination or segregation with reference to the selection, location,
8 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

9 BORROWER, its successors and assigns, shall refrain from restricting the rental, sale, or
10 lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual
11 orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and
12 contract entered into with respect to the Property, or any portion thereof, after the date of this
13 Agreement shall contain or be subject to substantially the following nondiscrimination or
14 nonsegregation clauses:

- 15 a. In deeds: "The grantee herein covenants by and for himself or herself, his or her
16 heirs, executors, administrators, and assigns, and all persons claiming under or
17 through them, that there shall be no discrimination against or segregation of,
18 any person or group of persons on account of any basis listed in subdivision (a)
19 or (d) of Section 12955 of the Government Code, as those bases are defined in
20 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
21 of Section 12955, and Section 12955.2 of the Government Code, in the sale,
22 lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises
23 herein conveyed, nor shall the grantee or any person claiming under or through
24 him or her, establish or permit any practice or practices of discrimination or
25 segregation with reference to the selection, location, number, use or occupancy
26 of tenants, lessees, subtenants, sublessees, or vendees in the premises herein
27 conveyed. The foregoing covenants shall run with the land."

1 b. In leases: "The lessee herein covenants by and for himself or herself, his or her
2 heirs, executors, administrators, and assigns, and all persons claiming under or
3 through him or her, and this lease is made and accepted upon and subject to the
4 following conditions: That there shall be no discrimination against or
5 segregation of any person or group of persons, on account of any basis listed in
6 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
7 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
8 subdivision (p) of Section 12955, and Section 12955.2 of the Government
9 Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or
10 enjoyment of the premises herein leased nor shall the lessee himself or herself,
11 or any person claiming under or through him or her, establish or permit any
12 such practice or practices of discrimination or segregation with reference to the
13 selection, location, number, use, or occupancy, of tenants, lessees, sublessees,
14 subtenants, or vendees in the premises herein leased."

15 c. In contracts: "There shall be no discrimination against or segregation of any
16 person or group of persons, on account of any basis listed in subdivision (a) or
17 (d) of Section 12955 of the Government Code, as those bases are defined in
18 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
19 of Section 12955, and Section 12955.2 of the Government Code, in the sale,
20 lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor
21 shall the transferee itself or any person claiming under or through him or her,
22 establish or permit any such practice or practices of discrimination or
23 segregation with reference to the selection, location, number, use, or
24 occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

25 In addition to the obligations and duties of BORROWER set forth herein, BORROWER
26 shall, upon notice from COUNTY, promptly pay to COUNTY all fees and costs, including
27 administrative and attorneys' fees, incurred by COUNTY in connection with responding to or
28 defending any discrimination claim brought by any third party and/or local, state or federal

1 government entity, arising out of or in connection with this Agreement or the Covenant Agreement
2 attached hereto.

3 25. PROHIBITION AGAINST CONFLICTS OF INTEREST:

- 4 a. BORROWER and its assigns, employees, agents, consultants, officers and
5 elected and appointed officials shall become familiar with and shall comply
6 with the conflict of interest provisions in OMB Circular A-110, 24 CFR 85.36,
7 24 CFR 84.42, 24 CFR 92.356 and Policy Manual #A-11, attached hereto as
8 **Exhibit E** and by this reference incorporated herein.
- 9 b. BORROWER understands and agrees that no waiver or exception can be
10 granted to the prohibition against conflict of interest except upon written
11 approval of HUD pursuant to 24 CFR 92.356(d). Any request by BORROWER
12 for an exception shall first be reviewed by COUNTY to determine whether such
13 request is appropriate for submission to HUD. In determining whether such
14 request is appropriate for submission to HUD, COUNTY will consider the
15 factors listed in 24 CFR 92.356(e).
- 16 c. Prior to any funding under this Agreement, BORROWER shall provide
17 COUNTY with a list of all employees, agents, consultants, officers and elected
18 and appointed officials who are in a position to participate in a decision-making
19 process, exercise any functions or responsibilities, or gain inside information
20 with respect to the ARPA activities funded under this Agreement.
21 BORROWER shall also promptly disclose to COUNTY any potential conflict,
22 including even the appearance of conflict that may arise with respect to the
23 ARPA activities funded under this Agreement.
- 24 d. Any violation of this section shall be deemed a material breach of this
25 Agreement, and the Agreement shall be immediately terminated by COUNTY.

26 26. INTENTIONALLY OMITTED.

27 27. PROJECT MONITORING AND EVALUATION.

1 a. Inspections. During the Affordability Period, COUNTY will perform on-site
2 inspections of the Project to determine compliance with the property standards
3 and to verify the information submitted by the owners in accordance with
4 requirements. The on-site inspections must occur within 12 months after
5 Covenant Agreement and at least once every 3 years thereafter during the
6 Affordability Period. If there are observed deficiencies for any of the
7 inspectable items in the property standards established by COUNTY, a follow-
8 up on-site inspection to verify that deficiencies are corrected must occur within
9 12 months. COUNTY may establish a list of non-hazardous deficiencies for
10 which correction can be verified by third party documentation (e.g., paid
11 invoice for work order) rather than re-inspection. Health and safety deficiencies
12 must be corrected immediately. COUNTY must adopt a more frequent
13 inspection schedule for properties that have been found to have health and
14 safety deficiencies

15 28. MONITORING FEE. BORROWER shall not be required to pay an annual
16 compliance monitoring fee to the COUNTY.

17 29. ACCESS TO PROJECT SITE. COUNTY, state and/or federal awarding agencies
18 shall have the right to access the Project site and the Property at all reasonable times, and upon
19 completion of the Project upon reasonable written notice to BORROWER, to review the
20 operation of the Project in accordance with this Agreement.

21 30. EVENTS OF DEFAULT. The occurrence of any of the following events shall
22 constitute an "Event of Default" under this Agreement:

23 a. Monetary Default. (1) BORROWER's failure to pay when due any sums
24 payable under this Agreement, the Covenant Agreement, the ARPA Note or
25 any advances made by COUNTY under this Agreement; (2) BORROWER's or
26 any agent of BORROWER's use of ARPA Act funds for costs other than those
27 costs permitted under this Agreement or for uses inconsistent with terms and
28 restrictions set forth in this Agreement; (3) BORROWER's or any agent of

1 BORROWER's failure to make any other payment of any assessment or tax
2 due under this Agreement, and /or (4) default under the terms of any senior
3 loan documents or any other instrument or document secured against the
4 Property;

- 5 b. Non-Monetary Default. (1) Discrimination by BORROWER or
6 BORROWER's agent(s) on the basis of characteristics prohibited by this
7 Agreement or applicable law; (2) the imposition of any encumbrances or liens
8 on the Project without COUNTY's prior written approval that are prohibited
9 under this Agreement or that have the effect of reducing the priority or
10 invalidating the lien of the ARPA Deed of Trust; (3) BORROWER's failure to
11 obtain and maintain the insurance coverage required under this Agreement; (4)
12 any material default under this Agreement, the ARPA Loan Deed of Trust,
13 Covenant Agreement, ARPA Note or any document executed by the County in
14 connection with this Agreement, and /or (5) a default under the terms of any
15 senior loan documents or any other instrument or document secured against the
16 Property or the Project;
- 17 c. General Performance of Loan Obligations. Any substantial or continuous or
18 repeated breach by BORROWER or BORROWER's agents of any material
19 obligations of BORROWER under this Agreement;
- 20 d. General Performance of Other Obligations. Any substantial or continuous or
21 repeated breach by BORROWER or BORROWER's agents of any material
22 obligations of BORROWER related to the Project imposed by any other
23 agreement with respect to the financing, development, or operation of the
24 Project; whether or not COUNTY is a party to such agreement; but only
25 following any applicable notice and cure periods with respect to any such
26 obligation;
- 27 e. Representations and Warranties. A determination by COUNTY that any of
28 BORROWER's representations or warranties made in this Agreement, any

1 statements made to COUNTY by BORROWER, or any certificates, documents,
2 or schedules supplied to COUNTY by BORROWER were false in any material
3 respect when made, or that BORROWER concealed or failed to disclose a
4 material fact to COUNTY.

5 f. Damage to Project. In the event that the Project is materially damaged or
6 destroyed by fire or other casualty, and BORROWER receives an award or
7 insurance proceeds sufficient for the repair or reconstruction of the Project, and
8 BORROWER does not use such award or proceeds to repair or reconstruct the
9 Project.

10 g. Bankruptcy, Dissolution and Insolvency. BORROWER's or general partner
11 and co-general partner of BORROWER's (1) filing for bankruptcy, dissolution,
12 or reorganization, or failure to obtain a full dismissal of any such involuntary
13 filing brought by another party before the earlier of final relief or ninety (90)
14 days after such filing; (2) making a general assignment for the benefit of
15 creditors; (3) applying for the appointment of a receiver, trustee, custodian, or
16 liquidator, or failure to obtain a full dismissal of any such involuntary
17 application brought by another party before the earlier of final relief or ninety
18 (90) days after such filing; (4) insolvency; or (5) failure, inability or admission
19 in writing of its inability to pay its debts as they become due.

20 31. NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. Formal notices,
21 demands and communications between the COUNTY and the BORROWER shall be
22 sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt
23 requested, to the principal offices of the COUNTY and the BORROWER, as designated in
24 **Section 53**, below. Such written notices, demands and communications may be sent in the same
25 manner to such other addresses as either party may from time to time designate by mail as
26 provided in this **Section 31**. Any notice that is transmitted by electronic facsimile transmission
27 followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any
28 notice that is personally delivered (including by means of professional messenger service,

1 courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service),
2 shall be deemed received on the documented date of receipt by the recipient; and any notice
3 that is sent by registered or certified mail, postage prepaid, return receipt required shall be
4 deemed received on the date of delivery thereof.

5 a. Subject to the Force Majeure Delay, as provided in **Section 9**, failure or delay
6 by BORROWER to perform any term or provision of this Agreement after
7 notice and an opportunity to cure constitutes a default under this Agreement.
8 BORROWER must immediately commence to cure, correct or remedy such
9 failure or delay and shall complete such cure, correction or remedy with
10 reasonable diligence.

11 b. COUNTY shall give written notice of default to BORROWER, specifying the
12 default complained of by COUNTY. Failure or delay in giving such notice
13 shall not constitute a waiver of any default, nor shall it change the time of
14 default. Except as otherwise expressly provided in this Agreement, any failures
15 or delays by COUNTY in asserting any of its rights and remedies as to any
16 default shall not operate as a waiver of any default or of any such rights or
17 remedies. Delays by COUNTY in asserting any of its rights and remedies shall
18 not deprive COUNTY of its right to institute and maintain any actions or
19 proceedings which it may deem necessary to protect, assert or enforce any such
20 rights or remedies.

21 c. If a monetary event of default occurs, prior to exercising any remedies
22 hereunder, COUNTY shall give BORROWER written notice of such default.
23 BORROWER shall have a period of ten (10) days after such notice is given
24 within which to cure the default prior to exercise of remedies by COUNTY.

25 d. If a non-monetary event of default occurs, prior to exercising any remedies
26 hereunder, COUNTY shall give BORROWER written notice of such default.
27 If the default is reasonably capable of being cured within thirty (30) days,
28 BORROWER shall have such period to effect a cure prior to exercise of

remedies by COUNTY. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and BORROWER (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then BORROWER shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in no event no more than sixty (60) days from the date of the notice of default. In no event shall COUNTY be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within sixty (60) days after the first notice of default is given.

- e. Any cure tendered by BORROWER'S Affiliate shall be accepted or rejected on the same basis as if tendered by BORROWER.

32. COUNTY REMEDIES. Upon the occurrence of an Event of Default, after notice and opportunity to cure, COUNTY's obligation to disburse ARPA funds shall terminate, and COUNTY shall also have the right, but not the obligation to, in addition to other rights and remedies permitted by this Agreement or applicable law, proceed with any or all of the following remedies in any order or combination COUNTY may choose in its sole discretion:

- a. Terminate this Agreement, in which event the entire ARPA Loan amount as well as any other monies advanced to BORROWER by COUNTY under this Agreement including administrative costs, shall immediately become due and payable to COUNTY at the option of COUNTY.
- b. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of this Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief.
- c. Accelerate the ARPA Loan and demand immediate full payment of the principal payment outstanding and all accrued interest under the ARPA Note,

as well as any other monies advanced to BORROWER by COUNTY under this Agreement.

- d. Enter the Project and take any remedial actions necessary in its judgment with respect to hazardous materials that COUNTY deems necessary to comply with hazardous materials laws or to render the Project suitable for occupancy, which costs shall be due and payable by BORROWER to COUNTY.
- e. Enter upon, take possession of, and manage the Project, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Project or to pay off the ARPA Loan or any advances made under this Agreement, as provided for by the ARPA Deed of Trust.
- f. Pursue any other remedies allowed at law or in equity.

33. RESERVED.

34. BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of this Agreement, and to otherwise carry out the Project, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the Project and to execute this Agreement, (4) that the persons executing and delivering this Agreement are authorized to execute and deliver such documents on behalf of BORROWER and (5) that neither BORROWER nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in connection with the transaction contemplated by this Agreement.

35. BORROWER'S CERTIFICATION. BORROWER certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or

1 employee of Congress, or an employee of a member of Congress in connection
2 with the awarding of any federal contract, the making of any federal grant, the
3 making of any federal loan, the entering into of any cooperative agreement, and
4 the extension, continuation, review, amendment, or modification of any federal
5 contract, grant, loan, or cooperative agreement.

6 b. If any funds other than federally appropriated funds have been paid or will be
7 paid to any person for influencing or attempting to influence an officer or
8 employee of any agency, a member of Congress, an officer or employee of
9 Congress, or an employee of a member of Congress in connection with this
10 federal contract, grant, loan, or cooperative agreement, the undersigned shall
11 complete and submit Standard Form-LLL, "Disclosure Form to Report
12 Lobbying," in accordance with its instructions.

