

# **IMPORTANT NOTICE**

**These documents are provided as a courtesy for information purposes only, and do not reveal all information that would be discovered by a full title search.**

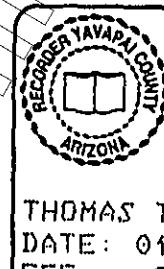
**They were obtained from the Public Record and are believed to be correct, however, they are limited to what is readily evident and available from a search of the *current legal description only*. No search of the property, as it may have previously described, has been conducted, and such a search may yield additional liens, interests or restrictions.**

**A complete title search conducted in an open escrow may yield additional, supplemental or contradictory information.**

**The recipient is advised that no warranty or guarantee is provided with these documents, and is encouraged to conduct all needed due diligence on their own behalf.**

When Recorded Mail To

Jerry Randolph  
Arizona Department of Commerce  
Office of Housing  
3800 N Central Ave, Ste 1200  
Phoenix, AZ 85012



INSTRUMENT # 9405816  
OFFICIAL RECORDS OF  
YAVAPAI COUNTY  
MARGO W. CARSON  
REQUEST OF:  
THOMAS TUCKER  
DATE: 01/28/94 TIME: 16:10  
FEE: 25.00 SC: 4.00 PT: 1.00  
BOOK 2770 PAGE 006 PAGES: 025

RECEIVED  
25  
3/10/94

Caption: Declaration of Affirmative Hand Use Restriction

covenants for Federal low income housing

DO NOT REMOVE  
THIS IS PART OF THE OFFICIAL DOCUMENT

After being recorded, the document was returned to Arizona Department of Commerce. Arizona Department of Commerce realized that blanks on pages 1 and 14 were not filled in; Exhibit A, the legal description, was not completed; and Exhibit C should have been completed and signed by the developer. In connection therewith, Arizona Department of Commerce sent out the attached memorandum with instructions concerning this document. The document has been completed according to instructions No. 1, 3, 5, and 7, and in accordance to instruction No. 8, we are sending this document to your office for re-recording.

2770 PAGE 6

WHEN RECORDED,  
RETURN TO:

INDEXED &  
MICROFILMED

INSTRUMENT # 9367281  
OFFICIAL RECORDS OF  
YAVAPAI COUNTY  
MARGO W. CARSON  
REQUEST OF:  
ARIZONA DEPT OF COMMERCE  
DATE: 12/30/93 TIME: 14:35  
FEE: 24.00 SC: 4.00 PT: 1.00  
BOOK 2754 PAGE 151 PAGES: 024



DECLARATION OF AFFIRMATIVE LAND USE RESTRICTIVE  
COVENANTS FOR FEDERAL LOW INCOME HOUSING TAX CREDITS

This Declaration of affirmative land use restrictive agreement, dated this 24<sup>th</sup> day of December, 1993 by and between Prescott Valley Elderly Housing Limited Partnership whose address is P.O. Box 100, Carbondale, Kansas 66414 and its successors, mergers, and assigns (the "Developer") and the Arizona Department of Commerce, an agency and instrumentality of the State of Arizona (the "Department") together with any successor to its rights, duties and obligations, shall govern the Developer's application for federal low income housing tax credits pursuant to Sections 38(a) and 42(a) of the Internal Revenue Code of 1986, as amended (the "Code") and the Department's allocation of said credits to the Developer in accordance with that application and Code.

R E C I T A L S

WHEREAS, the Department has been designated by Arizona Revised Statutes section 35-728(B) as the designated housing credit agency for the State of Arizona for allocation of federal low income housing tax credits in conjunction with section 42 of the Code; and

WHEREAS, the Department is established and has the authority to act in said capacity pursuant to direction of the Governor of the State of Arizona pursuant to Arizona Revised Statute section 41-1501 et. seq.; and

WHEREAS, the Developer is or shall be the owner or lessee of a 37 (Thirty-Seven) unit residential rental housing project located on lands within the City of Prescott Valley, County of Yavapai, State of Arizona, the legal description of which is more particularly set forth in Exhibit "A" hereto known as Prescott Valley Elderly Housing (herein the "Project"); and

WHEREAS, the Project may now or hereafter be encumbered by a third party loan (the "mortgage loan"), the indebtedness of which shall be evidenced by a promissory note, secured by a mortgage or trust deed (which shall be a first mortgage lien on the property)

RECEIVED JAN 1 8 1994

2770 PAGE 7 2754 PAGE 151

and other security instruments (collectively referred to hereinafter as the "loan documents"); and

WHEREAS, the Developer has applied to the Department for an allocation of federal low income housing tax credits to the Project in an amount not to exceed \$ 77,474.00; and

WHEREAS, the Developer on the Project must comply continuously with section 42(a) et. seq. and other applicable sections of the Code, as amended, and the treasury regulations thereunder or to be adopted thereunder; and

WHEREAS, the Developer has represented to the Department in the Developer's 1992 Low-Income Housing Tax Credit Application (the "Application") that it shall lease no fewer than 100 % of the total units in the Project to individuals or families whose income is 60 % or less of the applicable area median gross income as determined in accordance with section 42(a) et. seq. of the Code (said tenants shall be referred to hereinafter, collectively, as "low-income tenants"); and

