

RESOLUTION NO. 2004-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
TO AUTHORIZE THE CITY MANAGER TO EXECUTE A REGULATORY
AGREEMENT TO PROVIDE FOR TWO LOW INCOME RENTAL UNITS WITHIN THE
LAGUNA CREEK APARTMENTS**

WHEREAS, the City of Elk Grove has recognized in its 2003-2008 Housing Element of the General Plan the need to provide housing affordable to all economic segments of the City; and

WHEREAS, Laguna Creek Apartments Associates, LLC has offered to make two rental units of the Laguna Creek Apartments, located at the southwest quadrant of the intersection of Sheldon and Bruceville Roads in the City, affordable to low income households; and

WHEREAS, the City of Elk Grove has determined that a Regulatory Agreement is an appropriate mechanism to monitor and ensure the affordability of the two rental units; and

WHEREAS, the regulatory agreement is not a "project" subject to the California Environmental Quality Act because it is a regulatory mechanism having no physical effect on the environment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELK GROVE:


1. The City Manager is authorized to prepare and execute the Regulatory Agreement for Laguna Creek Apartments.
2. The City Manager is authorized to negotiate the terms of the Regulatory Agreement with Laguna Creek Apartments, LLC and make technical amendments to said agreements and documents, including the term of affordability, definition of Affordable Rent, use of the property, and verification of income, provided that said amendments are consistent with City policy, with this resolution, and good legal practices for entering into such an agreement.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 4th day of February 2004.

for 

SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-14

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

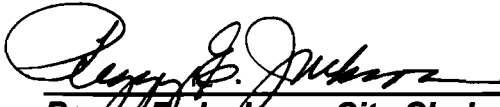
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 4th day of February 2004 by the following vote:

AYES 4: COUNCILMEMBERS: Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS: Scherman



Peggy E. Jackson, City Clerk
City of Elk Grove, California

REGULATORY AGREEMENT

RECORDING REQUESTED BY AND
AFTER RECORDATION, MAIL TO:

City of Elk Grove
Attn: City Clerk
8380 Laguna Palms Way
Elk Grove, CA 95758

No fee for recordation pursuant to
Government Code Section 27383

REGULATORY AGREEMENT FOR LAGUNA CREEK APARTMENTS

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF ELK GROVE ("City") and LAGUNA CREEK APARTMENT ASSOCIATES, LLC, a Washington limited liability company ("Owner"), with respect to that certain parcel of real property (the "Property") legally described on Attachment A, hereby agree that the Property will be subject to the conditions, restrictions, reservations and rights of City specified below:

1. **DEFINITIONS.** As used in this regulatory agreement ("Agreement"), the following terms shall have the meanings set forth below unless the context clearly indicates a contrary intention.

1.1 The term "Affordable Rents" shall mean Rents for Designated Units which do not exceed the product of 30 percent times 80 percent of the Area Median Income after first adjusting for a reasonable utility allowance and for imputed household size under Section 50053 of the California Health and Safety Code and utility costs under Section . The term "Area Median Income" shall mean the definition published annually for Sacramento County by the Department of Housing and Urban Development for purposes of Section 8 of the U.S. Housing Act of 1937.

1.2 "Designated Units" are those units for which Rents are regulated by this Agreement. Of the total units, two (2) residential units are Designated Units, each of which shall be a one (1) one bedroom – one bath unit.

1.3 The term "Rent" shall mean the monthly charge to be paid by tenants for occupancy and for use of all common facilities in the Property.

1.4 The term "Qualifying Household" shall mean lower income households, as that term is defined in Health and Safety Code Section 50079.5 and whose annual incomes do not exceed 80 percent of the Area Median Income by household size as published by the U.S. Department of Housing and Urban Development for Sacramento County.

2. USE AND MAINTENANCE OF THE PROPERTY. The Owner hereby covenants and agrees, for itself, its lessees, successors and assign, as follows:

2.1 Use of the Property. The Owner shall limit for the full term of this Regulatory Agreement the rental of Designated Units to Qualifying Households. Owner shall have the right to rent to a non-restricted tenant if a suitable restricted tenant is not available, provided Owner has made reasonable efforts to find a restricted tenant. Owner shall make reasonable efforts to rent the next one bedroom, one bath unit that becomes vacant to a suitable non-restricted tenant.

2.2 Maintenance Standards. The Owner and successor(s) shall have the affirmative and ongoing obligation to prevent on the Property the occurrence of: i) fire hazards; ii) conditions dangerous to the public health, safety and general welfare; and iii) conditions which constitute unsightly appearance or otherwise detract from the aesthetic and property values of neighboring properties.