13 c. The undersigned shall require that the language of this certification be included
14 in the award documents for all sub-awards at all tiers (including subcontracts,
15 sub-grants, and contracts under grants, loans, and cooperative agreements) and
16 that BORROWER shall certify and disclose accordingly. This certification is a
17 material representation of fact upon which reliance was placed when this
18 transaction was made or entered into.

19 36. HOLD HARMLESS AND INDEMNIFICATION. BORROWER shall indemnify
20 and hold harmless the County of Riverside, its Agencies, Boards, Districts, Special Districts and
21 Departments, their respective directors, officers, Board of Supervisors, elected and appointed
22 officials, employees, agents and representatives (collectively the "Indemnified Parties") from any
23 liability whatsoever, based or asserted upon any services of BORROWER, its officers,
24 employees, subcontractors, agents or representatives arising out of their performance under this
25 Agreement, including but not limited to property damage, bodily injury, or death or any other
26 element of any kind or nature whatsoever arising from the performance of BORROWER, its
27 officers, agents, employees, subcontractors, agents or representatives under this Agreement.
28 BORROWER shall defend, at its sole expense (including all costs and fees including, but not

1 limited, to attorney fees, cost of investigation, defense and settlements or awards), the County of
2 Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors,
3 officers, Board of Supervisors, elected and appointed officials, employees, agents and
4 representatives in any claim or action based upon such alleged acts or omissions.

5 With respect to any action or claim subject to indemnification herein by BORROWER,
6 BORROWER shall, at their sole cost, have the right to use counsel of their own choice and shall
7 have the right to adjust, settle, or compromise any such action or claim without the prior consent
8 of COUNTY; provided, however, that any such adjustment, settlement or compromise in no
9 manner whatsoever limits or circumscribes BORROWER'S indemnification to COUNTY as set
10 forth herein.

11 BORROWER's obligation hereunder shall be satisfied when BORROWER has provided
12 to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action
13 or claim involved.

14 The specified insurance limits required in this Agreement shall in no way limit or
15 circumscribe BORROWER's obligations to indemnify and hold harmless COUNTY herein from
16 third party claims.

17 In the event there is conflict between this clause and California Civil Code Section 2782,
18 this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not
19 relieve BORROWER from indemnifying COUNTY to the fullest extent allowed by law.

20 BORROWER's obligations set forth in this **Section 36** shall survive the expiration or
21 earlier termination of this Agreement.

22 37. TERMINATION.

23 a. BORROWER. BORROWER may terminate this Agreement prior to
24 disbursement of any ARPA Loan funds by COUNTY in accordance with the
25 applicable ARPA Act regulations.

26 b. COUNTY. Notwithstanding the provisions of **Section 37(a)**, COUNTY may
27 suspend or terminate this Agreement upon written notice to BORROWER of
28

1 the action being taken and the reason for such action in the event one of the
2 following events occur:

3 (i) In the event BORROWER fails to perform the covenants herein
4 contained at such times and in such manner as provided in this
5 Agreement after the applicable notice and cure provision hereof; or

6 (ii) In the event there is a conflict with any federal, state or local law,
7 ordinance, regulation or rule rendering any material provision, in the
8 judgment of COUNTY of this Agreement invalid or untenantable; or

9 (iii) In the event the ARPA funding identified in **Section 1** above is
10 terminated or otherwise becomes unavailable.

11 c. This Agreement may be terminated or funding suspended in whole or in part
12 for cause. Cause shall be based on the failure of BORROWER to materially
13 comply with either the terms or conditions of this Agreement after the
14 expiration of all applicable notice and cure provisions hereof. Upon suspension
15 of funding, BORROWER agrees not to incur any costs related thereto, or
16 connected with, any area of conflict from which COUNTY has determined that
17 suspension of funds is necessary.

18 d. Upon expiration or earlier termination of this Agreement, BORROWER shall
19 transfer to COUNTY any unexpended ARPA funds in its possession at the time
20 of expiration of the Agreement as well as any accounts receivable held by
21 BORROWER which are attributable to the use of ARPA funds awarded
22 pursuant to this Agreement.

23 38. AFFORDABILITY RESTRICTIONS. COUNTY and BORROWER, on behalf of
24 its successors and assigns, hereby declare their express intent that the restrictions set forth in this
25 Agreement shall continue in full force and effect for the duration of the Affordability Period (as
26 defined in **Section 13** above). Each and every contract, deed or other instrument hereafter
27 executed covering and conveying the Property or any portion thereof shall be held conclusively
28 to have been executed, delivered and accepted subject to such restrictions, regardless of whether

1 such restrictions are set forth in such contract, deed or other instrument. BORROWER shall
2 execute and record as a lien against the Property, a Covenant Agreement, substantially
3 conforming in form and substance to the Covenant Agreement attached hereto as **Exhibit E** and
4 incorporated herein by this reference, setting forth the affordability use and income restriction
5 required in this Agreement.

6 39. MECHANICS LIENS AND STOP NOTICES. If any claim of mechanics lien is
7 filed against the Project or a stop notice affecting the ARPA Loan is served on COUNTY,
8 BORROWER must, within twenty (20) calendar days of such filing or notification of service,
9 either pay and fully discharge the lien or stop notice, obtain a release of the lien or stop notice by
10 delivering to COUNTY a surety bond in sufficient form and amount, or provide COUNTY with
11 other assurance reasonably satisfactory to COUNTY that the lien or stop notice will be paid or
12 discharged.

13 40. ENTIRE AGREEMENT. It is expressly agreed that this Agreement embodies the
14 entire agreement of the parties in relation to the subject matter hereof, and that no other agreement
15 or understanding, verbal or otherwise, relative to this subject matter, exists between the parties at
16 the time of execution.

17 41. AUTHORITY TO EXECUTE. The persons executing this Agreement or exhibits
18 attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they
19 have the authority to execute this Agreement and warrant and represent that they have the
20 authority to bind the respective parties to this Agreement to the performance of its obligations
21 hereunder.

22 42. WAIVER. Failure by a party to insist upon the strict performance of any of the
23 provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon
24 the default of the other party, shall not constitute a waiver of such party's rights to insist and
25 demand strict compliance by the other party with the terms of this Agreement thereafter.

26 43. INTERPRETATION AND GOVERNING LAW. This Agreement and any
27 dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the
28 State of California. This Agreement shall be construed as a whole according to its fair language

1 and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of
2 construction to the effect that ambiguities are to be resolved against the drafting party shall not
3 be employed in interpreting this Agreement, all parties having been represented by counsel in the
4 negotiation and preparation hereof.

5 44. JURISDICTION AND VENUE. Any action at law or in equity arising under this
6 Agreement or brought by a party hereto for the purpose of enforcing, construing or determining
7 the validity of any provision of this Agreement shall be filed in the Superior Court of Riverside
8 County, State of California, and the parties hereto waive all provisions of law providing for the
9 filing, removal or change of venue to any other court or jurisdiction.

10 45. SEVERABILITY. Each paragraph and provision of this Agreement is severable
11 from each other provision, and if any provision or part thereof is declared invalid, the remaining
12 provisions shall nevertheless remain in full force and effect.

13 46. MINISTERIAL ACTS. COUNTY's Director of HWS, or designee, is authorized
14 to take such ministerial actions as may be necessary or appropriate to implement the terms,
15 provisions, and conditions of this Agreement as it may be amended from time to time by both
16 parties.

17 47. MODIFICATION OF AGREEMENT. COUNTY or BORROWER may consider
18 it in its best interest to change, modify or extend a term or condition of this Agreement, provided
19 such change, modification or extension is agreed to in writing by the other party. Any such
20 change, extension or modification, which is mutually agreed upon by COUNTY and
21 BORROWER shall be incorporated in written amendments to this Agreement. Such amendments
22 shall not invalidate this Agreement, nor relieve or release COUNTY or BORROWER from any
23 obligations under this Agreement, except for those parts thereby amended. No amendment to this
24 Agreement shall be effective and binding upon the parties, unless it expressly makes reference to
25 this Agreement, is in writing, is signed and acknowledged by duly authorized representatives of
26 all parties, and approved by the COUNTY.

1 48. CONDITIONAL COMMITMENT.

2 a. Construction. BORROWER must demonstrate that it is working towards
3 obtaining financing to reconstruct the Project in accordance with the scheduled
4 Completion Deadline.

5 b. Completion. The Project must be completed no later than two (2) years from
6 the Effective Date of this Agreement (the "Completion Deadline"). If
7 BORROWER is unable to meet the condition as required by this **Section 48**
8 including any extension, then COUNTY and BORROWER mutually agree that
9 this Agreement will self-terminate and any ARPA Loan funds disbursed to
10 BORROWER to date shall be returned to COUNTY within thirty (30) calendar
11 days of such termination. Upon such termination, this Agreement shall become
12 null and void. COUNTY and BORROWER shall be released and discharged
13 respectively from their obligations under this Agreement, except for those
14 provisions which by their terms survive termination. All costs incurred by each
15 party on the Project will be assumed respectively.

16 49. INTENTIONALLY OMITTED.

17 50. INTENTIONALLY OMITTED.

18 51. EXHIBITS AND ATTACHMENTS. Each of the attachments and exhibits
19 attached hereto is incorporated herein by this reference.

20 52. MEDIA RELEASES. BORROWER agrees to allow COUNTY to provide input
21 regarding all media releases regarding the Project. Any publicity generated by BORROWER for
22 the Project must make reference to the contribution of COUNTY in making the Project possible.
23 COUNTY's name shall be prominently displayed in all pieces of publicity generated by
24 BORROWER, including flyers, press releases, posters, signs, brochures, and public service
25 announcements. BORROWER agrees to cooperate with COUNTY in any COUNTY-generated
26 publicity or promotional activities with respect to the Project.

27 53. NOTICES. All notices, requests, demands and other communication required or
28 desired to be served by either party upon the other shall be addressed to the respective parties as

1 set forth below or the such other addresses as from time to time shall be designated by the
2 respective parties and shall be sufficient if sent by United States first class, certified mail, postage
3 prepaid, or express delivery service with a receipt showing the date of delivery.

4 COUNTY
5 Director HWS
6 County of Riverside
7 3403 10th Street, Suite 300
8 Riverside, CA 92501

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

9 54. COUNTERPARTS. This Agreement may be signed by the different parties hereto
10 in counterparts, each of which shall be an original but all of which together shall constitute one
11 and the same agreement.

12 55. EFFECTIVE DATE. The effective date of this Agreement is the date the parties
13 execute the Agreement ("Effective Date"). If the parties execute the Agreement on more than one
14 date, then the last date the Agreement is executed by a party shall be the Effective Date.

15 56. FURTHER ASSURANCES. BORROWER shall execute any further documents
16 consistent with the terms of this Agreement, including documents in recordable form, as the
17 COUNTY may from time to time find necessary or appropriate to effectuate its purposes in
18 entering into this Agreement.

19 57. NONLIABILITY OF OFFICIALS AND EMPLOYEES. No member, official,
20 employee or consultant of the COUNTY shall be personally liable to the BORROWER, or any
21 successor in interest, in the event of any default or breach by the COUNTY or for any amount
22 which may become due to the BORROWER or to its successor, or on any obligations under the
23 terms of this Agreement. No member, official, employee or consultant of the BORROWER shall
24 be personally liable to the COUNTY, or any successor in interest, in the event of any default or
25 breach by the BORROWER or for any amount which may become due to the COUNTY or to its
26 successor, or on any obligations under the terms of this Agreement.

27 58. CONSTRUCTION AND INTERPRETATION OF AGREEMENT.

- 28 a. The language in all parts of this Agreement shall in all cases be construed
simply, as a whole and in accordance with its fair meaning and not strictly for

1 or against any party. The parties hereto acknowledge and agree that this
2 Agreement has been prepared jointly by the parties and has been the subject of
3 arm's length and careful negotiation over a considerable period of time, that
4 each party has been given the opportunity to independently review this
5 Agreement with legal counsel, and that each party has the requisite experience
6 and sophistication to understand, interpret, and agree to the particular language
7 of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute
8 regarding the interpretation of this Agreement, this Agreement shall not be
9 interpreted or construed against the party preparing it, and instead other rules
10 of interpretation and construction shall be utilized.

- 11 b. If any term or provision of this Agreement, the deletion of which would not
12 adversely affect the receipt of any material benefit by any party hereunder, shall
13 be held by a court of competent jurisdiction to be invalid or unenforceable, the
14 remainder of this Agreement shall not be affected thereby and each other term
15 and provision of this Agreement shall be valid and enforceable to the fullest
16 extent permitted by law. It is the intention of the parties hereto that in lieu of
17 each clause or provision of this Agreement that is illegal, invalid, or
18 unenforceable, there be added as a part of this Agreement an enforceable clause
19 or provision as similar in terms to such illegal, invalid, or unenforceable clause
20 or provision as may be possible.
- 21 c. The captions of the articles, sections, and subsections herein are inserted solely
22 for convenience and under no circumstances are they or any of them to be
23 treated or construed as part of this instrument.
- 24 d. References in this instrument to this Agreement mean, refer to and include this
25 instrument as well as any riders, exhibits, addenda and attachments hereto
26 (which are hereby incorporated herein by this reference) or other documents
27 expressly incorporated by reference in this instrument. Any references to any
28 covenant, condition, obligation, and/or undertaking "herein," "hereunder," or

1 “pursuant hereto” (or language of like import) means, refer to, and include the
2 covenants, obligations, and undertakings existing pursuant to this instrument
3 and any riders, exhibits, addenda, and attachments or other documents affixed
4 to or expressly incorporated by reference in this instrument.

- 5 e. As used in this Agreement, and as the context may require, the singular includes
6 the plural and vice versa, and the masculine gender includes the feminine and
7 vice versa.

8 59. TIME OF ESSENCE. Time is of the essence with respect to the performance of
9 each of the covenants and agreements contained in this Agreement.

10 60. BINDING EFFECT. This Agreement, and the terms, provisions, promises,
11 covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties
12 hereto and their respective heirs, legal representatives, successors and assigns.