WHEREAS, the Department has determined in accordance with its allocation plan that the Project will support and is in need of a credit allocation in the amount of \$ 70,796.00 per annum during the credit period; and

WHEREAS, the Department is unwilling to allocate to the Project federal low income housing tax credit dollars in accordance with section 42(a) et. seq. unless the Developer enters into the subject agreement (this "Agreement"); and consents to the continued regulation and monitoring by the Department in order that the Department may enforce the set-aside requirements for low-income tenants as more particularly set forth hereinabove and any other covenants, terms and conditions of this Agreement in accordance with the Code and regulations promulgated thereunder; and

WHEREAS, the Developer, pursuant to the terms of this Agreement, intends, declares and acknowledges and covenants for itself, its successors and assigns that the regulatory and restrictive covenants set forth herein governing the use, occupancy, and transfer of the Project or any portion thereof, shall be covenants running with the Project land for the term stated herein and be binding upon all subsequent owners of the Project land for such term, and are not merely personal covenants of the Developer herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of all other valuable consideration, the Developer and the Department agree as follows:

1. Incorporation. The above recitals are incorporated herein as a substantive portion of this Agreement by signature of the parties hereinbelow.

2. Representations, Covenants and Warranties of Developer. The Developer makes the following representations and warranties in conjunction with its application to induce the Department to enter into this Agreement and further represents, covenants and warrants to the Department that:

a. The Developer (i) is a Limited Partnership duly organized under the laws of the State of Kansas, and qualified to transact business within the State of Arizona pursuant to either Title 29 or Title 10, Arizona Revised Statutes; (ii) has the power and requisite authority to own its properties and assets as owned, where owned, and to carry on its business as now being conducted (and as now contemplated by this Agreement and the loan documents), and (iii) has the full legal right, power, and authority to execute and deliver this Agreement and the loan documents and to perform all undertakings of the Developer hereunder.

b. The execution and performance of this Agreement and the loan documents by the Developer (i) will not violate or, if applicable, have not violated any provision of law, rule or regulation, or any order of any court or other governmental agency and (ii) will not violate or, if applicable, have not violated any provision of any indenture agreement, mortgage, mortgage note or other instrument to which the Developer is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

c. The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the real property and improvements constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, the loan documents or other permitted encumbrances).

d. There is presently no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair the Developer's right to carry on business substantially as now conducted (and as now contemplated by this Agreement and the loan documents) or which would materially, adversely affect its financial condition. Neither the Developer, its principals, shareholders or general partners, as the case may be, have any judgment entered against them which would, when

recorded, constitute a lien against or otherwise impair the security of the Project.

e. The actual cost of this acquisition, construction and rehabilitation of the project is \$ 1,805,241.00.

f. The Project constitutes and will constitute residential rental property as defined in section 42 of the Code and the regulations promulgated or to be promulgated thereunder; the rental units of which will be rented or available for rental on a continuous basis to members of the general public. The Project consists of one or more proximate buildings or structures containing one or more similarly constructed accommodations containing separate and complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis as that term is defined in the Code and facilities which are functionally related and subordinate to such accommodations. No actions will be taken by the Developer which will in any way affect the use of the Project therefore.

g. The Developer covenants that it will not knowingly take or permit to be taken any action which would have the effect, either directly or indirectly, of subjecting the Developer or the Project to non-compliance with section 42(a) et. seq. of the Code and the applicable treasury regulations.

h. The Developer may sell, transfer or exchange the Project or any portion thereof at any time, but the Developer shall notify in writing and obtain the agreement of any Buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and otherwise subject to the requirements for a sale, transfer or exchange as identified in section 42(a) et. seq. This provision shall not act to waive any other restriction on such sale, transfer or exchange as contained in the Code or adopted by the Department.

i. The Developer further covenants and agrees to pay to the Department upon receipt of an invoice for compliance monitoring performed by the Department or its authorized representative, a monitoring fee which is the lesser of \$25 per low income unit or \$5000.00. Monitoring is required by Federal law and may be performed by the Department periodically, but the fees will be assessed no more frequently than annually.

j. The Developer covenants and agrees not to discriminate on the basis of race, creed, color, sex, age, handicap, marital status or national origin in the leases for occupancy of the Project or in conjunction with the employment or application for employment of any person or persons for the operation and management of said Project.

**UNOFFICIAL COPY**

k. The Developer covenants and agrees that it shall not: (i) except pursuant to the provisions of this Agreement or the loan documents or except upon a sale, transfer, or other conveyance of the Project in accordance with the terms of this Agreement, grant commercial leases or licenses relating to the Project (other than commercial leases with respect to insubstantial portions of the Project on a square footage basis) or permit the sale, transfer, conveyance or other encumbrance of the Project or any portion thereof (except for unit leases) during the effective term of this Agreement, provided that this covenant shall not apply to any encumbrance, conveyance or transfer in conjunction with a sale, transfer or other conveyance of the Project that complies with the requirements of the loan documents and this Agreement; (ii) demolish any portion of the Project or substantially subtract from any real or personal property comprising the Project; or (iii) permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement.

l. The Developer covenants and agrees that if it shall become aware of any situation, event or condition which would result in non-compliance of the Project or the Developer with section 42 of the Code or the regulations promulgated thereunder, then the Developer shall promptly give written notice thereof to the Department.

m. The Developer warrants that it has not and will not execute any other Agreement or otherwise become a party to such an Agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supercede requirements and conflicts herewith; provided, however, that in the case of any conflict with the loan documents, the loan documents shall control.

n. The Developer shall ensure that units occupied by low-income tenants shall be of comparable quality to other units in the Project unless the Developer has elected to exclude such excess costs for non-comparable units from eligible basis pursuant to the terms of the Application and section 42 of the Code.

o. The Developer represents, warrants and agrees that if the Project, or any portion thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer will use its best efforts to repair and restore same to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter operate the Project in accordance with the terms of the loan documents and this Agreement.

