

**AGREEMENT TO AWARD INCENTIVE TO MAINTAIN
LEWIS STREET APARTMENTS AS AFFORDABLE HOUSING**

This Agreement is entered into effective as of the last date indicated below in the signature block between the Archuleta County Board of County Commissioners (the “BoCC”), a statutory Colorado county, and Olympus SRH, LLC (“Olympus SRH”), a Colorado limited liability company. The BoCC and Olympus SRH may be referred to individually as Party or collectively as Parties.

WHEREAS, the BoCC, pursuant to C.R.S. § 30-1-108, is authorized to establish a reasonable schedule of fees for providing certain services and information to the public; and,

WHEREAS, on March 2, 2021, the BoCC adopted Resolution 2021-19, which included new fees applicable to the permitting of short-term rentals located in unincorporated Archuleta County; and,

WHEREAS, on March 2, 2021, the BoCC directed that fifty percent (50%) of any net overages recognized by Archuleta County from the new fees on short-term rentals be placed in a designated account for workforce or qualified affordable housing projects; and,

WHEREAS, Olympus SRH has purchased a property located at 180 Lewis Street in Pagosa Springs, CO and is currently renovating the property to provide up to ten (10) affordable housing units known as the Lewis Street Apartments; and,

WHEREAS, Olympus SRH intends to rent the units at the Lewis Street Apartments to individuals working in Archuleta County and are at or below 100% of the area median income (“AMI”) as established by the Colorado Housing and Finance Authority (“CHFA”); and,

WHEREAS, Olympus SRH has made a request to the BoCC for a waiver, abatement or refund of the County’s portion of property taxes for the Lewis Street Apartments in order to keep rents at or below 100% AMI.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Criteria to Qualify for Incentive Award.** In order to qualify for an award equal to the County’s portion of the property taxes on the Lewis Street Apartments, Olympus SRH shall meet the following criteria:
 - a. At all times during the Term of this Agreement, the rent charged for each of the rental units within the Lewis Street Apartments must be no more than 100% of the AMI for Archuleta County as determined by the CHFA. If any rental unit within the Lewis Street Apartments is rented above 100% of the AMI for Archuleta County as determined by the CHFA, Olympus SRH is disqualified from receiving any incentive award from the BoCC.
 - b. An annual report, certified under penalties of perjury, shall be provided by Olympus SRH to the BoCC setting forth the rental rate for each unit at the Lewis Street

Apartments compared to the 100% of the AMI for Archuleta County as determined by the CHFA and verifying compliance with the CHFA AMI standards. Said annual report is due to the BoCC on the anniversary of the execution of this Agreement by the Parties, unless the Parties agree on another date in writing.

2. **Timing and Amount of Incentive Award.** The BoCC shall cause the incentive award to be issued to Olympus SRH in the same amount as Archuleta County's portion of the property taxes on the Lewis Street Apartments for that particular fiscal year within forty-five (45) days of the receipt and approval of the certified annual report. The funds for the incentive award shall be drawn from the overages recognized by Archuleta County from the fees on short-term rentals, or from any other source within the general fund as the BoCC so directs.
3. **Refund of Incentive Award.** If after receiving the incentive award from the BoCC, the Lewis Street Apartments no longer meet the criteria for receiving such award for the fiscal year in which the award was granted, Olympus SRH shall refund to the BoCC the pro-rata amount for the portion of the year that the Lewis Street Apartments do not meet the criteria for receiving the incentive award. For example only, if the incentive award for the year 202X was \$5,000.00, and the Lewis Street Apartments no longer meet the criteria for receiving the incentive award for the final three months of the year, Olympus SRH would be required to refund the BoCC \$1,260.27 ($\$5,000 / 365 * 92$).
4. **Term.** The Term of this Agreement shall be for five (5) years from the date last signed by the Parties below. The Agreement may be renewed via a written agreement signed by both Parties with the same terms and conditions, or different terms and conditions as agreed to by the Parties.
5. **Termination.** So long as Olympus SRH remains in compliance with the terms of this Agreement, the BoCC will not terminate this Agreement prior to the end of the Term. Except for the BoCC's agreement not to terminate as described above, this Agreement may be terminated by either Party, with or without cause, by thirty (30) days written notice to the other Party. However, if terminated after the BoCC delivers the incentive award to Olympus SRH, the provisions of Section 3. Refund of Incentive Award shall survive and remain in full force and effect until the end of the year in which the Agreement is terminated.
6. **General Provisions.**
 - a. **Appropriation of Public Funds:** Because this Agreement involves the expenditure of public funds, this Agreement is contingent upon continued availability and appropriation of such funds by the County. The obligations described herein shall not constitute a general obligation, indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the constitution or the laws of the State of Colorado.

