

RECORDING REQUESTED BY:

City of Carlsbad

WHEN RECORDED MAIL TO:

City of Carlsbad
City Clerk's Office
Attn: City Clerk
1200 Carlsbad Village Drive
Carlsbad, California 92008

(Space above for Recorder's Use)

**AFFORDABLE HOUSING AGREEMENT
IMPOSING RESTRICTIONS ON REAL PROPERTY**

This AFFORDABLE HOUSING AGREEMENT IMPOSING RESTRICTIONS ON REAL PROPERTY ("Agreement"), entered into this _____ day of _____ 2016, by and between the CITY OF CARLSBAD, a municipal corporation (hereinafter referred to as the "City"), and Lanshire Housing Partners, LLC, a limited liability company (hereinafter referred to as the "Developer"), is made with reference to the following:

A. Developer is the owner of certain real property in the City of Carlsbad, in the County of San Diego, California (hereinafter referred to as the "Subject Property") described in "Attachment A", which is attached hereto and incorporated herein by this reference.

B. For the purposes of this Agreement, Developer currently intends to construct a total of thirty five (35) residential units (hereinafter referred to as the "Development") on the Subject Property. The City has approved Tentative Tract Map CT 15-01, and Site Development Plan 15-02 for the Development. The City issued the approval subject to certain Conditions of Approval, including a condition requiring at least fifteen percent (15%) of the units in the Development to be affordable housing as required by the City's Inclusionary Housing Ordinance (CMC Chapter 21.85).

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Satisfaction of Affordable Housing Obligation and Conditions of Approval. In order to satisfy the Conditions of Approval for the Development and requirements of the City's Inclusionary Housing Ordinance, Carlsbad Municipal Code Chapter 21.85, Developer shall provide a total of five (5) Affordable Units which shall be restricted and affordable to lower-income households. This Agreement is an Affordable Housing Agreement pursuant to Section 21.85.140 of Chapter 21.85 of the Carlsbad Municipal Code. Developer shall submit this

Agreement to City and Agreement shall be executed prior to the approval of the final map for the Subject Property.

2. Terms Governing Provision of Affordable Units.

2.1. Obligation to Provide Affordable Units.

2.1.1. Developer shall provide the five (5) Affordable Units in relation to the thirty (30) Market Units ("Market Units") on the Subject Property. The Affordable Units shall include one bedroom units with the square footage indicated in "Attachment B" to this Agreement. The maximum allowable income level of buyers and/or tenants of the affordable units shall be restricted to a maximum of 80% of the area median income.

2.2 Schedule for Developing Affordable Units.

2.2.1. Prior to the approval of any Final Map, Grading Permit or Building Permit for the Development: (i) this Agreement shall be duly executed and recorded; and (ii) the Developer shall have received approval of a Site Development Plan for the development which will include all of the Affordable Units.

2.2.2 Upon satisfying the applicable conditions stated in Sections 2.2.1, all building permits can be released for the Market Units and for the Affordable Units.

2.3 Terms for Sale of Affordable Units.

2.3.1. The Schedule of Maximum Eligible Buyer Incomes and Affordable Subsidized Purchase Prices (the "Schedule") attached hereto and incorporated herein as Exhibit C sets forth the City's requirements for determining the maximum household income of buyers of the Affordable Units ("Eligible Buyers") and the methodology for calculation of the subsidized purchase prices of Affordable Units which will be affordable to each of the Eligible Buyers (the "Affordable Purchase Prices"). The Schedule also includes initial estimates of Eligible Buyer actual incomes and the corresponding Affordable Purchase Prices. The Final Schedule shall be established prior to sale based on the San Diego County Area Median Income and the cost factors applicable at the time. The Final Schedule shall be submitted by the Developer and approved by the City's Housing and Neighborhood Services Director prior to the marketing of the Affordable Units.

2.3.2. The Developer shall sell the Affordable Units only to Eligible buyers whose household incomes have been verified by the Developer. The purchase price for an Affordable Unit (the "Market Purchase Price") shall be the market price charged for a comparable unit (and not to exceed fair market value); provided, however, that the Developer shall carry back financing equal to the difference between the Market Purchase Price and the Affordable Purchase Price for the particular Eligible Buyer (the "Primary Affordability Subsidy"). The carryback financing shall be assigned by the Developer to the City, and shall be evidenced by a promissory note from the Eligible Buyer to the City, secured by a second

mortgage deed of trust on the Affordable Unit (the "City Second Mortgage"). The balance of the Market Purchase Price shall be paid by the Eligible Buyer to the Developer in cash, utilizing downpayment monies and first mortgage proceeds.