**UNOFFICIAL COPY**

3. Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan documents of the mortgage loan. In the event of a forfeiture or foreclosure pursuant to Arizona Revised Statute sections 33-701 et. seq. and 33-801 et. seq. or transfer of title by deed in lieu of foreclosure, this Agreement and the restrictions hereunder will automatically terminate, subject to the provisions of paragraph 4 (b) hereinbelow.

4. Term of Restrictive Covenant.

a. The term of the occupancy restrictions set forth in Paragraph 5 of this Agreement below shall (i) commence on the first day on which the Project is placed in service and (ii) end on the date which is thirty (30) years after the date on which the Project is placed in service.

b. Notwithstanding the provisions of Paragraph (a) of this paragraph 4, this Agreement and the restrictions hereunder shall cease to apply in the event of an involuntary non-compliance caused by unforeseen events such as fire, seizure, requisition, a change in federal law or an action of a federal agency after the date of issuance which prevents the Department from enforcing the requirements of this Agreement, or condemnation provided that (i) the mortgage loan is retired or (ii) insurance proceeds, condemnation awards or other amounts received as a result of such loss or destruction are used to restore the Project. However, the foregoing provisions of this paragraph shall cease to apply in the event of foreclosure, transfer of title by deed in lieu of foreclosure or such similar conveyance event if, at any time subsequent to such event and during the period set forth in subparagraph (a) hereinabove, the developer or a related person (as the Code defines said related person) obtains an ownership interest in the Project for federal income tax purposes.

c. Provided, however, that acquisition by foreclosure or transfer of title by deed in lieu of foreclosure or any similar event during the period set forth in subparagraph (a) hereinabove shall not terminate the restrictions hereunder if the Secretary of the Treasury determines that the purpose of the foreclosure or transfer of title by deed in lieu of foreclosure or similar event is part of an arrangement or scheme, the purpose of which, is to terminate the extended use period specified in subparagraph (a) of this paragraph 4.

d. This Agreement shall otherwise terminate upon the earlier of (i) termination of the occupancy restrictions as provided in subparagraph (a) hereinabove or (ii) a termination pursuant to the provisions of subparagraph (b) of this paragraph 4 subject to the qualifications enumerated in subparagraph (c).

5. Occupancy Restrictions. The developer further represents, warrants and covenants that:

- a. At least 40% of the units in the Project shall be occupied (or treated as occupied as provided herein) by individuals or families whose income is 60% or less of the area median gross income as determined in accordance with the Code. The determination of whether an individual or family is a low-income tenant shall be made at least annually on the basis of the current certified income of such low-income tenant(s). Any unit occupied by an individual or family who is a low-income tenant at the commencement of occupancy shall continue to be treated as if occupied by a low-income tenant; provided, however, that should such qualifying tenant's income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a low-income tenant if after such determination of income, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a low income tenant.
- b. As a condition to occupancy, each person who is intended to be a low-income tenant or an eligible tenant (as hereinafter defined) shall be required to sign and deliver to the developer an income certification substantially identical in form and content to Exhibit "B" or such other form adopted for use by the Developer substantially similar in form and content to Exhibit "B". In addition, such person shall be required to provide whatever other information, documentation or certifications deemed necessary by the Department to substantiate the income certification.
- c. The form of lease to be utilized by the developer in renting any units in the Project to any person who is intended to be a low-income tenant shall provide for immediate termination of the lease and eviction in accordance with Arizona Revised Statutes for failure to qualify as a low-income tenant as a result of any material misrepresentation made by such person with respect to the income certification, or any material misrepresentation made in conjunction with execution of the lease or the failure by such tenant to execute an income certification at least annually.
- d. Income certifications shall be maintained on file at the Project with respect to each low-income tenant who resides in a Project unit or resided therein during the immediately preceding calendar year, and the developer will, promptly upon receipt, file a copy thereof with the Department if so requested by the Department.