13 61. NO THIRD PARTY BENEFICIARIES. The parties to this Agreement
14 acknowledge and agree that the provisions of this Agreement are for the sole benefit of COUNTY
15 and BORROWER, and not for the benefit, directly or indirectly, of any other person or entity,
16 except as otherwise expressly provided herein.

17 62. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

- 18 a. This Agreement shall be executed in three duplicate originals each of which is
19 deemed to be an original. This Agreement, including all attachments hereto
20 and exhibits appended to such attachments shall constitute the entire
21 understanding and agreement of the parties.
- 22 b. This Agreement integrates all of the terms and conditions mentioned herein or
23 incidental hereto, and supersedes all negotiations or previous agreements
24 between the parties with respect to all or any part of the Property.
- 25 c. All waivers of the provisions of this Agreement must be in writing and signed
26 by the appropriate authorities of the COUNTY or the BORROWER, and all
27 amendments hereto must be in writing and signed by the appropriate authorities
28 of the COUNTY and the BORROWER. This Agreement and any provisions

hereof may be amended by mutual written agreement by the BORROWER and the COUNTY.

(SIGNATURES ON THE NEXT PAGE)

IN WITNESS WHEREOF, COUNTY and BORROWER have executed this Agreement
as of the dates written below.

COUNTY:

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

BORROWER:

CITY OF LAKE ELSINORE,
a municipal corporation

By: _____
Heidi Marshall, Director HWS

By: _____
Jason Simpson, City Manager

Date: _____

Date: _____

(Above signatures need to be notarized)

APPROVED AS TO FORM:
MINH C. TRAN
County Counsel

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

By: _____
Amrit P. Dhillon
Deputy County Counsel

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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 _____, 2024, before me, _____,

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 Public

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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 _____, 2024, before me, _____,

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 Public

EXHIBIT “A”

Borrower: City of Lake Elsinore
Address: 130 South Main Street, Lake Elsinore, CA 92530
Project Title: Riley Street Apartments (“Project”)
Location: APN: 374-162-036

Project Description:

BORROWER proposes to utilize \$5,000,000 in ARPA funds to pay a portion of the costs to develop and construct a multi-family affordable rental housing project consisting of sixteen (16) total units, including fifteen (15) affordable rental housing units and one (1) residential manager’s unit on an approximately 17,755 square feet of vacant land situated on the southeast corner of Riley Street and Heald Avenue, in the City of Lake Elsinore in the County of Riverside, also identified as portions of APN 374-162-036 (“Property”).

Fifteen (15) one-bedroom units shall be rented to seniors 62+ years whose household income does not exceed 30% of the area median income for the County of Riverside, adjusted by family size at the time of occupancy (“Qualified Population”).

Legal Description of Property:

Real Property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

ALL OF LOTS 2, 4, 6 AND 8, ALL IN BLOCK 51 OF S. D. HEALD'S RESUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 378 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING EASTERLY AND SOUTHEASTERLY OF THE WESTERLY AND NORTHWESTERLY BOUNDARY LINE DESCRIBED WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DOCUMENT RECORDED OCTOBER 26, 1993 AS INSTRUMENT NO. 1993-420648 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO CITY OF LAKE ELSINORE BY DOCUMENT RECORDED JULY 23, 2019 AS INSTRUMENT NO. 2019-0273768 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN GRANT DEED CONVEYED TO JOSE LUIS MORALES GUITRON, A MARRIED MAN BY DOCUMENT RECORDED OCTOBER 24, 2018 AS INSTRUMENT NO. 2018-0419883 OF OFFICIAL RECORDS.

NOTE: THE ABOVE DESCRIPTION DESCRIBING PARCEL B IS FOR IDENTIFICATION PURPOSES ONLY AND HAS BEEN PROVIDED FOR THE ACCOMMODATION OF THIS REPORT. SAID DESCRIPTION IS NOT INSURABLE PURSUANT TO THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND SHOULD NOT BE RELIED UPON TO CONVEY OR ENCUMBER SAID LAND.

[portion of APN: 374-162-036]

Exhibit A-1

IMPLEMENTATION SCHEDULE

Commented [A3]: City: Please update implementation schedule. FYI - NEPA is scheduled for BOS date 7/9/24.

Milestone	Completion Date
1. Construction Start Deadline	October 1, 2024
2. Completion of Project	May 1, 2026
3. Project Open to the Public	June 15, 2026

Sources and Uses of Funds:

Sources:

County ARPA Loan	\$5,000,000
City of Lake Elsinore LMIHAF monies	<u>\$ 3,687,500</u>
Total Sources	\$8,687,500

EXHIBIT “B”

DEED OF TRUST

EXEMPT RECORDING FEE CODE 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Riverside
Housing and Workforce Solutions
3403 10th Street, Suite 300
Riverside, CA 92501
Attn. Juan Garcia

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, SECURITY
AGREEMENT AND FIXTURE FILING**
(WITH ASSIGNMENT OF RENTS)

This DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS) is made this _____ day of _____ 2024 by CITY OF LAKE ELSINORE, a municipal corporation within the geographical boundaries of the COUNTY, (hereinafter referred to as "Trustor"), whose address is 130 South Main Street, City of Lake Elsinore, California 92530, Attention: City Clerk. The trustee is Housing and Workforce Solutions ("Trustee"). The beneficiary is the County of Riverside, a political subdivision of the State of California, (hereinafter called "Beneficiary"), whose address is 3403 10th Street, Suite 300, Riverside, CA 92501.

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the "Trust Estate"):

(A) That certain fee interest in the real property in the City of Riverside, County of Riverside, State of California more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (such interest in real property is hereafter referred to as the "Subject Property");

(B) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "Improvements");

(C) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the "Appurtenances"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "Real Property");

(D) All rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the Trustor's use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the "Rents");

(E) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “UCC”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property of Trustor (the “Goods,” and together with the Real Property, the “Property”); and

(F) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the Ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types of intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the “Intangibles”).

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles used in operation of the Real Property and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the “Personal Property”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Solely with respect to the Trust Estate, Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9334 and 9502(b) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

- i. due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) that certain Promissory Note in favor of the Beneficiary ("County" therein) executed by Trustor ("Borrower" therein) of even date herewith (the "ARPA Note") in the principal amount of \$ [REDACTED].
 - (b) that certain Loan Agreement for the Use of ARPA Act Funds dated [REDACTED], 2024 and recorded in the Official Records ("Official Records") of the County of Riverside concurrently herewith, between Trustor ("Borrower" therein) and Beneficiary ("County" therein) (the "ARPA Loan Agreement"); and
 - (c) that certain Covenant Agreement dated [REDACTED], 2024, and recorded concurrently herewith in the Official Records, between Trustor ("Borrower" therein) and Beneficiary ("County" therein) ("Covenant Agreement").
- ii. payment of indebtedness of the Trustor to the Beneficiary not to exceed [REDACTED] Dollars (the "ARPA Loan") according to the terms of the ARPA Note.

Said ARPA Note, ARPA Loan Agreement and Covenant Agreement (collectively, referred to as the "Secured Obligations") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any note reciting that it is secured hereby. The ARPA Note, ARPA Loan Agreement and Covenant Agreement as used herein shall mean, refer to and include the ARPA Note, ARPA Loan Agreement and Covenant Agreement, as well as any riders, exhibits, addenda, implementation agreements, amendments, or attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the ARPA Loan Agreement.

The ARPA Loan evidenced by the ARPA Note and secured by this Deed of Trust is being made pursuant to the American Rescue Plan Act of 2021 (Pub.L. No. 117-2) ("ARPA"). Pursuant to the ARPA Loan Agreement, the maturity date of the ARPA Loan shall be the later to occur of (i) July 1, 2079 or (ii) fifty five (55) years from recordation of the Covenant Agreement for the last building completed as part of the Project (as defined in the ARPA Loan Agreement) ("ARPA Loan Term").

TRUSTOR COVENANTS that the Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the fee interest of the Property. Trustor warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the ARPA Note at the time and in the manner provided therein, and perform the obligations of the Trustor as set forth in the ARPA Loan Agreement and Covenant Agreement at the time and in the manner respectively provided therein.

2. That Trustor shall not permit or suffer the use of any of the property for any purpose other than the use set forth in the ARPA Loan Agreement and Covenant Agreement.

3. That the Secured Obligations are incorporated in and made a part of the Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.

4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the ARPA Loan Agreement and Covenant Agreement.

4a. That upon default hereunder or under any of the Secured Obligations and after giving notice and opportunity to cure, Beneficiary shall be entitled to the appointment of receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom

5. **Payment of Principal and Interest; Prepayment and Late Charges.** Trustor shall promptly pay when due the principal of and interest on the debt evidenced by the ARPA Note and any late charges due under the ARPA Note. Payments on the ARPA Note shall be deferred annually and forgiven at the end of the Term of the Agreement if the BORROWER has complied with the terms of the ARPA Loan

6. **Taxes and Insurance.** Trustor shall pay before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Deed of Trust, directly to the person owed payment. Trustor shall promptly furnish to Beneficiary receipts evidencing the payments.

a. Should Trustor fail to make any payment or to do any act herein provided, then Beneficiary or Trustee, but without obligation so to do and upon written notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

7. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Beneficiary under **Section 5** shall be applied: first, to interest due; second, to principal due; and last, to any late charges due under the ARPA Note.

8. **Prior Deeds of Trust; Charge; Liens.** Trustor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust, and leasehold payments or ground rents, if any, subject to applicable cure periods directly to the person owed payment. Trustor shall pay these obligations in the manner provided in **Section 6**.

a. Except for the liens permitted in writing by the Beneficiary, Trustor shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Trustor: (1) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Beneficiary; (2) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Beneficiary's opinion operate to prevent the enforcement of the lien; or (3) bond around the lien (4) secures from the holder of the lien an agreement satisfactory to Beneficiary subordinating the lien to this Deed of Trust. Except for the liens approved herein, if Beneficiary determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, Beneficiary may give Trustor a notice identifying the lien. Trustor shall satisfy such lien or take one or more of the actions set forth above within 30 days of the giving of notice.

9. **Priority of ARPA Deed of Trust.** The ARPA Deed of Trust shall be in a second priority lien position, behind the Covenant Agreement (first priority) and ahead of the ARPA Loan Agreement (third priority).

10. **Hazard or Property Insurance.** Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss of fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Beneficiary reasonably requires insurance. This insurance shall be maintained in the amounts and for the periods as required in the ARPA Loan Agreement. The insurance carrier providing the insurance shall be chosen by Trustor subject to Beneficiary's approval which shall not be unreasonably withheld. If Trustor fails to maintain coverage described above, Beneficiary may, at Beneficiary's option, obtain coverage to protect Beneficiary's rights in the Property in accordance with **Section 12**.

a. All insurance policies and renewals shall be reasonably acceptable to Beneficiary and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Trustor complies with the insurance requirements under the ARPA Loan Agreement. Trustor shall promptly give to Beneficiary certificates of insurance showing the coverage is in full force and effect and that Beneficiary is named as additional insured. In the event of loss, Trustor shall give prompt notice to the insurance carrier, the Senior Lien Holder, if any, and Beneficiary. Beneficiary may make proof of loss if not made promptly by the Senior Lien Holder, if any, or the Trustor.

b. Unless Beneficiary and Trustor otherwise agree in writing and subject to the rights of senior lenders, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Trustor determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Trustor determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within 30 days from the date notice is

mailed by Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

c. Unless Beneficiary and Trustor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of Note. If under **Section 27** the Property is acquired by Beneficiary, Trustor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

d. Notwithstanding the above, the Beneficiary's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of a Senior Lien Holder, if any, to collect and apply such proceeds in accordance with any Senior Lien Holder Deed of Trust.

11. Preservation, Maintenance and Protection of the Property; Trustor's Loan Application; Leaseholds. Trustor shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property; normal wear and tear excepted. Trustor shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Beneficiary's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust or Beneficiary's security interest. Trustor may cure such a default and reinstate, as provided in **Section 23**, by causing the action or proceeding to be dismissed with a ruling that, in Beneficiary's good faith determination, precludes forfeiture of the Trustor's interest in the Property or other material impairment of the lien created by this Deed of Trust or Beneficiary's security interest. Trustor shall also be in default if Trustor, during the loan application process, gave materially false or inaccurate information or statements to Beneficiary (or failed to provide Beneficiary with any material information) in connection with the loan evidenced by the ARPA Note, including, but not limited to representations concerning Trustor's use of Property for transitional housing. If this Deed of Trust is on a leasehold, Trustor shall comply with all provisions of the lease. If Trustor acquires fee title to the Property, the leasehold and the fee title shall not merge unless Beneficiary agrees to the merger in writing.

a. The Trustor acknowledges that this Property is subject to certain use and occupancy restrictions (which may be further evidenced by a separate agreement recorded in the land records where the Property is located), limiting the Property's use to transitional housing. The use and occupancy restrictions may limit the Trustor's ability to rent the Property. The violation of any use and occupancy restrictions may, if not prohibited by federal law, entitle the Beneficiary to the remedies provided in **Section 27** hereof.

12. Protection of Beneficiary's Rights in the Property. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Beneficiary's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then, subject to notice to Trustor and any applicable grace periods or cure periods, Beneficiary may do and pay for whatever is necessary to protect the value of the Property and Beneficiary's rights in the Property. Beneficiary's actions may include paying any sums secured by a lien which has priority over this Deed of Trust, appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Although Beneficiary may take action under this **Section 12**, Beneficiary does not have to do so.

a. Any amounts disbursed by Beneficiary under this **Section 12** shall become additional debt of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the ARPA Note rate and shall be payable, with interest, upon notice from Beneficiary to Trustor requesting payment.

13. **Reserved.**

14. **Inspection.** Beneficiary or its agent may make reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor at least forty-eight (48) hours advanced notice in connection with an inspection specifying reasonable cause for the inspection.

15. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary, subject to the terms of a Senior Lien Holder Deed of Trust, if any.

a. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Trustor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Trustor and Beneficiary otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Trustor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Trustor and Beneficiary otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, any condemnation proceeds may be used by Trustor for repair and/or restoration of the Project.

b. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemner offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within 30 days after the date the notice is given, Beneficiary is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due.

c. Unless Beneficiary and Trustor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in **Sections 5 and 6** or change the amount of such payments.

16. **Trustor Not Released; Forbearance By Beneficiary Not a Waiver.** Except in connection with any successor in interest approved by Beneficiary in writing, extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release the liability of the original Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence

proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor or Trustor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

17. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of Beneficiary and Trustor, subject to the provisions of **Section 22**. Trustor's covenants and agreements shall be joint and several.

18. **Loan Charges.** If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Trustor which exceeded permitted limits will be promptly refunded to Trustor. Beneficiary may choose to make this refund by reducing the principal owed under the ARPA Note or by making a direct payment to Trustor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

19. **Notices.** Any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Trustor's mailing address stated herein or any other address Trustor designates by notice to Beneficiary. Any notice to Beneficiary shall be given by first class mail to Beneficiary's address stated herein or any other address Beneficiary designates by notice to Trustor. Any notice required to be given to a Senior Lien Holder shall be given by first class mail to such other address the Senior Lien Holder designates by notice to the Trustor. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given as provided in this Section.

20. **Governing Law; Severability.** This Deed of Trust shall be governed by federal law and the laws of the State of California. In the event that any provision or clause of this Deed of Trust or the ARPA Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the ARPA Note are declared to be severable. Any action at law or in equity arising under this Deed of Trust or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Superior Court of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

21. **Trustor's Copy.** Trustor shall be given one conformed copy of the ARPA Note and of this Deed of Trust.

22. **Transfer of the Property or a Beneficial Interest in Trustor.** Except as otherwise allowed under the ARPA Loan Agreement, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person) without Beneficiary's prior written consent (including a transfer of all or any part

of the Property to any person who, at initial occupancy of the Property, does not use the Property for affordable housing) Beneficiary may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the date of this Deed of Trust. Nothing in this Deed of Trust shall be deemed to require Beneficiary's approval of a transfer of a limited partnership interest in the Trustor or of a conveyance of an easement interest in the Property for utility purposes.

a. If Beneficiary exercises the aforementioned option, Beneficiary shall give Trustor and the Senior Lien Holder, prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Trustor must pay all sums secured by this Deed of Trust. If Trustor fails to pay these sums prior to the expiration of this period, Beneficiary may invoke any remedies permitted by this Deed of Trust without further notice or demand on Trustor.

b. Reserved.

23. **Trustor's Right to Reinstate.** If Trustor meets certain conditions, Trustor shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Trustor: (a) pays Beneficiary all sums which then would be due under this Deed of Trust and the ARPA Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's rights in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Trustor, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under **Section 22**.

24. **Reserved.**

25. **No Assignment.** The ARPA Note and this Deed of Trust shall not be assigned by Trustor without the Beneficiary's prior written consent and the consent of the Senior Lien Holder, if any.

26. **Hazardous Substances.** Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses, construction, and to maintenance of the Property.

a. Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified in writing by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the

Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

b. As used in this **Section 26**, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, excluding household products in normal quantities. As used in this **Section 26**, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

27. **Acceleration; Remedies.** Beneficiary shall give notice to Trustor prior to acceleration following Trustor's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, which shall not be more than ten (10) calendar days from the date of the mailing of the notice for a monetary default, or a date, which shall not be more than thirty (30) calendar days from the mailing of the notice for a non-monetary default, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Trustor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Trustor to acceleration and sale. If the default is not cured by the Trustor on or before the date specified in the notice, and the Senior Lien Holder or the investor limited partner have not cured the default within that same period, subject to any non-recourse provisions set forth in Section 8 of the Note, then Beneficiary at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided in this **Section 27**, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

a. If Beneficiary invokes the power of sale, Beneficiary or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Trustor, the Senior Lien Holder, if any, and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Beneficiary or its designee may purchase the Property at any sale.

b. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

28. **Release.** Upon payment of all sums secured by this Deed of Trust, or upon forgiveness of all sums at the end of the ARPA Loan Term as provided in the ARPA Note and ARPA Loan Agreement, Beneficiary shall release this Deed of Trust without charge to Trustor.

Trustor shall pay any recordation costs. The lien of the Covenant Agreement shall not be released or reconveyed until the expiration of the term set forth therein notwithstanding the payment of all sums secured by this Deed of Trust.

29. **Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

30. **Reserved.**

31. **Reserved.**

32. **Reserved.**

33. **Removal, Demolition or Alteration of Personal Property and Fixtures.** Except to the extent permitted by the following sentence, no personal property or fixtures shall be removed, demolished or materially altered without the prior written consent of the Beneficiary. Trustor may remove and dispose of, free from the lien of this Deed of Trust, such personal property and fixtures as from time to time become worn out or obsolete, providing that, (a) the same is done in the ordinary course of business, and (2) either (i) at the time of, or prior to, such removal, any such personal property or fixtures are replaced with other personal property or fixtures which are free from liens other than encumbrances permitted hereunder and which have a value at least equal to that of the replaced personal property and fixtures (and by such removal replacement Trustor shall be deemed to have subjected such replacement personal property and fixtures to the lien of this Deed of Trust), or (ii) such personal property and fixtures may not require replacement if functionally, economically or operationally obsolete and so long as the fair market value of and operational efficiency of the Project is not reduced or adversely effected thereby.

[Remainder of Page Blank]

[Signatures on Following Page]

BY SIGNING BELOW, TRUSTOR accepts and agrees to the terms and covenants contained in this Deed of Trust.

TRUSTOR:

CITY OF LAKE ELSINORE, a municipal corporation

By: _____
Jason Simpson, City Manager

Date: _____

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

(Signature needs to be notarized)

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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 _____, 2024, before me, _____,

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 Public

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

Real Property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

ALL OF LOTS 2, 4, 6 AND 8, ALL IN BLOCK 51 OF S. D. HEALD'S RESUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 378 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING EASTERLY AND SOUTHEASTERLY OF THE WESTERLY AND NORTHWESTERLY BOUNDARY LINE DESCRIBED WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DOCUMENT RECORDED OCTOBER 26, 1993 AS INSTRUMENT NO. 1993-420648 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO CITY OF LAKE ELSINORE BY DOCUMENT RECORDED JULY 23, 2019 AS INSTRUMENT NO. 2019-0273768 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN GRANT DEED CONVEYED TO JOSE LUIS MORALES GUITRON, A MARRIED MAN BY DOCUMENT RECORDED OCTOBER 24, 2018 AS INSTRUMENT NO. 2018-0419883 OF OFFICIAL RECORDS.

NOTE: THE ABOVE DESCRIPTION DESCRIBING PARCEL B IS FOR IDENTIFICATION PURPOSES ONLY AND HAS BEEN PROVIDED FOR THE ACCOMMODATION OF THIS REPORT. SAID DESCRIPTION IS NOT INSURABLE PURSUANT TO THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND SHOULD NOT BE RELIED UPON TO CONVEY OR ENCUMBER SAID LAND.

[portion of APN: 374-162-036]

EXHIBIT “C”

PROMISSORY NOTE (ARPA Loan)**\$5,000,000.00****Riverside, CA**

In installments as hereafter stated, for value received, City of Lake Elsinore, a municipal corporation within the geographical boundaries of the COUNTY ("Borrower"), promises to pay the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("COUNTY"), or order, at 3403 10th Street, Suite 300, Riverside, CA 92501, the sum of **Five Million Dollars (U.S. \$5,000,000.00)** (the "ARPA Loan" or "Note Amount") which at the time of payment is lawful for the payment of public and private debts.

This Promissory Note ("Note") is given in accordance with that certain Loan Agreement for the Use of ARPA Act funds executed by COUNTY and Borrower, dated as of **, 2024** and recorded in the Official Records of the County of Riverside ("Official Records") on or about the date hereof (the "ARPA Loan Agreement"). Except to the extent otherwise expressly defined in this Note, all capitalized terms shall have the meanings ascribed to such terms in the ARPA Loan Agreement. The Note is secured by a Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by Borrower for the benefit of the County dated as of **, 2024**, and recorded on or about the date hereof in the Official Records (the "ARPA Deed of Trust" or "Deed of Trust"). The rights and obligations of the Borrower and COUNTY under this Note shall be governed by the ARPA Loan Agreement and the following terms:

- (1) The ARPA Loan evidenced by this Note and secured by the Deed of Trust are being made pursuant to the American Rescue Plan Act (Pub.L No. 117-2), hereinafter ("ARPA "). Borrower agrees for itself, its successors and assigns, that the use of the Property shall be subject to the restrictions set forth in ARPA regulations, the ARPA Loan Agreement and that certain Covenant Agreement dated on or about the date hereof and recorded concurrently herewith in the Official Records, between Borrower and County.
- (2) That the ARPA Loan will not accrue any interest per annum, and shall be deferred if the Project is in compliance with the ARPA Loan Agreement and forgiven in its entirety at the end of the Term of the ARPA Loan Agreement.
- (3) This Note may be prepaid in whole or in part by the undersigned at any time without prepayment penalty or premium, provided however notwithstanding such prepayment, Borrower shall be required to adhere to the affordability restrictions contained in the Covenants until the expiration of the term contained therein.
- (4) Subject to the provisions and limitations of this Paragraph 4, the obligation to repay the Note Amount is a nonrecourse obligation of Borrower and its officers. Neither Borrower nor its officers shall have any personal liability for repayment of the Note Amount, except as provided in this Paragraph 4. The sole recourse of the County shall be the exercise of its rights against the Property (or any portion thereof) and any related security for the ARPA Loan; provided, however, that the foregoing shall not (i) constitute a waiver of any other obligation evidenced by this Note or the Deed of Trust; (ii) limit the right of the COUNTY to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Note and the Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Borrower; (iii) release or impair either this Note or the Deed of Trust; (iv) prevent or in any way hinder the COUNTY from exercising, or constitute a defense, an affirmative defense, a counterclaim or other basis for relief in respect of the exercise of,

Exhibit "E"

any other remedy against the mortgaged Property or any other instrument securing this Note or as prescribed by law or in equity in case of default; (v) prevent or in any way hinder the COUNTY from exercising, or constitute a defense, an affirmative defense, a counterclaim or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing this Note; or (vi) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Note and the Deed of Trust. Notwithstanding the first sentence of this Section 4, the COUNTY may recover directly from Borrower or, unless otherwise prohibited by any applicable law, from any other party: (a) any damages, costs and expenses incurred by the COUNTY as a result of fraud, misrepresentation or any criminal act or acts of Borrower, or any officer, director or employee of Borrower; (b) any damages, costs and expenses incurred by the COUNTY as a result of any misappropriation of funds provided to pay costs as described in the ARPA Loan Agreement for the operation of the Project, or proceeds of insurance policies or condemnation proceeds; and (c) any misappropriation of proceeds resulting in the failure to pay taxes, assessments, or other charges that could create statutory liens on the Project and that are payable or applicable prior to any foreclosure under the Deed of Trust.

- (5) The occurrence of any of the following events shall constitute an "Event of Default" under this Note after notice and opportunity to cure pursuant to the terms set forth in the ARPA Loan Agreement:

- a. Monetary Default. (1) Borrower's failure to pay when due any sums payable under the ARPA Note or any advances made by COUNTY under this Agreement, (2) Borrower's or any agent of Borrower's use of ARPA funds for costs other than those costs permitted under the ARPA Loan Agreement or for uses inconsistent with terms and restrictions set forth in this Agreement, and/or (3) Borrower's or any agent of Borrower's failure to make any other payment of any assessment or tax due under the ARPA Loan Agreement;
- b. Non-Monetary Default - Operation. (1) Discrimination by Borrower or Borrower's agent on the basis of characteristics prohibited by this Agreement or applicable law, (2) the imposition of any encumbrances or liens on the Project without COUNTY's prior written approval that are prohibited under this agreement or that have the effect of reducing the priority or invalidating the lien of the ARPA Deed of Trust, (3) Borrower's failure to obtain and maintain the insurance coverage required under the ARPA Loan Agreement, (4) any material default under the ARPA Loan Agreement, ARPA Deed of Trust with Assignment of Rents, Covenant Agreement, ARPA Note, or any document executed by the Borrower in connection with this Agreement, and/or (4) default past any applicable notice and cure period under the terms of the ARPA Deed of Trust or any other instrument or document secured against the Property;
- c. General Performance of Loan Obligations. Any substantial or continuous or repeated breach by Borrower or Borrower's agents of any material obligations on Borrower imposed in the ARPA Loan Agreement; and

- d. General Performance of Other Obligations. Any substantial or continuous or repeated breach by Borrower or Borrower's agents of any material obligations on the Project imposed by any other agreement with respect to the financing, development, or operation of the Project; whether or not COUNTY is a party to such agreement.