2.4 Terms for Re-sale of Affordable Units. After the initial sale of the inclusionary for-sale units at a price affordable to the target income level group, inclusionary for-sale units shall remain affordable to subsequent low income eligible buyers pursuant to a resale restriction for a minimum term of fifteen (15) years. Beginning in the sixteenth (16) year after the initial purchase of an Affordable Unit, for-sale units may be sold at a market price to other than targeted households provided that the sale shall result in the recapture by the City or its designee of a financial interest in the units equal to the amount of subsidy necessary to make the unit affordable to the designated income group and a proportionate share of any appreciation. Funds recaptured by the City shall be used in assisting other eligible households with home purchases at affordable prices. To the extent possible, projects using for-sale units to satisfy inclusionary requirements shall be designed to be compatible with conventional mortgage financing programs including secondary market requirements.

2.5 Terms for Interim Rental of Affordable Units. The developer may elect to retain ownership of one or more of the Affordable Units for a period of time and rent those Affordable Units to income-qualified renters. The Affordable Units, if rented, shall be available to households with incomes not exceeding 80% of the median income for San Diego County, adjusted for actual household size. Monthly rents of the Affordable Units shall not exceed 1/12th of 30% of 70% of median household income for San Diego County, adjusted for assumed household size appropriate for the unit. For purposes of this Agreement, "Rent" shall include a utility allowance as established and adopted by the City of Carlsbad Housing Authority, as well as all required monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant (but not including fees and charges resulting from any default by the tenant or damage caused by the tenant, or fees or charges paid by the tenant to third party utilities or other providers). Median income figures shall be those published annually by the United States Department of Housing and Urban Development. Assumed household size figures shall be provided by the City of Carlsbad Housing and Neighborhood Services Department. With respect to each Affordable Rental Unit, the affordability requirements of this Section 2.5 shall continue for fifty-five (55) years from the date of issuance of a Certificate of Occupancy by the City for such unit or another comparable unit based upon substitution provisions pursuant to the Regulatory Agreement, or until the units are sold to a household with an income not exceeding 80% of the median income for San Diego County, adjusted for actual household size. The affordability requirements of this Section 2.5 shall be set forth in the Regulatory Agreement between the Developer or its successors and the City, provided for below, which shall supersede this Agreement upon recordation of the Regulatory Agreement.

3. City Approval of Documents.

3.1. The following documents, in form and substance acceptable to the City, shall be used in connection with the sale of Affordable Units. Documents to be prepared by

Developer shall be submitted to the Housing and Neighborhood Services Director for review and approval no later than the start of construction of the Affordable Units.

3.1.1. A marketing plan establishing the process for seeking, selecting and determining the eligibility of buyers of the Affordable Units shall be prepared by the Developer.

3.1.2. An educational program informing Affordable Unit purchasers of the obligations of home ownership and the specific features of this program shall be prepared by the Developer.

3.1.3. Purchase and Sale Agreements for sale of the Affordable Units shall be prepared by the Developer.

3.1.4. City Second Mortgage promissory note, deed of trust, and borrower disclosure form shall be provided by the City.

3.2 The following documents, in form and substance acceptable to the City, shall be used in connection with the rental of the Affordable Units.

3.2.1 A marketing plan consistent with the terms of this Agreement, establishing the process for seeking, selecting and determining the eligibility of tenants of the Affordable Units.

3.2..2 Form of Rental Agreement.

3.2..3 A Property Management Plan.

3.2..4 A Form of Regulatory Agreement between the developer of the Affordable Units and City (the “regulatory agreement”), following a format designated by the City.

3.3 Any of the documents identified in Sections 3.1 and 3.2 may be revised by Developer from time to time with the prior written approval of the Housing and Neighborhood Services Director.

4. Mortgage Credit Certificate Program. Buyers of the Affordable Units may qualify for income tax credits pursuant to Mortgage Credit Certificate (MCC) Program, for a portion of the annual interest paid on a first mortgage used to acquire the Affordable Unit. City shall cooperate with Developer in obtaining and providing to prospective buyers Mortgage Credit Certificates from allocations which it may receive.

5. Reporting and Compliance Monitoring. A report verifying compliance with the requirements of this Agreement covering the initial sales of the Affordable Units shall be provided to the City by the Developer and approved by the Housing and Neighborhood Services Director. Developer shall provide the City with other reports as reasonably required by the City to verify compliance with this Agreement. If the developer exercises the option to rent the

Affordable Units, a Compliance Report meeting the requirements of Section 21.85.140 of the Inclusionary Housing Ordinance, verifying compliance of all completed Affordable Units with the terms of this Agreement and certified as correct by a third-party, shall be submitted annually to the Housing and Neighborhood Services Director, commencing on the first Report Date that is twelve months from the completion of construction of the Affordable Units. If similar reports on some or all of the Affordable Units are required for regulatory compliance with other financing programs, those reports may be deemed satisfactory for the purpose of this section by the Housing and Neighborhood Services Director, with respect to the portion of the Affordable Units covered by such reports, provided that copies are provided on an annual basis to the Housing and Neighborhood Services Director with a third party certification addressed to the City.