2754 PAGE 157

2770 PAGE 13

6. Certifications.

a. On the date of execution and delivery of this Agreement, the Developer shall notify the Department of the date on which the units in the Project are first placed in service and deliver the following certifications or documents:

i. Evidence of transfer of ownership of the Project to the Developer (for projects receiving an acquisition credit);

ii. For projects requiring a waiver of the ten year holding period requirement in order to obtain a credit for the acquisition of an existing building, a copy of the waiver obtained from the Internal Revenue Service;

iii. Original certified copy of the Developer's organizational documents, as follows:

(1) if an individual or individuals, a properly notarized affidavit of ownership;

(2) if a partnership, a copy of the partnership agreement certified by a general partner or the managing general partner;

(3) if a corporation, certified articles of incorporation and a certificate of good standing from the state of incorporation (not more than sixty (60) days old); and

(4) if a trust, a copy of the trust agreement certified by the trustee(s).

iv. Original certification from the Developer of the actual cost of the Project, if applicable;

v. Original certification from the Developer that the Project is in full compliance with section 42 of the Code and the applicable Treasury Regulations; that the Project shall continue to comply with section 42 of the Code during the compliance period as required by the Internal Revenue Code; that the information supplied in the Developer's Application is and will continue to be true and correct as of the time of allocation of tax credit dollars; and that no change shall occur in the Developer or the general partner of the Developer without the prior written consent of the Department. If not already provided, the Developer shall also certify what the taxpayer identification number of the Project will be for purposes of federal income taxes;

vi. Original certification from the Developer that the Developer has minimized the involuntary displacement of low

income households, and that the Project is available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap;

vii. Original Developer certification as to the actual date the Project as "placed in service" as that term is defined in the regulations promulgated under section 42 of the Code;

viii. Original certificate(s) of occupancy for the municipality or other governmental authority having jurisdiction. If a governmental authority does not issue certificates, an architect's certification of substantial completion may be satisfactory;

ix. Original release and indemnification Agreement agreeing to release the Department and its counsel from any claim, loss, demand or judgment as a result of allocation of tax credit dollars to the Project or the recapture of tax credit dollars by the Internal Revenue Service; and agreement to indemnify the Department, its counsel, agents and employees from any claim, loss, demand or judgment as a result of allocation of tax credit dollars by the Internal Revenue Service identical in form and content to Exhibit "C" hereto;

x. Any and all other documents required by section 42 of the Code, the applicable Treasury Regulations, the Department, the Rules thereunder and any documents that the Department's counsel may require;

b. On the first day of the month after the Project is placed in service and no less frequently than the first business day of each anniversary thereafter, the Developer will submit to the Department a certificate in substantially the form of Exhibit "D" attached hereto (the "Certificate of Continuing Program Compliance"). The Developer shall place on file at the project location a copy of the Income Certification for each qualifying tenant whose occupancy commenced in such period and, with respect to the annual certification described in paragraph (c), an updated Income Certification for each of the other low-income tenants.

c. The Developer shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or his designee, a Certificate of Continuing Program Compliance, with such modifications as the Department shall require based upon the rules or regulations established by the Secretary, at such times as shall be required by the Secretary. A copy of such annual certification shall be provided to the Department without attachments.

2754-159

7. Rental Restrictions. The Developer represents, covenants and warrants that once available for occupancy, each unit in the Project will be rented or available for rental to the public on a continuous basis and that no low-income tenant may be evicted except for good cause.

8. Transfer Restrictions. The Developer covenants and agrees that it will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project prior to the termination of the rental restrictions and occupancy restrictions provided herein (the "Transfer"), that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Department, all duties and obligations of the Developer under this Agreement, including this Agreement. The Developer shall deliver the assumption agreement to the Department prior to the Transfer. This limited Transfer restriction does not affect the rights of the first mortgagee to approve the proposed transfer as required under the loan documents.

The Developer further covenants and agrees not to dispose of less than all of its interest in any building composing the Project; and that the Developer will require in connection with any such conveyance or Transfer that the prospective transferee specify in any qualified contract (as that term is defined in the Code) a price of the non-low-income portion of any building equal to its fair market value.

9. Enforcement.

a. The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Department, to inspect any books and records of the Developer regarding the Project and with respect to the incomes of qualifying tenants which pertain to compliance with the provisions of this Agreement and section 42 of the Code.

b. In addition to the information provided for in Section 6 of this Agreement, the Developer shall submit any other information, documents or certifications requested by the Department which the Department shall deem reasonably necessary to substantiate the Developer's continuing compliance with the provisions of this Agreement and section 42 of the Code.

c. The Developer covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of pertinent law or section 42 of the Code or the Treasury Regulations thereafter. Moreover, Developer covenants to take any lawful action (including amendment of this Agreement as may be necessary in the opinion of the Department) to comply fully with pertinent law and with all applicable rules, rulings, policies, procedures, regulations or other official statements.

promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service from time to time pertaining to Developer's obligations under section 42 of the Code and affecting the Project.

d. The Developer covenants and agrees to inform the Department by written notice of any violation of the Developer's obligations hereunder within five (5) days of first discovering any such violation, and the Department covenants and agrees to inform the Developer by written notice of any violation of the Developer's obligations hereunder within five (5) days of first discovering such violation and provide the Developer a reasonable period of time in which to correct such violation. If any such violation is not corrected to the satisfaction of the Department within the period of time specified by the Department, which must be at least thirty (30) days after the date any notice to the Developer is mailed, or within such further time as the Department determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice the Department shall declare a default under this Agreement effective on the date of such declaration of default, and the Department may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other action as shall be necessary or desirable so as to correct non-compliance with this Agreement. The Developer for itself as well as its successors and assigns consents to jurisdiction and venue in the superior court of Arizona for the county in which the Project is located for purposes of this provision.