- (6) COUNTY shall give written notice of default to Borrower, specifying the default complained of by the COUNTY. Borrower shall have ten (10) calendar days from the mailing of the notice for a monetary default, and thirty (30) calendar days from the mailing of the notice for any other default, by which such action to cure must be taken or commenced if a cure cannot reasonable be rendered within the applicable cure period.. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- (7) Any failures or delays by COUNTY in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by COUNTY in asserting any of its rights and remedies shall not deprive COUNTY of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- (8) If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid. In the event that any provision or clause of this Note conflicts with applicable law, such conflict will not affect other provisions of this Note which can be given effect without the conflicting provision, and to this end the provisions of the Note are declared to be severable.
- (9) Borrower hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Note, and expressly agrees that, without in any way affecting the liability of Borrower hereunder, the COUNTY may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Note. Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Note.
- (10) Should default be made in payment of principal and interest when due and such default shall continue beyond the applicable notice and cure period provided in the ARPA Loan Agreement, the whole sum of principal and interest shall become immediately due at the option of the holder of this Note. Principal and interest are payable in lawful money of the United States. If action be instituted on this Note, the undersigned promises to pay such sums as the Court may fix as attorney's fees.
- (11) This Note has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California. Any action at law or in equity arising under this Note or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Note shall be filed in the Superior Court of Riverside County, State of California,

and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

- (12) No modification, rescission, waiver, release or amendment of any provision of this Note shall be made except by a written agreement executed by Borrower and the duly authorized representative of the COUNTY.
- (13) The COUNTY may, in its sole and absolute discretion, assign its rights under this Note and its right to receive repayment of the Note Amount without obtaining the consent of Borrower.
- (14) In no event shall Borrower assign or transfer any portion of this Note or any rights herein without the prior express written consent of the COUNTY, which consent the COUNTY may give or withhold in its sole and absolute discretion. In the absence of specific written agreement by the COUNTY, no unauthorized assignment or transfer, or approval thereof by the COUNTY, shall be deemed to relieve Borrower or any other party from any obligations under the ARPA Loan Agreement or this Note. This provision shall not affect or diminish the COUNTY's assignment rights under this Note.
- (15) Except as to the permitted deeds of trust identified herein, Borrower shall not encumber the Property for the purpose of securing financing either senior or junior in priority or subordinated to the Deed of Trust without the prior written approval of the COUNTY in its sole and absolute discretion.
- (16) The relationship of Borrower and the COUNTY pursuant to this Note is that of debtor and creditor and shall not be, or be construed to be, a joint venture, equity venture, partnership or other relationship.
- (17)
 - (a) Formal notices, demands and communications between the County and Borrower shall be deemed sufficiently given if made in writing and dispatched by any of the following methods to the addresses of the COUNTY and Borrower as set forth below: (i) registered or certified mail, postage prepaid, return receipt requested (in which event, the notice shall be deemed delivered on the date of receipt thereof); (ii) electronic facsimile transmission, followed on the same day by delivery of a "hard" copy via first-class mail, postage prepaid (in which event, the notice shall be deemed delivered on the date of its successful facsimile transmission as evidenced by a facsimile confirmation or "kick-out" sheet); or (iii) personal delivery, including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service (in which event, the notice shall be deemed delivered on the documented date of receipt). Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.
 - (b) The address of the COUNTY for purposes of receiving notices pursuant to this Note shall be 3403 10th Street, Suite 300, Riverside, California 92501, Attention: Director HWS. The facsimile number for the COUNTY's receipt of notices is (951) 352-4852.
 - (c) The address of Borrower for purposes of receiving notices pursuant to this Note is 130 South Main Street, Lake Elsinore, CA 92530, Attn: City Manager.

- (18) The captions and headings in this Note are for convenience only and are not to be used to interpret or define the provisions hereof.
- (19) The undersigned, if comprising more than one person or entity, shall be jointly and severally liable hereunder.
- (20) This Note shall be binding upon Borrower and its heirs, successors and assigns, and shall benefit the COUNTY and its successors and assigns.

IN WITNESS WHEREOF, Borrower has executed this Note as of the day and year first set forth above.

BORROWER:

CITY OF LAKE ELSINORE, a municipal corporation

By: _____
Jason Simpson, City Manager

Date: _____

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

EXHIBIT “D”

Prohibition Against Conflicts of Interest

§ 92.356 Conflict of interest.

(a) Applicability. In the procurement of property and services by participating jurisdictions, State recipients, and sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) Conflicts prohibited. No persons described in **paragraph (c)** of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with ARPA funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a ARPA-Assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provisions of **paragraph (b)** of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY, State recipient, or sub-recipient which are receiving ARPA funds.

(d) Exceptions: Threshold requirements. Upon the written request of the recipient, HUD may grant an exception to the provisions of **paragraph (b)** of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the ARPA Act and the effective and efficient administration of COUNTY's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of **paragraph (d)** of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in **paragraph (c)** of this section;

(5) Whether undue hardship will result either to COUNTY or the person affected when weighed against the public interest served by avoiding the prohibited conflict;

(6) Any other relevant considerations.

(f) Owners/Participants and Developers.

(1) No owner, developer, or sponsor of a project assisted with ARPA funds (or officer, employee, agent or consultant of the owner, developer, or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy an ARPA-Assisted affordable housing unit in a project. This provision does not apply to an individual who receives ARPA funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) Exceptions. Upon written request of owner or developer, COUNTY may grant an exception to the provisions of **paragraph (f)(1)** of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the ARPA Act and the effective and efficient administration of the owner's or developer's ARPA-Assisted project. In determining whether to grant a requested exception, COUNTY shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to COUNTY's determination, including the timing of the requested exception.

Community Development Block Grant
Policy Manual, I.D. # A-11

TOPIC: CONFLICT OF INTEREST CODE

RIVERSIDE COUNTY

Housing & Workforce Solutions

DATE: MARCH 1999

This Conflict of Interest Code is written to comply with Federal Regulations (24 CFR Part 85). These Regulations. "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" require that grantees and sub-grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

- 1) No employee, officer, or agent of the grantee shall participate in the selection, in the award or in the administration of a contract supported by Federal Funds if a conflict of interest, real or apparent, would be involved.
- 2) Such a conflict will arise when:
 - i) The employee, officer or agent;
 - ii) Any member of the immediate family;
 - iii) His/Her partners; or
 - iv) An organization which employs, or is about to employ any of the above has a financial or other interest in the firm's selection for award.
- 3) The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to sub-agreements except as noted in Section 4.
- 4) A grantee's or sub-grantee's officers, employees or agents will be presumed to have a financial interest in a business if their financial interest exceeds the following:
 - i) Any business entity in which the official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.
 - ii) Any real property in which the official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
 - iii) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the official within 12 months prior to the time when the decision is made.
 - iv) Any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management.
 - v) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the official within 12 months prior to the time when the decision is made.
- 5) For purposes of **Section 4**, indirect investment or interest means any investment or interest owned by the spouse or dependent child of an official, by an agent on behalf of an official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or more.

Exhibit "E"

EXHIBIT “E”

Covenant Agreement

1 NO FEE FOR RECORDING PURSUANT
2 TO GOVERNMENT CODE SECTION 6103
3 Order No.
Escrow No.
Loan No.

4 RECORDING REQUESTED BY AND
5 WHEN RECORDED MAIL TO:

6 County of Riverside
7 Housing and Workforce Solutions
8 3403 10th Street, Suite 300
Riverside, CA 92501
Attn. Juan Garcia

SPACE ABOVE THIS LINE FOR RECORDERS USE

9
10 **COVENANT AGREEMENT**

11 This Covenant Agreement ("Covenant") is made and into this _____ day of _____ 2024
12 by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California
13 ("COUNTY"), and CITY OF LAKE ELSINORE, a municipal corporation within the
14 geographical boundaries of the COUNTY ("OWNER").

15 **RECITALS**

16 WHEREAS, OWNER owns that certain real property identified as a portion of APN 374-
17 132-036 more specifically described in the legal description attached hereto as **Exhibit A** and
18 incorporated herein by this reference (the "Property");

19 WHEREAS, COUNTY and OWNER entered into that certain Loan Agreement for the Use
20 of ARPA Act Funds dated _____, 2024 and recorded in the Official
21 Records of the County of Riverside ("Official Records") concurrently herewith (the "ARPA Loan
22 Agreement" or "Agreement") which provides for, among other things, the development and
23 construction on the Property, also known as "Riley Street Apartments," of a multi-family
24 affordable housing project consisting of sixteen (16) total units, including fifteen (15) affordable
25 rental housing units and one (1) residential manager's unit (collectively, the "Project").

26 WHEREAS, 15 units at the Project will be reserved as ARPA-Assisted Units for seniors
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1 (62+) whose incomes do not exceed 30% of the area median income for the County of Riverside
2 at the time of initial occupancy ("ARPA-Assisted Units"). Capitalized terms not defined herein
3 shall have the meaning ascribed to them in the ARPA Loan Agreement;

4 WHEREAS, the County is providing funding under the American Rescue Plan Act (Pub.L
5 No. 117-2), hereinafter "ARPA," for the purposes of providing decent, safe, and sanitary housing
6 to extremely low income senior households, a group that has been disproportionately affected
7 by the COVID-19 pandemic;

8 WHEREAS, pursuant to the ARPA Loan Agreement, COUNTY loaned to OWNER
9 \$5,000,000.00 derived from ARPA funds ("ARPA Loan"), to pay for a portion of the acquisition
10 and construction expenses of the Project, as more fully described in the ARPA Loan Agreement.
11 The ARPA Loan is evidenced by a Promissory Note executed by OWNER, in favor of the
12 COUNTY dated on or about the date hereof ("ARPA Loan Note") and secured by that certain
13 Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents) executed by
14 OWNER, for the benefit of COUNTY and recorded in the Official Records concurrently herewith
15 ("ARPA Loan Deed of Trust"); and

16 WHEREAS, pursuant to the ARPA Loan Agreement, OWNER has agreed to construct the
17 Project on the Property and ensure the ARPA-Assisted Units are occupied by Qualified Individuals
18 consistent with the ARPA Act requirements and as set forth more specifically below.

19 NOW, THEREFORE, in consideration of the mutual covenants and agreements, and for
20 other good and valuable consideration, the receipt and sufficiency of which are hereby
21 acknowledged, OWNER, on behalf of itself and its successors, assigns, and each successor in
22 interest to the Property or any part thereof, hereby declares as follows:

23 1) RESTRICTIONS. The recitals set forth above are true and correct and incorporated
24 herein. This Covenant shall continue in full force and effect for the later of (i) fifty-five (55) years
25 from the recordation of the Notice of Completion for the last building for which construction is
26 completed for the Project on the Property, or (ii) July 1, 2079 ("Term" or "Affordability Period").

1 For the duration of the Term, the Property shall be held, sold and conveyed, subject to the following
2 covenants, conditions, and restrictions:

3 a) Fifteen (15) of the units at the Project shall be restricted as ARPA-Assisted
4 Units to occupancy by senior (62 years old and above) households whose incomes do not exceed
5 30% of the area median income for the County of Riverside, at the time of initial occupancy.

6 b) OWNER shall comply with the terms of ARPA, the ARPA Loan
7 Agreement, ARPA Loan Note, ARPA Loan Deed of Trust and any other instrument secured
8 against the Property.

9 2) SENIOR PRIORITY. Notwithstanding anything to the contrary contained in the
10 ARPA Loan Agreement, including any of its attachments, this Covenant Agreement shall be in
11 first priority lien position and senior to all other security instruments including but not limited to
12 the deed of trust for the benefit of the County of Riverside securing the ARPA Loan.

13 3) COMPLIANCE WITH LAWS AND REGULATIONS. During the Term of this
14 Covenant, OWNER, for itself and on behalf of its successors and assigns, shall adhere to and
15 comply with all federal, state and local laws, regulations and ordinances., including, but not limited
16 to the following:

17 a) The American Rescue Plan Act (Pub.L 117-2).

18 b) Other Federal requirements and nondiscrimination. As set forth in 24 CFR
19 part 5, Subpart A, OWNER is required to include the following requirements: nondiscrimination
20 and equal opportunity under Section 282 of the Act; disclosure; debarred, suspended, or ineligible
21 contractors; and drug-free workplace.

22 c) Affirmative marketing and minority outreach program. OWNER must
23 adopt affirmative marketing procedures and requirements. These must include:

24 (1) Methods for informing the public, owners, and potential tenants about
25 Federal fair housing laws and the affirmative marketing policy (e.g., the use of the Equal Housing
26 Opportunity logotype or slogan in press releases and solicitations for owners, and written
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1 communication to fair housing and other groups).

2 (2) Requirements and practices that OWNER must adhere to in order to
3 carry out the affirmative marketing procedures and requirements (e.g., use of commercial media,
4 use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display
5 of fair housing poster).

6 (3) Procedures to be used by OWNER to inform and solicit applications
7 from persons in the housing market area who are not likely to apply without special outreach (e.g.,
8 use of community organizations, employment centers, fair housing groups, or housing counseling
9 agencies).

10 (4) Records that will be kept describing actions taken by OWNER to
11 affirmatively market units and records to assess the results of these actions.

12 (5) A description of how OWNER will annually assess the success of
13 affirmative marketing actions and what corrective actions will be taken where affirmative
14 marketing requirements are not met.

15 (6) OWNER must prescribe procedures to establish and oversee a minority
16 outreach program to ensure the inclusion, to the maximum extent possible, of minorities and
17 women, and entities owned by minorities and women, including, without limitation, real estate
18 firms, construction firms, appraisal firms, management firms, financial institutions, investment
19 banking firms, underwriters, accountants, and providers of legal services, in all contracts entered
20 into by OWNER with such persons or entities, public and private, in order to facilitate the
21 activities of COUNTY to provide affordable housing authorized under this Act or any other
22 Federal housing law. Section 24 CFR 85.36(e) provided affirmative steps to assure that minority
23 business enterprises and women business enterprises are used when possible in the procurement
24 of property and services. The steps include:

25 (i) Placing qualified small and minority businesses and women's
26 business enterprises on solicitation lists.

1 (ii) Assuring that small and minority businesses, and women's
2 business enterprises are solicited whenever they are potential sources.

3 (iii) Dividing total requirements, when economically feasible, into
4 smaller tasks or quantities to permit maximum participation by small and minority business, and
5 women's business enterprises.

6 (iv) Establishing delivery schedules, where the requirement permits,
7 which encourage participation by small and minority business, and women's business enterprises.

8 (v) Using the services and assistance of the Small Business
9 Administration, and the Minority Business Development Agency of the Department of
10 Commerce.