6. Default. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within (90) days after the delivery of a notice of default from the City (or where the default is of the nature which cannot be cured within such ninety (90) period, the failure of the Developer to commence to cure such default within the ninety (90) day period or the Developer's failure to proceed diligently to complete the cure of such a default within a reasonable time period but in no event not greater than 180 days) will constitute a failure to satisfy the Conditions of Approval with respect to the Subject Property and the requirements of Chapter 21.85 of the Carlsbad Municipal Code and void the approval of the Final Map and Site Development Plan; and the City may exercise any and all remedies available to it with respect to the Developer's failure to satisfy the Conditions of Approval, including but not limited to, the withholding of building permits for the Market Units within the Subject Property until such cure is completed.

7. Appointment of Other Agencies. At its sole discretion, City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform the City's obligations under this Agreement.

8. Release of Subject Property From Agreement. The covenants and conditions herein contained shall apply to and bind the Developer and its heirs, executors, administrators, successors, transferees, and assignees of all the parties having or acquiring any right, title or interest in or to any part of Subject Property and shall run with and burden the Subject Property until terminated in accordance with the provisions hereof. Prior to the issuance of building permits, the Developer shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in the Subject Property. Notwithstanding anything to the contrary set forth in the Agreement, individual purchasers of market rate units pursuant to an approved public report in compliance with the California Subdivided Lands Act, and mortgage lenders holding deeds of trust on such individual units after sale to such purchasers, shall not be subject to the terms of this Agreement; and the terms of this Agreement shall be of no further force or effect with respect to such completed unit on the date of the recordation of a deed to the individual purchaser. Upon issuance of certificates of occupancy for all of the Affordable Units, the entire Subject Property, with the exception of the property subject to the approved Site Development Plan, shall be released from the burdens of this Agreement. The burdens of this agreement shall remain in full force and effect and recorded against the property subject to the approved Site Development Plan in accordance with the terms

of this agreement. The burdens of this agreement shall remain in full force and effect and recorded against the affordable units for a minimum of 55 years if the units are rental and 30 years if the units are sold.

9. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to Developer's performance or non-performance pursuant to this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto. The provisions of this section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this Section 9 shall remain in full force and effect

10. Insurance Requirements: Developer shall obtain, at its expense, comprehensive general liability insurance for the development of the Subject Property naming Indemnitees as additional named insureds with one million dollars (\$1,000,000) per occurrence and aggregate limits of not less than two million dollars (\$2,000,000) for bodily injury and death and property damage, including coverages for contractual liability and products and completed operations, purchased by Developer or its successors or assigns from an insurance company duly licensed to engage in the business of issuing such insurance in the State, with a current Best's Key Rating of not less than A-:V, such insurance to be evidenced by an endorsement which so provides and delivered to the Housing and Neighborhood Services Department prior to the issuance of any building permit for the Subject Property.

11. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the party to receive such notice at the addressed set forth below:

TO THE CITY OF CARLSBAD

CITY OF CARLSBAD

Housing and Neighborhood Services Department

Attn: Housing and Neighborhood Services Director

1200 Carlsbad Village Drive

Carlsbad, California 92008

TO THE DEVELOPER:

LANSHIRE HOUSING PARTNERS LLC

Attn: Matt Nelson/Michael Kootchick

11913 Ocean Park Boulevard

Los Angeles, Ca. 90064

Any party may change the address to which notices are to be sent by notifying the other parties of the new address in the manner set forth above.

12. Integrated Agreement. This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

13. Duration of Agreement. This Agreement shall remain in effect for 55 years following the date certificates of occupancy have been issued for all affordable rental units, and/or shall terminate and become null and void upon the : (a) the closing of the sale of the last of the Affordable Units to an individual eligible purchaser pursuant to a sale on an approved public report in compliance with the California Subdivided Lands Act, or (b) upon the granting of a written release by the Community & Economic Development Director. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of Developer and the Community Development Director.

14. Recording of Agreement. The parties hereto shall cause this Agreement to be recorded against the Subject Property in the Official Records of the County of San Diego.

15. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

DEVELOPER

CITY

By: Lanshire Housing Partners, LLC

City of Carlsbad, a chartered Municipal Corporation

By: _____

Name Matt Nelson

Title

By: _____

Debbie Fountain,
Housing & Neighborhood Services
Director

By: _____

Name Michael Kootchick

Title

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CELIA BREWER, City Attorney

By: _____

Ronald Kemp
Assistant City Attorney

ATTACHMENT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Parcel 4 of Parcel Map No. 13158, in the City of Carlsbad, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, February 21, 1984 as Instrument No. 84-061796 of Official Records.

ATTACHMENT B

**LOCATION, SIZE, AND BEDROOM COUNT
OF AFFORDABLE UNITS**

Location of the affordable, price-restricted homes shall be as identified in SDP 15-02, which is hereby attached for reference.

Unit	Square Feet	Bedroom(s)	Bath
5 units total	Approx. 800 sf	1	1

ATTACHMENT C

MAXIMUM ELIGIBLE RENTER AND BUYER INCOMES

Household Size	Maximum Annual Income
1	47,600
2	54,400
3	61,200
4	68,000
5	73,450
6	78,900
7	84,350
8	89,800

Note: Based upon 2016 HUD Median Income Data Effective March, 2016