e. The Developer and the Department each acknowledge that the primary purposes for requiring compliance by the Developer with the restrictions provided in this Agreement are to assure compliance of the Project and the Developer with section 42 of the Code and the Treasury Regulations thereunder, AND BY REASON THEREOF, THE DEVELOPER IN CONSIDERATION FOR RECEIVING LOW INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND THE LOW-INCOME TENANT(S) (OR EITHER OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE DEVELOPER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY ARIZONA STATE COURT OF COMPETENT JURISDICTION, the Developer hereby further specifically acknowledging that the beneficiaries of the Developer's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

f. Notwithstanding the foregoing, enforcement of this Agreement shall not serve as a basis for a declaration of default under the loan documents or acceleration of the mortgage note or result in any claim under the mortgage or claim against the

Project, the mortgage note proceeds, any reserve or deposit made with the first mortgagee in connection with the mortgage loan, or against the rents or other income from the Project.

g. The Developer hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under section 42 of the Code and Treasury Regulations thereunder. In performing its duties and obligations hereunder, the Department may rely upon statements and certificates of the Developer pertaining to occupancy of the Project. In addition, the Department may consult with counsel, and the authorization and protection in respect of any action taken or suffered by the Department hereunder in good faith and in conformity with the opinion of such counsel shall be applicable to the Department's reliance upon such opinion of counsel.

10. Covenants Run with the Land; Successors Bound Thereby. Upon execution and delivery by the Developer, the Developer shall cause this Agreement and all amendments and exhibits hereto to be recorded and filed in the official records of the county recorder's office in which this Project is located, and pay all fees and charges incurred in conjunction with recording of this Agreement and all addenda or amendments thereto. Upon recording, the Owner shall immediately transmit or cause to be sent directly from the recorder's office to the Department an executed original of the recorded Agreement showing the date, book and page number of recording. The Developer acknowledges and agrees that the Department will not issue form 8609's constituting final allocation of the credit unless and until the Department has received a recorded executed original of this Agreement. Where pertinent, the Department may require Developer to furnish a preliminary title report for the property prior to or after recordation of this Agreement.

The Developer intends, declares and covenants, on behalf of itself and all future owners and operators of the Project and land upon which the Project is constructed that, during the term of this Agreement, all of the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project and land upon which the Project sits for the term of this Agreement, and are binding upon the Developer's successors in title and all subsequent owners and operators of the Project and the land upon which the Project sits (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer (and the benefits shall enure to the Department and any past, present, or prospective low-income tenant of the project) and its and their respective successors and assigns during the term of this Agreement. The Developer hereby agrees that any and all requirements of the laws of the State of Arizona to be satisfied in order for the provisions of this

Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate or title are intended to be satisfied hereby, or in the alternative, that an equitable servitude has been created to ensure that these restrictions will run with the land. For the longer of the period this credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereinafter executed conveying the Project or any portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or any portion thereof provides that such conveyance is subject to this Agreement.

The Developer further covenants and agrees to obtain the consent of any prior recorded lienholder on the Project to this Agreement and the recording thereof, and such consent shall be a condition precedent to the issuance of the IRS Form 8609 constituting final allocation of the credit to this Project.

11. Interpretation. Any terms not defined in this Agreement shall have the same meaning as terms defined in section 42 of the Code and the Treasury Regulations promulgated thereunder.

12. Amendment. This Agreement may be amended with the prior written approval of the Department to reflect changes in pertinent law, section 42 of the Code, the Treasury Regulations and any revenue ruling promulgated there-under. No amendment to this Agreement may be made without the prior written approval of the Department. The Developer hereby expressly agrees to enter into all amendments hereto which, in the opinion of Department Counsel, are reasonably necessary or desirable for maintaining compliance under section 42 of the Code.

13. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

14. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Department:

Arizona Department of Commerce  
Office of Housing Development  
3800 N. Central, Ste. 1200  
Phoenix, Arizona 85012  
Attention: Jerry Ransdell

To the Developer:

Prescott Valley Elderly Housing Limited Partnership  
511 Commercial  
Carbondale, Kansas 66414  
Attention: David L. Tucker

To the IRS:

United States Department of the  
Treasury  
Ogden, Utah

The Department, and the Developer, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

15. Governing Law. This Agreement shall be governed by the laws of the State of Arizona and, where applicable, the laws of the United States of America. In accordance with Arizona law, the Department and State of Arizona may cancel this Agreement without penalty or further obligation under the provisions of A.R.S. 38-511. The parties further agree to use arbitration to the extent required by A.R.S. 12-1518.

16. Project Decertification. Notwithstanding anything in this entire Agreement to the contrary, failure of the Developer to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or Arizona Department of Commerce from time to time pertaining to the obligations of the Developer as set forth therein or herein, the Arizona Department of Commerce may, and in addition to all of the remedies provided by law or in equity, request the IRS to decertify the Project for low income housing tax credits and to immediately commence recapture of the tax credit dollars heretofore allocated to the Project.

17. Survival of Obligations. The obligations of the Developer as set forth herein and in the Application shall survive the allocation of tax credit dollars and shall not be deemed to terminate or merge with the awarding of the allocation.