3. NO DISCRIMINATION. The Owner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

4. MONITORING. To ensure compliance with this Agreement, Owner shall submit to the City an annual report (the "Annual Report") that shall include, for each Designated Unit, the rental rate and the income and household size of the occupants. The income information shall be supplied by the tenant in a certified statement on a form approved in advance by the City. The Owner shall submit the Annual Report on or before the end of the first calendar quarter of the year following the year covered by the Annual Report. The owner shall have no requirement to verify the accuracy of a tenant's certified statements except to obtain a copy of the tenant's current pay stub(s) and a copy of their previous years tax return. The Owner shall provide for the submission of such information in its leases with tenants.

5. RECORDS. The owner shall maintain records which clearly documents Owner's performance of its obligations to operate the Property under the terms of this Regulatory Agreement. Owner shall submit any records relating to Designated Units and Qualifying Households within thirty (30) business days of City's request.

6. NO IMPAIRMENT OF LIEN. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Covenant shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Owner to the Property shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

7. DURATION. The covenants contained in Section 2.1 of this Agreement shall be deemed to run with the land and shall remain in full force and effect for a period of thirty (30) ~~ten (10)~~ years. The covenants against discrimination contained in Section 3 of this Agreement shall be deemed to run with the land and shall remain in effect in perpetuity.

8. SUCCESSORS AND ASSIGNS. The covenants contained in this Covenant shall be binding for the benefit of the City and its respective successors and assigns and any shall bind any successor, transferee, or assign in interest to the Property or any part thereof, and such covenants shall run in favor of the City and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. The City, and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Covenant shall be for the benefit of and shall be enforceable only by the City, and its respective successors and such aforementioned parties.

9. SUBORDINATION. This Agreement shall be subject to and subordinate to the lien of all deeds of trust and related regulatory agreements relating to the Owner's construction and permanent financing. The City and Owner shall timely execute any and all documents requested by the Owner's lenders to confirm the subordination.

10. MANAGEMENT RESPONSIBILITIES. Owner is specifically responsible, subject to its obligations herein, for all management functions with respect to the Property, 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. The City shall have no responsibility over management of the Property.

11. FEES, TAXES, AND OTHER LEVIES. Owner shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property.

12. NOTICES AND COMMUNICATIONS. Formal notices and communications between City and Owner shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to the principal offices of Owner and City as follows, or if any such office is relocated, to the new address specified by the relocated party.

CITY OF ELK GROVE
LLC
City Clerk
8380 Laguna Palms Way
Elk Grove, CA 95758

LAGUNA CREEK APARTMENT ASSOCIATES,
LLC
Attn: Greg Borrego
110 110th Ave. Suite 550
Bellevue, Washington 98004

13. RELATIONSHIP OF PARTIES. The relationship of City and Owner for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. City neither undertakes nor assumes any responsibility or duty to

Owner or to any third party with respect to the operation of the Property or the actions of Owner.

14. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Regulatory Agreement must be in writing, and shall be effective only if executed by both Owner and City.

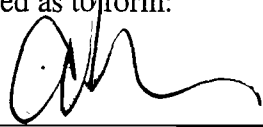
15. SEVERABILITY. Every provision of this Regulatory Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

IN WITNESS WHEREOF, the City and Owner have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this ____ day of _____, 2004.

CITY OF ELK GROVE:

By: _____
City Manager

Approved as to form:

By:  _____
City Attorney

LAGUNA CREEK APARTMENT ASSOCIATES, LLC

By: Laguna Creek Manager, Inc., its manager

By: _____
Roger W. Kuula, its Vice President

STATE OF CALIFORNIA }
 } ss
COUNTY OF SACRAMENTO }

On _____, before me the undersigned, a notary public,
personally appeared _____

- () personally known to me, or
() proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that
he/she executed the same in his/her authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

WITNESS my hand and official seal.

Signature_____ [SEAL]

STATE OF WASHINGTON }
 } ss
COUNTY OF KING }

On _____, before me the undersigned, a notary public, personally appeared

- () personally known to me, or
() proved to me on the basis of satisfactory evidence

to be the persons whose names are subscribed to the within instrument and acknowledged to me
that they executed the same in their authorized capacities, and that by their signature on the
instrument the persons, or the entity upon behalf of which the persons acted, executed the
instrument.

WITNESS my hand and official seal.

Signature_____ [SEAL]

ATTACHMENT A

LEGAL DESCRIPTION OF THE PROPERTY

(To be attached prior to recordation)