11 4) MAINTENANCE OF THE IMPROVEMENTS. OWNER, on behalf of itself and
12 its successors, assigns, and each successor in interest to the Property and Project or any part thereof
13 hereby covenants to and shall protect, maintain, and preserve the Property in compliance with all
14 applicable federal and state law and regulations and local ordinances. In addition, OWNER, its
15 successors and assigns, shall maintain the improvements on the Property in the same aesthetic and
16 sound condition (or better) as the condition of the Property at the time of the recordation of the
17 Covenant Agreement for the Project, or at the time of completion of construction, as applicable,
18 reasonable wear and tear excepted. This standard for the quality of maintenance of the Property
19 shall be met whether or not a specific item of maintenance is listed below. However, representative
20 items of maintenance shall include frequent and regular inspection for graffiti or damage or
21 deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing,
22 walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping
23 of public sidewalks adjacent to the Property, on-site walks and paved areas and washing-down as
24 necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive
25 condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows
26 on a regular basis; painting the buildings on a regular program and prior to the deterioration of the
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1 painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-
2 free and weather-tight condition; maintaining security devices in good working order. In the event
3 OWNER, its successors or assigns fails to maintain the Property in accordance with the standard
4 for the quality of maintenance, the COUNTY or its designee shall have the right but not the
5 obligation to enter the Property upon reasonable notice to OWNER, correct any violation, and hold
6 OWNER, or such successors or assigns responsible for the cost thereof, and such cost, until paid,
7 shall constitute a lien on the Property.

8 5) NONDISCRIMINATION. OWNER shall not discriminate on the basis of race,
9 gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation,
10 selection, hiring or treatment of any contractors or consultants, to participate in
11 subcontracting/subconsulting opportunities. OWNER understands and agrees that violation of this
12 clause shall be considered a material breach of this Covenant and may result in termination,
13 debarment or other sanctions. This language shall be incorporated into all contracts between
14 OWNER and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.
15 OWNER shall comply with the provisions of the California Fair Employment and Housing Act
16 (Government Code Sections 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), as
17 amended, and all Administrative Rules and Regulations issued pursuant to said Acts and Orders
18 with respect to its use of the Property.

19 6) OWNER herein covenants by and for itself, its successors and assigns, and all
20 persons claiming under or through them, that this Covenant is made and accepted upon and subject
21 to the following conditions: There shall be no discrimination against or segregation of any person
22 or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the
23 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
24 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
25 in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall
26 the transferee itself or any person claiming under or through him or her, establish or permit any

1 such practice or practices of discrimination or segregation with reference to the selection, location,
2 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

3 7) OWNER, its successors and assigns, shall refrain from restricting the rental, sale,
4 or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex,
5 sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and
6 contract entered into with respect to the Property, or any portion thereof, after the date of this
7 Agreement shall contain or be subject to substantially the following nondiscrimination or
8 nonsegregation clauses:

9 a) In deeds: "The grantee herein covenants by and for himself or herself, his or her
10 heirs, executors, administrators, and assigns, and all persons claiming under or through them, that
11 there shall be no discrimination against or segregation of, any person or group of persons on
12 account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as
13 those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
14 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease,
15 sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
16 the grantee or any person claiming under or through him or her, establish or permit any practice
17 or practices of discrimination or segregation with reference to the selection, location, number, use
18 or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein
19 conveyed. The foregoing covenants shall run with the land."

20 b) In leases: "The lessee herein covenants by and for himself or herself, his or her
21 heirs, executors, administrators, and assigns, and all persons claiming under or through him or her,
22 and this lease is made and accepted upon and subject to the following conditions: That there shall
23 be no discrimination against or segregation of any person or group of persons, on account of any
24 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are
25 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
26 Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing,
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1 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee
2 himself or herself, or any person claiming under or through him or her, establish or permit any
3 such practice or practices of discrimination or segregation with reference to the selection, location,
4 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises
5 herein leased.”

6 c) In contracts: “There shall be no discrimination against or segregation of any
7 person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955
8 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m)
9 and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government
10 Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor
11 shall the transferee itself or any person claiming under or through him or her, establish or permit
12 any such practice or practices of discrimination or segregation with reference to the selection,
13 location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the
14 land.”

15 In addition to the obligations and duties of OWNER set forth herein, OWNER shall,
16 upon notice from COUNTY, promptly pay to COUNTY all fees and costs, including
17 administrative and attorneys’ fees, incurred by COUNTY in connection with responding to or
18 defending any discrimination claim brought by any third party and/or local, state or federal
19 government entity, arising out of or in connection with the Agreement or this Covenant.

20 8) INSURANCE. Without limiting or diminishing OWNER’s obligation to indemnify
21 or hold COUNTY harmless, OWNER shall procure and maintain or cause to be maintained, at its
22 sole cost and expense, the following insurance coverage’s during the term of this Covenant.

23 a) Worker’s Compensation Insurance. If OWNER has employees as defined
24 by the State of California, OWNER shall maintain statutory Workers' Compensation Insurance
25 (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers’
26 Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per
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1 person per accident. The policy shall be endorsed to waive subrogation in favor of the County of
2 Riverside

3 b) Commercial General Liability Insurance. Commercial General Liability
4 insurance coverage, including but not limited to, premises liability, contractual liability, products
5 and completed operations liability, personal and advertising injury, and cross liability coverage,
6 covering claims which may arise from or out of OWNER's performance of its obligations
7 hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts,
8 and Departments, their respective directors, officers, Board of Supervisors, employees, elected or
9 appointed officials, agents or representatives as Additional Insured. Policy's limit of liability shall
10 not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a
11 general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times
12 the occurrence limit.

13 c) Vehicle Liability Insurance. If vehicles or mobile equipment are used in the
14 performance of the obligations under this Covenant, then OWNER shall maintain liability
15 insurance for all owned, non-owned or hired vehicles so used in an amount not less than
16 \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate
17 limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence
18 limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and
19 Departments, their respective directors, officers, Board of Supervisors, employees, elected or
20 appointed officials, agents or representatives as Additional Insured or provide similar evidence of
21 coverage approved by County's Risk Manager ("Risk Manager").

22 d) General Insurance Provisions – All Lines.

23 (1) Any insurance carrier providing insurance coverage hereunder shall be
24 admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8)
25 unless such requirements are waived, in writing, by Risk Manager. If Risk Manager waives a
26 requirement for a particular insurer such waiver is only valid for that specific insurer and only for
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1 one policy term.

2 (2) OWNER's insurance carrier(s) must declare its insurance self-insured
3 retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall
4 have the prior written consent of Risk Manager. Upon notification of self-insured retention
5 unacceptable to COUNTY, and at the election of Risk Manager, OWNER's carriers shall either:
6 (a) reduce or eliminate such self-insured retention, or (b) procure a bond which guarantees payment
7 of losses and related investigations, claims administration, and defense costs and expenses.

8 (3) OWNER shall cause OWNER's insurance carrier(s) to furnish the
9 County of Riverside with copies of the Certificate(s) of Insurance and Endorsements effecting
10 coverage as required herein, and 2) if requested to do so orally or in writing by Risk Manager,
11 provide copies of policies including all Endorsements and all attachments thereto, showing such
12 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall
13 contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given
14 to the County of Riverside prior to any material modification, cancellation, expiration or reduction
15 in coverage of such insurance. OWNER shall not commence or continue construction of the
16 Project until COUNTY has been furnished Certificate(s) of Insurance and copies of endorsements
17 and if requested, copies of policies of insurance including all endorsements and any and all other
18 attachments as required herein. An individual authorized by the insurance carrier to do so, on its
19 behalf, shall sign the original endorsements for each policy and the Certificate of Insurance.

20 (4) It is understood and agreed to by the parties hereto that OWNER's
21 insurance shall be construed as primary insurance, and COUNTY's insurance and/or deductibles
22 and/or self-insured retention's or self-insured programs shall not be construed as contributory.

23 (5) If, during the term of this Covenant or any extension thereof, there is a
24 material change in the scope of services or there is a material change in the equipment to be used
25 in the performance of the scope of work which will add additional exposures (such as the use of
26 aircraft, watercraft, cranes, etc.), then COUNTY reserves the right to adjust the types of insurance

1 required under this Covenant and the monetary limits of liability for the insurance coverage's
2 currently required herein, if, in Risk Manager's reasonable judgment, the amount or type of
3 insurance carried by OWNER has become inadequate.

4 (6) OWNER shall pass down the insurance obligations contained herein to
5 all tiers of subcontractors.

6 (7) OWNER agrees to notify COUNTY in writing of any claim by a third
7 party or any incident or event that may give rise to a claim arising from the performance of the
8 Agreement.

9 9) HOLD HARMLESS/INDEMNIFICATION. OWNER shall indemnify and hold
10 harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
11 respective directors, officers, Board of Supervisors, elected and appointed officials, employees,
12 agents and representatives (individually and collectively hereinafter referred to as Indemnitees)
13 from any liability whatsoever, based or asserted upon any services of OWNER, its officers,
14 employees, subcontractors, agents or representatives arising out of or in any way relating to this
15 Agreement, including but not limited to property damage, bodily injury, or death or any other
16 element of any kind or nature whatsoever arising from the performance of OWNER, its officers,
17 employees, subcontractors, agents or representatives Indemnitors from this Agreement. OWNER
18 shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost
19 of investigation, defense and settlements or awards, the Indemnitees in any claim or action based
20 upon such alleged acts or omissions. With respect to any action or claim subject to indemnification
21 herein by OWNER shall, at their sole cost, have the right to use counsel of their own choice and
22 shall have the right to adjust, settle, or compromise any such action or claim without the prior
23 consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in
24 no manner whatsoever limits or circumscribes OWNER's indemnification to Indemnitees as set
25 forth herein. OWNER's obligation hereunder shall be satisfied when OWNER has provided to
26 COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action

1 or claim involved. The specified insurance limits required in this Agreement shall in no way limit
2 or circumscribe OWNER's obligations to indemnify and hold harmless the Indemnites herein
3 from third party claims. In the event there is conflict between this clause and California Civil Code
4 Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation
5 shall not relieve OWNER from indemnifying the Indemnites to the fullest extent allowed by law.
6 The indemnification set forth in this paragraph 14 shall survive the expiration and earlier
7 termination of this Covenant.

8 10) NOTICES. All Notices provided for in this Covenant shall be deemed received
9 when personally delivered, or two (2) days following mailing by certified mail, return receipt
10 requested. All mailing shall be addressed to the respective parties at their addresses set forth
11 below, or at such other address as each party may designate in writing and give to the other party:

12 COUNTY
13 Director HWS
14 County of Riverside
15 3404 10th Street
Riverside, CA 92501

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

With a Copy to:
City Attorney
City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530

16
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18
19 11) REMEDIES. COUNTY shall have the right, in the event of any breach of any such
20 agreement or covenant, to exercise all available rights and remedies, and to maintain any actions
21 at law or suit in equity or other proper proceedings to enforce the curing of such breach of
22 agreement or covenant.

23 12) TERM. The non-discrimination covenants, conditions and restrictions contained in
24 Section 6 of this Covenant shall remain in effect in perpetuity. Every other covenant, condition
25 and restriction contained in this Covenant shall continue in full force and effect for the Term, as
26 defined in **Section 1** of this Covenant.

1 13) NOTICE AND CURE. Prior to exercising any remedies hereunder, the COUNTY
2 shall give OWNER notice of such default pursuant to section 9 above. Any monetary default shall
3 be cured within ten (10) days of delivery of written notice. Except as otherwise set forth herein,
4 if a non-monetary default is reasonably capable of being cured within thirty (30) days of delivery
5 of such notice of default, OWNER shall have such period to effect a cure prior to exercise of
6 remedies by COUNTY. If the non-monetary default is such that it is not reasonably capable of
7 being cured within thirty (30) days of delivery of such notice of default, and OWNER (a) initiates
8 corrective action within said period, and (b) diligently, continually, and in good faith works to
9 effect a cure as soon as possible, then OWNER shall have such additional time as is reasonably
10 necessary to cure the default prior to exercise of any remedies by the COUNTY; but in no event
11 no later than sixty (60) days from delivery of such notice of default, subject to force majeure
12 (including government restrictions, pandemics, and acts of God). COUNTY, upon providing
13 OWNER with any notice of default under this Covenant, shall, within a reasonable time, provide
14 a copy of such default notice to a Permitted Lender(as hereinafter defined) who has given written
15 notice to COUNTY of its interest in the Property and Project. From and after such notice has been
16 delivered to a Permitted Lender , such Permitted Lender shall have the same period for remedying
17 the default complained of as the cure period provided to OWNER pursuant to this Section 18.
18 COUNTY shall accept performance by a Permitted Lender as if the same had been done by
19 OWNER.

20 14) If a violation of any of the covenants or provisions of this Covenant remains
21 uncured after the respective time period set forth above in **Section 13**, COUNTY and its successors
22 and assigns, without regard to whether COUNTY or its successors and assigns is an owner of any
23 land or interest therein to which these covenants relate, may institute and prosecute any
24 proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation
25 or to compel specific performance by OWNER of its obligations hereunder. No delay in enforcing
26 the provisions hereof as to any breach or violation shall impair, damage or waive the right of any
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1 party entitled to enforce the provisions hereof or to obtain relief against or recover for the
2 continuation or repetition of such breach or violations or any similar breach or violation hereof at
3 any later time.

4 15) Intentionally omitted.

5 16) SALE, ASSIGNMENT OR TRANSFER OF THE PROJECT OR PROPERTY.

6 OWNER hereby covenants and agrees not to sell, transfer, assign or otherwise dispose of the
7 Project, the Property or any portion thereof, without obtaining the prior written consent of
8 COUNTY, which consent may be withheld or granted in its reasonable discretion. Any sale,
9 assignment, or transfer of the Project or Property, shall be memorialized an assignment and
10 assumption agreement the form and substance of which have been first approved in writing by the
11 COUNTY . Such assignment and assumption agreement shall, among other things, provide that
12 the transferee has assumed in writing and in full, that the transfer of the Project complies with
13 ARPA Rules and qualifies as an ARPA-Eligible Activity, and is reasonably capable of performing
14 and complying with OWNER's duties and obligations under the ARPA Loan Agreement and this
15 Covenant, provided, however OWNER shall not be released of all obligations under the ARPA
16 Loan Agreement and this Covenant unless agreed to in a writing signed by COUNTY.