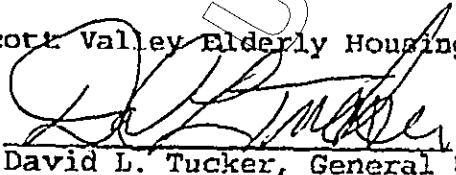
7-2754 PAGE 164

6-2770 PAGE 20

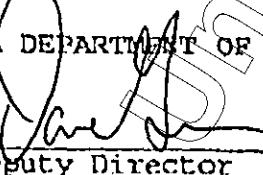
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first above written.

"DEVELOPER"

Prescott Valley Elderly Housing  
L.P.

By:   
David L. Tucker, General Partner

ARIZONA DEPARTMENT OF COMMERCE

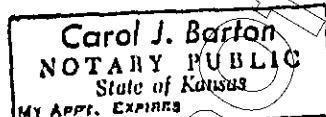
By:   
Carol J. Barton  
Deputy Director

THIS PAGE  
WILL NOT REPRODUCE

ACKNOWLEDGEMENT

STATE OF Kansas  
CITY OF Carbondale )  
COUNTY OF Osage )  
)

On this 24th day of December, 1993, before me personally appeared David L. Tucker, to me known to be the person described in and who executed the foregoing instrument as the General Partner of Prescott Valley Elderly Housing, L.P. and acknowledged that he executed the same as the free act and deed of General Partner and that the General Partner is said General Partner acting for and on behalf of Prescott Valley Elderly Housing, L.P..



Carol J. Barton  
Notary Public

My Commission Expires:

4-4-96

STATE OF Arizona  
CITY OF Phoenix )  
COUNTY OF Maricopa )  
)

On this 29th day of December, 1993, before me personally appeared David L. Tucker, known to me personally and known to me to be the duly appointed Authorized Agent and the person who executed the aforesaid

15

7-2754 PAGE 165

SEARCHED 2770 PAGE 21

REC 24 '93 08:09 TO:913 836 7483

FROM:ROSENBLUM/GOLDENHERS T-894 P.02

instrument by virtue of the authority vested in him/her by Arizona Revised Statutes § 35-728(B), as amended, and acknowledged that he/she executed the aforesaid instrument for and on behalf of the Arizona Department of Commerce for the purpose therein stated.

GIVEN under my hand and seal of office this 29th day of December, 1993

Douglas A. Phillips  
Notary Public

My Commission Expires:

11/30/00

SEAL

THIS PAGE  
WILL NOT REPRODUCE

16

ENCL 2754 PAGE 166

ENCL 2770 PAGE 22

33037680—

EXHIBIT "A"  
LEGAL DESCRIPTION

THIS PAGE  
WILL NOT REPRODUCE

All That portion of Tract "A", PRESCOTT VALLEY UNIT FOURTEEN, as recorded in Book 13 of Maps, page 90, Yavapai County Recorders Office, all in Section 13, Township 14 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the most Northerly B.C. of curve number 20 on Tract "A" marked with a found one-half inch rebar "Tim R.L.S. 13011";

Thence Southeasterly 72.81 feet along a curve to the right (chord = South 23° 46' 06" East, 72.41 feet) of a non-tangent curve with a radius of 199.46 feet;

Thence North 76° 16' 48" West 702.12 feet to the Easterly Right-of-Way of Navajo Drive;

Thence North 56° 31' 50" East 149.25 feet to the B.C. of curve number 35 marked with a found five-eighth inch rebar "Tim R.L.S. 13011";

Thence Northwesterly 412.58 feet along a curve to the left (chord = North 36° 59' 55" East 404.51 feet) of a non-tangent curve (No. 35) with a radius of 600.15 feet to the E.C. marked with a found one-half inch rebar "Tim R.L.S. 13011";

Thence North 16° 58' 57" East 65.38 feet (North 17° 08' 30" East 30.47 feet record) to the B.C. of a non-tangent curve with a radius of 20.00 feet marked with a found five-eighth inch rebar "Tim R.L.S. 13011";

Thence Northeasterly 31 feet more or less along a curve to the right (chord = North 61° 42' 51" East 28.51 feet) of a non-tangent curve with a radius of 20.00 feet to the E.C. marked with a found one-half inch rebar "Tim R.L.S. 13011";

Thence South 73° 02' 09" East 119.25 feet (South 72° 51' 30" East 115.00 feet record) to the B.C. of a 20.00 foot radius curve marked with a found one-half inch rebar "Tim R.L.S. 13011";

Thence Southeasterly 31 feet more or less along a curve to the right (chord = South 27° 52' 48" East 20.15 feet) of a non-tangent curve with a radius of 20.00 feet to a found five-eighth inch rebar "Tim R.L.S. 13011";

Thence South 16° 45' 21" West 133.16 feet (South 17° 08' 30" West 133.01 feet record) to the B.C. of curve number 10 marked with a found one-half inch rebar "Tim R.L.S. 13011";

Thence Southeasterly 231.38 feet along a curve to the left (chord = South 00° 41' 19" East 223.79 feet) of a non-tangent curve (No. 10) with a radius of 259.42 feet to a found one-half inch rebar "Tim R.L.S. 13011";

Thence South 34° 13' 33" East 209.05 feet (South 33° 49' 20" East 209.97 feet record) to the POINT OF BEGINNING.