- b. No Waiver of Governmental Immunity Act: The Parties hereto understand and agree that Archuleta County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to Archuleta County.

- c. Governing Law; Venue: The substantive laws of the State of Colorado (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Venue for any action hereunder shall be in the District Court, County of Archuleta, State of Colorado. The Parties expressly waive the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

- d. Notice: All notices, requests, demands, and determinations (individually a “Notice”) required under this Agreement (other than routine operational communications or as otherwise expressly set forth herein), must be in writing and provided by one or more of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, Registered or Certified Mail (with return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid and proof of delivery provided by courier), facsimile or email.
 - i. Each Notice shall be addressed to the appropriate person at the receiving Party (“Addressee”) at the address listed below or to such address as a Party may designate by a Notice given in compliance with this Section.

 - ii. Notice hereunder is only effective if the requirements of this Section have been strictly fulfilled, and if the Notice was actually received by the Addressee.

 - iii. If a Notice that otherwise fulfills the requirements of this Section is rejected by the Addressee, or if an Addressee refuses to accept such Notice, or if a change in address for which no Notice was given causes the Notice to be undeliverable, then the Notice is effective upon the occurrence of such rejection, refusal or undeliverability.

To the BoCC: Archuleta County Board of County Commissioners
 P.O. Box 1507, 398 Lewis Street
 Pagosa Springs, CO 81147
 Attention: County Administrator

To Olympus SRH: Olympus SRH, LLC
 9000 Tesoro Dr., Suite 300
 San Antonio, TX 78217
 Attention: David Dronet

- e. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall together constitute one and the same document. Facsimile, electronically scanned or electronically signed copies of an original signature by either Party shall be binding as if they were original signatures.
- f. Signatory Authority: Each person signing this Agreement in a representative capacity expressly represents that the signatory has the subject Party's authority to so sign and that the subject Party will be bound by the signatory's execution of this Agreement.
- g. No Third Party Beneficiaries: Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Parties.
- h. Waiver: The waiver of any breach of a term, provision or requirement hereof shall not be construed as a waiver of any other term, provision or requirement or any subsequent breach of the same term, provision or requirement. No failure by either Party to exercise any right it may have shall be deemed to be a waiver of that right or the right to demand exact compliance with the terms of this Agreement.
- i. Modification: Neither this Agreement nor any of its provisions may be amended or otherwise modified, except by a written instrument signed by both Parties and then only to the extent expressly provided therein.
- j. Ambiguities: Each Party and its legal counsel have reviewed this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.
- k. Captions: The captions of this Agreement are for convenience only, are not part of the Agreement, and do not in any way limit or amplify its terms and provisions.
- l. Severability: To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- m. Entire Agreement: This Agreement, together with its exhibits and attachments, is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or modification hereto shall have any force or effect whatsoever.

COUNTY

Attest:

BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY,
COLORADO

County Clerk

By:
Alvin Schaaf, Chair

(Affix County Seal)

Date: _____

OLYMPUS SRH, LLC

By: David Dronet

Title: Managing Principal

Date: _____