17 17) AMENDMENTS OR MODIFICATIONS. This Covenant may be changed or
18 modified only by a written amendment signed by authorized representatives of both parties.

19 18) GOVERNING LAW; VENUE; SEVERABILITY. This Covenant shall be
20 governed by the laws of the State of California. Any legal action related to the performance or
21 interpretation of this Covenant shall be filed only in the Superior Court of the State of California
22 located in Riverside, California, and the parties waive any provision of law providing for a change
23 of venue to another location. In the event any provision in this Covenant is held by a court of
24 competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will
25 nevertheless continue in full force without being impaired or invalidated in any way.

26 19) BINDING EFFECT. The rights and obligations of this Covenant shall bind and
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1 inure to the benefit of the respective heirs, successors and assigns of the parties.

2 20) PERMITTED MORTGAGES. No violation or breach of the covenants, conditions,
3 restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or
4 in any way impair the lien or charge of any deed of trust or mortgage permitted by the ARPA Loan
5 Agreement or the lien or charge of a deed of trust made by OWNER for the benefit of any lender
6 first approved in writing by the COUNTY (each, a “Permitted Lender”) and nothing herein or in
7 the ARPA Loan Agreement shall prohibit or otherwise limit the exercise of a Permitted Lender’s
8 rights and remedies thereunder, including a foreclosure or deed-in-lieu of foreclosure and
9 subsequent transfer thereafter.

10 21) SEVERABILITY. In any event that any provision, whether constituting a separate
11 paragraph or whether contained in a paragraph with other provisions, is hereafter determined to be
12 void and unenforceable, it shall be deemed separated and deleted from the agreement and the
13 remaining provisions of this Agreement shall remain in full force and effect.

14 22) PROJECT MONITORING AND EVALUATION.

15 a) Reserved.

16 b) Inspections. During the Affordability Period, COUNTY must perform on-
17 site inspections of ARPA-Assisted Units to determine compliance with the property standards.
18 The on-site inspections shall occur within 12 months after the completion of construction of the
19 Project and at least once every 3 years thereafter during the Affordability Period. If there are
20 observed deficiencies for any of the inspectable items in the property standards established by
21 COUNTY, a follow-up on-site inspection to verify that deficiencies are corrected must occur
22 within 12 months. COUNTY may establish a list of non-hazardous deficiencies for which
23 correction can be verified by third party documentation (e.g., paid invoice for work order) rather
24 than re-inspection. Health and safety deficiencies must be corrected immediately. COUNTY must
25 adopt a more frequent inspection schedule for properties that have been found to have health and
26 safety deficiencies. The property owner must annually certify to the COUNTY that each building

1 and all ARPA Assisted-Units in the Project are suitable for occupancy, taking into account State
2 and local health, safety, and other applicable codes, ordinances, and requirements, and the
3 ongoing property standards established by the participating jurisdiction.

4 23) ACCESS TO PROJECT SITE. Representatives of the COUNTY shall have the
5 right of access to the Property, upon 24 hours' written notice to OWNER (except in the case of an
6 emergency, in which case COUNTY shall provide such notice as may be practical under the
7 circumstances), without charges or fees, during normal business hours to review the operation of
8 the Project in accordance with this Covenant and the Agreement.

9 24) COUNTERPARTS. This Covenant may be signed by the different parties hereto in
10 counterparts, each of which shall be an original, but all of which together shall constitute one and
11 the same agreement.

12 25) Recitals. The Recitals set forth above are true and correct and incorporated herein
13 by this reference.

14 26) This Covenant and the Agreement set forth and contain the entire understanding
15 and agreement of the parties hereto. There are no oral or written representations, understandings,
16 or ancillary covenants, undertakings or agreements, which are not contained or expressly referred
17 to within this Covenant, and the Agreement, including all amendments and modifications to the
18 Agreement.

19 ///

20 ///

21 [Remainder of Page Intentionally Blank]

22 [SIGNATURES ON THE NEXT PAGE]

IN WITNESS WHEREOF, COUNTY and OWNER have executed this Covenant as of the dates written below.

COUNTY:

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

BORROWER:

CITY OF LAKE ELSINORE,
a municipal corporation

By: _____
Heidi Marshall, Director HWS

By: _____
Jason Simpson, City Manager

Date: _____

Date: _____

(Above signatures need to be notarized)

APPROVED AS TO FORM:
MINH C. TRAN, County Counsel

By: _____
Amrit P. Dhillon
Deputy County Counsel

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

(COUNTY and OWNER signatures need to be notarized)

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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 _____, 2024, before me, _____,

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 Public

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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 _____, 2024, before me, _____,

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 Public

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

Real Property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

ALL OF LOTS 2, 4, 6 AND 8, ALL IN BLOCK 51 OF S. D. HEALD'S RESUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 378 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING EASTERLY AND SOUTHEASTERLY OF THE WESTERLY AND NORTHWESTERLY BOUNDARY LINE DESCRIBED WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DOCUMENT RECORDED OCTOBER 26, 1993 AS INSTRUMENT NO. 1993-420648 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO CITY OF LAKE ELSINORE BY DOCUMENT RECORDED JULY 23, 2019 AS INSTRUMENT NO. 2019-0273768 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN GRANT DEED CONVEYED TO JOSE LUIS MORALES GUITRON, A MARRIED MAN BY DOCUMENT RECORDED OCTOBER 24, 2018 AS INSTRUMENT NO. 2018-0419883 OF OFFICIAL RECORDS.

NOTE: THE ABOVE DESCRIPTION DESCRIBING PARCEL B IS FOR IDENTIFICATION PURPOSES ONLY AND HAS BEEN PROVIDED FOR THE ACCOMMODATION OF THIS REPORT. SAID DESCRIPTION IS NOT INSURABLE PURSUANT TO THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND SHOULD NOT BE RELIED UPON TO CONVEY OR ENCUMBER SAID LAND.

[portion of APN: 374-162-036]

EXHIBIT “F”

Request for Notices

NO FEE FOR RECORDING PURSUANT
TO GOVERNMENT CODE SECTION 6103

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

County of Riverside
Housing and Workforce Solutions
3403 10th Street, Suite 300
Riverside, CA 92501
Attn: Juan Garcia

SPACE ABOVE THIS LINE FOR RECORDERS USE

REQUEST for NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Civil Code, Section 2924b, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust dated _____, and recorded concurrently herewith in the Official Records of the County of Riverside, California, executed by _____, a _____, as Trustor in which _____ is named as Beneficiary, and _____ as Trustee, and describing land referred to in this Report is situated in the County of Riverside, State of California, and is described as follows:

Real property in the County of Riverside, State of California, described as follows:

All notices to be mailed to:

Attn: Director HWS
County of Riverside
Housing Division
3403 10th Street. Suite 300
Riverside, California 92501

Request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

COUNTY OF RIVERSIDE DEPARTMENT OF HOUSING
AND WORKFORCE SOLUTIONS

Heidi Marshall, Director HWS

Exhibit F

Sample

Contractor Debarment Certification Form

Excluded Parties Lists System (EPLS)

The purpose of EPLS is to provide a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits.

The EPLS was established to ensure that agencies solicit offers from, award contracts, grants, or financial or non-financial assistance and benefits to, and consent to subcontracts with responsible contractors/vendors only and not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion action) that party from participation in an affected program.

In July 2012, all records from CCR/FedReg, ORCA, and EPLS, active or expired, were moved to the System for Award Management (SAM). SAM is a Federal Government owned and operated free web site that consolidates the capabilities in CCR/FedReg, ORCA, and EPLS.

The County of Riverside requires that each contractor/vendor hold the required federal/state/local license for the service provided.

Please complete the following verification process for each contractor/vendor:

- STEP 1: Visit <https://sam.gov/search>
- STEP 2: Under "Search Records", enter the company name and press enter.
- STEP 3: Click "Print" on the Search Results page.
- STEP 4: Repeat steps 2 & 3 for variations of the name of contractor/vendor (individual last name or firm).
- STEP 5: Attach print out of search results to this certification as supporting documentation.
- STEP 6: Attach to this certification as supporting documentation a copy of contractor/vendor license for the service provided.

By signing below ARPA Recipient, [developer name](#), has verified the contractor/vendor known as, [name of contractor/vendor](#), was not listed in the Excluded Parties Lists System and has the required contractor/vendor license as of [date of verification](#).

DEVELOPER SIGNATURE

Exhibit G

1. ORDERS OF LOCAL, STATE OR FEDERAL HEALTH OFFICIALS; EXECUTIVE

ORDERS. County and Contractor mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. County and Contractor mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order, particularly but not limited to Executive Orders of the Governor of the State of California and Orders of the County Public Health Officer, and the like (“Official Actions”), and if the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern.

a. In the event that such Official Actions make the services provided to the County under this Agreement illegal, unlawful, or contrary to public policy, County shall provide written notice to Contractor in the manner described herein, and County and Contractor mutually agree that this Agreement shall terminate as of the date of that Official Action, at no penalty to County. In such an event, County shall pay outstanding fees due to Contractor pro-rated from the date of the Official Action, along with all other remaining sums due to Contractor, within thirty (30) calendar days from the date of that Official Action.

b. The parties acknowledge that Contractor is providing the services for emergency purposes at the request of the County under the California Emergency Services Act (the “Act” (California Government Code §§ 8550 et seq.)). Pursuant to California Government Code §8655, the County and as such, is subject to certain immunities with respect thereto and shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of the County or any employee of the County in carrying out the provisions of the Act.

c. CONTRACTOR acknowledges and agrees that this Agreement is subject to the federal Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards (2 C.F.R. Part 200), including the federal provisions attached hereto, and incorporated herein. Should there be any conflict between the provisions of this Agreement and Exhibit I, the terms and conditions in Exhibit I shall govern, unless the more restrictive provision herein is otherwise required to control as a condition of FEMA funding.

d. Should funding be allocated through American Rescue Plan Act (ARPA) (Title VI of the Social Security Act Section 602 et seq.), the COUNTY will administer and distribute those funds in accordance with ARPA. ARPA requires that payments from the Coronavirus Fiscal Recovery Fund be used to respond to the public health emergency or its negative economic impacts, to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay, provide government services to the extent the reduction of revenue due to COVID-19 public health emergency, and to make necessary investments in water, sewer or broadband infrastructure. It is effective beginning May 17, 2021 and ends on December 31, 2024.

2. NON-DISCRIMINATION. Contractor shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the

California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

3. EQUAL EMPLOYMENT OPPORTUNITY/ FAIR EMPLOYMENT PRACTICES/ FEDERAL PROVISIONS. During the performance of this Agreement, the Contractor shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

a. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Executive Order 11246 of Sept. 23, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor, the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and of the rules, regulations or standards adopted by the County to implement such article.

b. The Contractor shall comply with the provisions of the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

4. OTHER FEDERAL PROVISIONS. Contractor acknowledges and agrees that this Agreement is subject to the federal requirements for seeking FEMA reimbursements, including the federal provisions provided below.

4.1 CLEAN AIR ACT.

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 etseq.

The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Governor's Office of Emergency Services, Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.2. FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sections 1251 et seq.

The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

4.3. DEBARMENT AND SUSPENSION CLAUSE

This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4.4. BYRD ANTI- LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or

modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR

By _____
Date _____

4.5. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

4.6. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- i. The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Contractor agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

4.7. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, FLAGS

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

4.8. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

4.9. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

4.10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

4.11 FEDERAL PREVAILING WAGE

DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. Additionally, wages are required to be paid not less than once a week.
- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Riverside." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California DIR for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

4.12. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- A. Compliance: Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) as

supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

- B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of paragraph B of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages: Contractor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

4.13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by HUD.

414. RIGHTS TO DATA AND COPYRIGHTS – Contractors and consultants agree to comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR Part 27.4, Federal Acquisition Regulations (FAR).

4.15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services As used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Page 9

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system;
and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. Page 10

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

4.16 REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of [Public Law 110-417](#), as amended ([41 U.S.C. 2313](#)). As required by section 3010 of [Public Law 111-212](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit

the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes -

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “Indemnity”), dated as of _____, 2024, is made by CITY OF LAKE ELSINORE, a municipal corporation within the geographic boundaries of the County of Riverside (referred to as “Indemnitor”), whose address for purposes of giving notices is 130 South Main Street, City of Lake Elsinore, CA 92530, Attention: City Clerk, in favor of the COUNTY OF RIVERSIDE, a political subdivision of the State of California (“COUNTY” or “County”), whose address for purposes of giving notices is 3403 Tenth Street, Suite #300, Riverside, CA 92501.

WITNESSETH

WHEREAS, Indemnitor is the owner of the real property in the City of Lake Elsinore, County of Riverside, California, as more particularly described on **Exhibit A** attached hereto and made a part hereof, and the real property improvements thereon or to be constructed thereon (collectively referred to as the “Property”);

WHEREAS, Indemnitor and COUNTY have entered into that certain Loan Agreement for the Use of American Rescue Plan Act (ARPA) Funds, dated as of _____, 2024 (the “Loan Agreement”), pursuant to which COUNTY agreed to loan to Indemnitor, or its assignee, Five Million and 0/100 Dollars (\$5,000,000) in ARPA Program funds (the “ARPA Loan”) for the purpose of developing a sixteen (16) unit multifamily rental affordable housing development, including one manager’s unit, and related improvements and amenities on the Property; and

WHEREAS, Indemnitor has agreed to execute and deliver to COUNTY this Indemnity to induce COUNTY to enter into the Loan Agreement and provide the ARPA Loan to Indemnitor.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Indemnitor hereby agrees with COUNTY as follows:

Section 1. DEFINITIONS

For the purpose of this Indemnity, “Hazardous Materials” or “Hazardous Substances” shall include, but not be limited to, any substance or material (whether a raw material, building component or waste, a product or by-product of manufacturing or other activities, or any other substance or material) which is or becomes designated, classified or regulated as being “hazardous” or “toxic”, or is or becomes otherwise similarly designated, classified or regulated, under any Federal, state or local law, regulation or ordinance, including without limitation (i) any substance defined as a “hazardous substance” or a “hazardous waste” for purposes of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., respectively, (ii) any substance defined as a “hazardous waste” or a “hazardous substance” for purposes of applicable state or local law, and (iii) petroleum, flammable explosives, urea formaldehyde insulation, asbestos and radioactive materials, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” under the Hazardous Materials Transportation Act, 49

U.S.C. Sections 1801, et seq.; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code, as “infectious waste” in Section 25117.5 of the California Health and Safety Code, or as “hazardous substances” in Section 25316 of the California Health and Safety Code or “hazardous materials” as defined in Section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws. “Hazardous Materials” and “Hazardous Substances” shall expressly exclude substances typically used in the construction, development, operation and maintenance of an apartment complex provided such substances are used in accordance with all applicable laws.