EXCEPT all oil, gas, coal and minerals, as reserved in Deed recorded in Book 195 of Deeds, page 54, records of Yavapai County, Arizona;

EXCEPT half of all minerals, gas, oil, and petroleum, as reserved in Deed recorded in Book 395 of Official Records, page 231, records of Yavapai County, Arizona.

EXHIBIT "B"

This is a:  New Certification  Re-certification  
Reason for re-certification \_\_\_\_\_

TENANT INCOME CERTIFICATION

The applicant(s) understand that the rental unit which he/she intends to occupy is rent-restricted under the Low Income Housing Tax Credit program. This program is regulated by Section 42 of the Internal Revenue Code of 1986, as amended, which requires that all applicants complete an income certification in order to qualify for tenancy in any such unit. The undersigned therefore certifies that:

1. This Income Certification is being delivered in connection with the undersigned's application for occupancy of Unit # \_\_\_\_\_ in the \_\_\_\_\_ project, in \_\_\_\_\_ County, Arizona. (City) (County)

2. List all the occupants of the apartment, the relationship (if any) of the various occupants, their ages, and indicate whether they are students. For this purpose, a student is any individual who has been, or will be, a full-time student (12 or more credit hours/semester) in an educational institution with regular facilities and students (other than correspondence school) during five months of the year in which this application is submitted.

<u>Occupant Name</u>	<u>Relationship</u>	<u>Age</u>	<u>Student (Yes or No)</u>
(1) (Head of Household)			
(2)			
(3)			
(4)			
(5)			
(6)			

3. Are any of the students listed in paragraph 2 above eligible to file a joint return for Federal income tax purposes?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. For each person above who is age 18 or older, list the total income from each applicable source which is anticipated for the 12 month period commencing with the date occupancy will begin:

Name: (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_

Wages \_\_\_\_\_  
(salaries, overtime, commissions, fees, tips and bonuses - if tenant is unemployed, write "Unemployed" on the "Wages" line.)

Business \_\_\_\_\_  
Income (net income from operation of a business or profession)

Interest, \_\_\_\_\_  
Dividends and other net income from real or personal property

PERIODIC PAYMENTS:

Unemployment \_\_\_\_\_

Soc. Security \_\_\_\_\_

AFDC \_\_\_\_\_

Other Public Assistance \_\_\_\_\_

Alimony \_\_\_\_\_

Child Support \_\_\_\_\_

Armed Forces \_\_\_\_\_

Special Pay Allowances (to head of family, spouse or other person not living in the unit, but whose dependents are residing in the unit)

Disability \_\_\_\_\_

Workers \_\_\_\_\_

Comp. \_\_\_\_\_

Annuities \_\_\_\_\_

Insurance \_\_\_\_\_

Retirement \_\_\_\_\_

Funds \_\_\_\_\_

Pensions \_\_\_\_\_

Death Benefits \_\_\_\_\_

Severance Payments \_\_\_\_\_

Gifts \_\_\_\_\_

(Regular contributions or gifts from persons not residing in the unit)

Earned Income tax credit \_\_\_\_\_

TOTALS: \_\_\_\_\_

TOTAL COMBINED FAMILY INCOME: \_\_\_\_\_

**Unofficial Copy**

NOTE: The following items are not counted as income:

- casual, sporadic or irregular gifts
- amounts which are specifically for reimbursement of medical expenses
- lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation)
- capital gains and any judgment or settlement for personal or property losses
- amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes
- special pay to a serviceman head of a family who is away from home and exposed to hostile fire
- relocation payments under Title II of the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970
- foster child care payments
- food stamps
- payments received pursuant to participation in ACTION volunteer programs
- income from the employment of children (including foster children) under the age of 18 years;

5. If any of the occupants listed in paragraph 2 above has any savings, bonds, equity in real property, or other form of capital investment (but do not include necessary items such as appliances, furniture or automobiles),<sup>1</sup> enter the following amounts:

(a) The total value of all such assets owned by all such persons: \$ \_\_\_\_\_,

(b) the amount of income expected to be derived from such assets in the 12 month period commencing with the occupancy of the unit (if these amounts are not already included in item 4. above): \$ \_\_\_\_\_.

6. RESIDENT'S STATEMENT: The information on this form is to be used to determine maximum income for tenant eligibility under Section 42 of the Internal Revenue Code of 1986, as amended. I/We have provided, for each person set forth in paragraph 2. above, either (a) an Employer's Verification of current annual income, if the occupant is currently employed, or (b) if the occupant is currently unemployed, such other evidence of

<sup>1</sup>/Include the value over and above actual consideration received, except in a foreclosure or bankruptcy, of any asset disposed of for less than fair market value within two years of the date of this Income Certification.

current/anticipated income as is acceptable to the Department and is consistent with income determinations under Section 8 of the United States Housing Act of 1937, as amended.

I/we further understand that it will be necessary to recertify tenant/family income and assets:

(a) If this Income Certification is executed more than five (5) days prior to the date I/we intend to occupy the unit;

(b) When, at any time after executing this income certification, the household composition or family income changes; and

(c) no less frequently than annually, if occupancy continues in this unit or any unit in this complex/project for 12 months or more.

I/We certify that the statements above are true and complete to the best of my/our knowledge and belief on the date hereof and are given under the penalty of perjury.

Affix signature(s) of all tenants 18 years of age or older:

Signature:

Date:

(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_  
(4) \_\_\_\_\_  
(5) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. OWNER'S STATEMENT: The family or individual(s) named in paragraph 2 of this Income Certification is/are eligible to live in a unit in the Project based upon the aggregate anticipated annual income from paragraph 4 and, if applicable, the amount stated in paragraph 5(b), which in the aggregate will be \$\_\_\_\_\_. The anticipated income is less than \$\_\_\_\_\_, which constitutes the "low or moderate imputed income limit" as of this date. Thus the family or individual(s) constitute(s) a Qualified Tenant under Section 42 of the Internal Revenue Code of 1986, as amended.

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Owner's Authorized Representative

Date

EXHIBIT "C"

RELEASE AND INDEMNIFICATION AGREEMENT

The undersigned Federal Low Income Housing Tax Credit applicant acknowledges, covenants and agrees that it has not relied upon or sought any information from the Arizona Department of Commerce, its agents, counsel or employees in conjunction with the application for, issuance of and reporting to the federal government of an allocation of low income housing tax credits. In conjunction with the undersigned's application and allocation of tax credits, the undersigned acknowledges and agrees that it shall hereby release the Department, its agents, counsel and employees from any claim, loss, demand or judgment as a result of allocation of federal low income housing tax credit dollars to the Project or the recapture of tax credit dollars by the Internal Revenue Service to include any interest and penalties thereon; and the undersigned does hereby further agree for itself, its successors and assigns to indemnify the Department, its agents, counsel and employees from any claim, loss, demand or judgment, to include reasonable attorney's fees as a result of allocation of tax credit dollars by the Department in the event of an assessment and deficiency determination or otherwise by the Internal Revenue Service.

DATED: 1/27, 1994.

DEVELOPER:  
Prescott Valley Elderly Housing Limited Partnership, A KANSAS LIMITED PARTNERSHIP  
By X Thomas C. Tucker  
Name Thomas C. Tucker  
Title General Partner

STATE OF Colorado)  
CITY OF Alamosa) ss.  
COUNTY OF Alamosa)

The foregoing was acknowledged before me by Thomas  
C. Tucker, this 27th day of  
January, 1994.

SEAL

David Kojancic  
Notary Public

My Commission Expires:

9-6-96

22

F-2754 PAGE 172

BOOK 2770 PAGE 28

EXHIBIT "D"

ANNUAL CERTIFICATE OF CONTINUING  
PROGRAM COMPLIANCE FOR  
TAX YEAR ENDED DECEMBER 31, 19

The undersigned owner hereby certifies that the below designated project, since being placed in service, has continuously been in full compliance with Section 42 of the Internal Revenue Code, Treasury Regulations thereunder and any and all rules or regulations promulgated by the Secretary of the Treasury and the Arizona Department of Commerce including, but not confined to the following:

- (1) That the project meets the application set aside requirements of either the 20/50, 40/60, 25/60 or deep skewing of 15/40; and
- (2) That there has been no change in the applicable fraction (i.e. unit or floor space) of any building in the project or, if so, a description of the change is attached; and
- (3) That the owner has received annual income certification and supporting documentation from each low income tenant, or Section 8 validation from the governing housing authority; and
- (4) For 1990 projects and later, that each low income unit in the project is rent-restricted per the extended use agreement and Section 42(g)(2); and
- (5) That all project units are available for the use of the general public and used on a non-transient basis (except homeless participants per Section 42(i)(3)(B)(iii)); and
- (6) That each building is suitable for occupancy per local health, safety and building codes; and
- (7) That there has been no change in the eligible basis set forth in the Department's allocation document for any building, or if so, the nature of such change is specified on the attached; and
- (8) That all tenant facilities, the cost of which was included in eligible basis (i.e. pool, parking, recreation) are provided on a comparable basis without charge to all tenants in the building; and

Unofficial Copy

- (9) For mixed use projects if a low-income unit became vacant during the year, that reasonable attempts were or are presently being made to rent the next available unit of comparable or smaller size to a qualifying income tenant before any other unit in the project is rented to non-qualifying tenants; and
- (10) That if the income of any low-income tenant increases above the threshold set forth in the code, the next unit of comparable or smaller size has or will be rented to a tenant with qualifying income; and
- (11) That the extended use, low-income agreement required by Section 42(h)(6) of the Code was and is in effect for all projects receiving an allocation of credits beginning with the calendar year 1990 and thereafter.

The owner further certifies that all necessary and required written documentation is being maintained by it to substantiate eligibility of qualified tenants and the project pursuant to Section 42.

PROJECT DESIGNATION: \_\_\_\_\_

OWNER: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

PLEASE RETURN THIS CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE TO THE ARIZONA DEPARTMENT OF COMMERCE PROMPTLY. THE ADDRESS FOR THE DEPARTMENT IS 3800 NORTH CENTRAL, SUITE 1200, PHOENIX, ARIZONA 85012, ATTN: JERRY RANSELL.