For the purpose of this Indemnity, “ARPA Loan Documents” shall refer to the Loan Agreement, any agreement entered into in the form of an Attachment thereto or in connection therewith, and any extensions, modifications or amendments thereto.

Section 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Indemnitor:

2.1 Covenants.

(a) Indemnitor covenants that it shall comply with any and all laws, regulations, and/or orders which may be promulgated, from time to time, with respect to the discharge and/or removal of Hazardous Materials, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Materials, and to keep the Property free of any lien imposed pursuant to any such laws, regulations, or orders.

(b) Indemnitor covenants that the Property will not, while Indemnitor is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release, or disposal of any Hazardous Materials, except for de minimis quantities used at the Property in compliance with all applicable environmental laws and required in connection with the development of the Property in conformance with the ARPA Loan Documents.

(c) Indemnitor further agrees that Indemnitor shall not release or dispose of any Hazardous Materials at the Property, except for de minimis quantities released or disposed of at the Property in compliance with all applicable environmental laws, without the express written approval of COUNTY and that any such release or disposal shall be affected in strict compliance with all applicable laws and all conditions, if any, established by COUNTY.

(d) COUNTY shall have the right, upon reasonable notice and subject to rights of tenants, to conduct an environmental audit of the Property at COUNTY’s expense, unless Hazardous Materials are found in violation of this Indemnity, then at Indemnitor’s sole cost and expense, and Indemnitor shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless COUNTY reasonably believes that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Indemnitor and only in the presence of a representative of Indemnitor. Indemnitor shall give COUNTY and its agents and employees access to the Property to remove, or otherwise to mitigate against the effects of, Hazardous Materials, provided, however, that COUNTY may

exercise this right only if Indemnitor has failed to commence action to mitigate the effects of the Hazardous Materials within thirty (30) days of receipt of notice from COUNTY.

(e) Indemnitor shall not install, or permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Indemnitor shall promptly either (i) remove or cause to be removed any material that such regulations deem hazardous and require to be removed, or (ii) otherwise comply with such federal and state regulations, at Indemnitor's sole cost and expense. If Indemnitor shall fail to so do within the cure period permitted under applicable law, regulation, or order, COUNTY may do whatever is necessary to eliminate said substances from the premises or to otherwise comply with the applicable law, regulation, or order, and the costs thereof shall be added to the Obligations (as hereinafter defined) of Indemnitor under this Section 2.

(f) Indemnitor shall immediately advise COUNTY in writing of any of the following: (i) any pending or threatened environmental claim against Indemnitor or the Property, or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Indemnitor with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law, or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Indemnitor that could reasonably have material adverse effect on the Property.

2.2 Indemnity. Indemnitor shall indemnify, protect, and hold COUNTY and its directors, officers, employees, and agents (the "Indemnified Parties") harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "Obligations") which may at any time be imposed upon, incurred by or asserted or awarded against COUNTY and arising in connection with, from or out of:

- (a) The presence of any Hazardous Materials on, in, under, or affecting all or any portion of the Property, which were stored, discharged, released or emitted on the Property;
- (b) The breach of any covenant made by Indemnitor in Section 2.1 hereof; or
- (c) The enforcement by COUNTY of any of the provisions of this Section 2.2 or the assertion by Indemnitor of any defense to its obligations hereunder.

Notwithstanding the foregoing, Indemnitor's liability under this Section 2.2 shall not extend to (i) any Hazardous Substance present or released in, on, or around any part of the Property, or in the soil, groundwater, or soil vapor or under the Property that first arise, commence or occur after the actual dispossession of the Property from Indemnitor and all entities which control, are controlled by, or are under common control with Indemnitor, following foreclosure or acquisition of the Property by a deed in lieu of foreclosure, or (ii) any Obligations arising from the gross negligence or intentional misconduct of COUNTY or any of its Indemnified Parties.

Section 3. INDEMNITOR'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Indemnitor hereby agrees that the Obligations will be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation, or order now or hereafter in effect in any jurisdiction affecting the ARPA Loan Documents or affecting any of the rights of COUNTY with respect thereto. The obligations of Indemnitor hereunder shall be absolute and unconditional irrespective of:

- (a) The validity, regularity, or enforceability of the Loan Agreement or any other instrument or document executed or delivered in connection therewith;
- (b) Any alteration, amendment, modification, release, termination, or cancellation of the ARPA Loan Documents, or any change in the time, manner, or place of payment or performance of, or in any other term in respect of, all or any of the obligations of Indemnitor contained in any of the ARPA Loan Documents;
- (c) Any exculpatory provision in any of the ARPA Loan Documents or any document delivered in connection therewith limiting COUNTY's recourse to property encumbered by the deed of trust securing Indemnitor's obligations under the ARPA Loan Documents, or to any other security, or limiting COUNTY's rights to a deficiency judgment against Indemnitor;
- (d) The insolvency or bankruptcy of Indemnitor; or
- (e) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Indemnitor with respect to any or all of the Obligations.

3.2 Continuation. The Indemnity provided under Section 2.2 (a) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations (notwithstanding the release or other extinguishment of the deed of trust securing Indemnitor's obligations under the ARPA Loan Documents); and (b) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the COUNTY upon the insolvency, bankruptcy, or reorganization of Indemnitor, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Indemnitor's obligations under the ARPA Loan Documents, this Indemnity shall not terminate if any of the following shall have occurred:

- (a) COUNTY has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale or otherwise; or

(b) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Materials laws, the effect of which may be to make a lender or mortgagee liable in respect of any of the Obligations, notwithstanding the fact that no event, circumstance, or condition of the nature described in paragraph (a) above ever occurred.

Section 4. WAIVER

Indemnitor hereby waives the following:

- (a) Promptness and diligence;
- (b) Notice of acceptance and notice of the incurrence of any obligation by Indemnitor;
- (c) Notice of any action taken by COUNTY, or any other interested party under the Loan Agreement or under any other agreement or instrument relating thereto;
- (d) All other notices, demands, and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Indemnitor of its Obligations hereunder;
- (e) Any requirement that COUNTY protect, secure, perfect, or insure any security interest or lien in or on any property subject thereto,
- (f) Any requirement that COUNTY exhaust any right or take any action against Borrower or any other person or collateral;
- (g) Any defense that may arise by reason of:
 - (1) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;
 - (2) The failure of COUNTY to file or enforce any claim against the estate (in probate, bankruptcy, or any other proceedings) of any person or persons; or
 - (3) Any defense based upon an election of remedies by COUNTY, including, without limitation, an election to proceed by non-judicial foreclosure or which destroys or otherwise impairs the subrogation rights of COUNTY or any other right of COUNTY to proceed against Indemnitor.

Section 5. NOTICES

Any notice, demand, statement, request, or consent made hereunder shall be in writing and shall be personally served, mailed by first-class registered mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, above, or given by telecopier to the telecopier numbers stated below, with confirmations mailed by first class registered mail, return

receipt requested to the address set forth above, of the party to whom such notice is to be given (or to such other address as the Parties hereto, shall designate in writing):

In the case of COUNTY:

County of Riverside
Housing and Workforce Solutions
3403 Tenth Street, Suite #300
Riverside, CA 92501
Attn: Director

In the case of Indemnitor:

City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
Attention: City Clerk
Email: calvarez@lake-elsinore.org

with copies to:

Leibold McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine, California 92618
Attention: Barbara Leibold, Esq.
Email: barbara@ceqa.com

Any notice that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 6. MISCELLANEOUS

6.1 Indemnitor shall make any payment required to be made hereunder in lawful money of the United States of America, and in same day funds, to COUNTY at its address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and signed by Indemnitor and COUNTY, and no waiver of any provision of this Indemnity, and no consent to any departure by Indemnitor from any provision of this Indemnity, shall be effective unless it is in writing and signed by COUNTY, and then such waiver or

consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of COUNTY to exercise, and no delay in exercising, any right hereunder or under the ARPA Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of COUNTY provided herein and in the other loan documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (a) be binding upon Indemnitor, and Indemnitor's successors and assigns; and (b) inure, together with all rights and remedies of COUNTY hereunder, to the benefit of COUNTY, its respective directors, officers, employees, and agents, any successors to COUNTY's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of COUNTY's rights and remedies under the ARPA Loan Documents, any successors to any such person, and all directors, officers, employees, and agents of all of the aforementioned parties. Without limiting the generality of clause (b) of the immediately preceding sentence, COUNTY may, subject to, and in accordance with, the provisions of the ARPA Loan Documents, assign or otherwise transfer all or any portion of its rights and obligations under the ARPA Loan Documents, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to COUNTY herein or otherwise. None of the rights or obligations of Indemnitor hereunder may be assigned or otherwise transferred without the prior written consent of COUNTY, except as provided in the ARPA Loan Documents.

6.6 Indemnitor hereby (a) irrevocably submits to the jurisdiction of the Superior Court of Riverside County in any action or proceeding arising out of or relating to this Indemnity, (b) waives any defense based on doctrines of venue or forum non convenient or similar rules or doctrines, and (c) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Indemnitor irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Indemnitor agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit, or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 This Indemnity may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one agreement.

[Signatures on the Following Page]

IN WITNESS WHEREOF, Indemnitor has duly executed this Indemnity as of the date first set forth above.

INDEMNITOR:

CITY OF LAKE ELSINORE,
a municipal corporation

By: _____
Name: Jason Simpson
Title: City Manager

ATTEST:

By: _____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Barbara Leibold, City Attorney

Exhibit A
LEGAL DESCRIPTION

Real Property in the City of Lake Elsinore, County of Riverside, State of California, described as follows:

ALL OF LOTS 2, 4, 6 AND 8, ALL IN BLOCK 51 OF S. D. HEALD'S RESUBDIVISION AS SHOWN BY MAP ON FILE IN BOOK 8 PAGE 378 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING EASTERLY AND SOUTHEASTERLY OF THE WESTERLY AND NORTHWESTERLY BOUNDARY LINE DESCRIBED WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DOCUMENT RECORDED OCTOBER 26, 1993 AS INSTRUMENT NO.

1993-420648 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN QUITCLAIM DEED CONVEYED TO CITY OF LAKE ELSINORE BY DOCUMENT RECORDED JULY 23, 2019 AS INSTRUMENT NO. 2019-0273768 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THAT CERTAIN GRANT DEED CONVEYED TO JOSE LUIS MORALES GUITRON, A MARRIED MAN BY DOCUMENT RECORDED OCTOBER 24, 2018 AS INSTRUMENT NO. 2018-0419883 OF OFFICIAL RECORDS.

NOTE: THE ABOVE DESCRIPTION DESCRIBING PARCEL B IS FOR IDENTIFICATION PURPOSES ONLY AND HAS BEEN PROVIDED FOR THE ACCOMMODATION OF THIS REPORT. SAID DESCRIPTION IS

NOT INSURABLE PURSUANT TO THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND SHOULD NOT BE RELIED UPON TO CONVEY OR ENCUMBER SAID LAND.

[portion of APN: 374-162-036]

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



HOUSING AUTHORITY of the County of Riverside

Main Office
5555 Arlington Avenue
Riverside, CA 92504-2506
(951) 351-0700
Admin FAX (951) 688-6873
Housing FAX (951) 354-6324
TDD (951) 351-9844

Indio Office
44-199 Monroe, Suite B
P.O. Box 1747
Indio, CA 92201-1747
(760) 863-2828
(760) 863-2838 FAX
TDD (760) 863-2830

Website: harivco.org

July 10, 2023

Adam Gufarotti
City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530

RE: Riley Street Senior Apartments, Lake Elsinore, CA

Dear Adam Gufarotti:

The Housing Authority of the County of Riverside (HACR) is pleased to inform you that the above referenced project proposal was selected to receive Project Based Vouchers (PBVs) pursuant to the Request for Proposal released by the HACR on June 2, 2023. The HACR is reserving funding for fifteen (15) PBVs for a twenty (20) year contract term.

Final commitment of the Project Based Vouchers is subject to the following items:

- Project's receipt of all necessary capital funding for the construction of the project, including but not limited to a tax credit allocation.
- Subsidy layering requirements as defined by the U.S. Department of Housing and Urban Development (HUD).
- National Environmental Policy Act Clearance.
- Approval of an Agreement to Enter into Housing Assistance Payments (AHAP) Contract by the HACR's Board of Commissioners.

This commitment is also contingent on continued funding from HUD. In the event of a budget decrease, HACR reserves the right to rescind the commitment up until the execution of an AHAP contract. This letter of commitment is valid until December 31, 2025, all financing must be secured by this deadline. Requests for extensions will not be considered. Therefore, all evidence of secured financing must be provided on or before December 31, 2025.

If you have any questions, please feel free to contact Nicole Sanchez at (760) 863-2825 or via e-mail at NiSanchez@rivco.org

Thank you,

Michael Walsh
Deputy Director
Housing Authority of the County of Riverside