# PETITIONER BRIEF

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STATE OF NEVADA
DEPARTMENT OF TAXATION

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Senior Housing Limited Partnership

NEVADA STATE BOARD OF EQUALIZATION

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| WEST SAHARA SENIOR HOUSING LIMITED PARTNERSHIP,<br><br>Plaintiff,<br><br>vs.<br><br>CLARK COUNTY ASSESSOR<br><br>Defendant. | Case No. 26-117<br><br>**PETITIONER'S OPENING BRIEF**<br><br>**HEARING DATE:**<br><br>**07-29-2026 and 7-30-2026** |

Plaintiff West Sahara Senior Housing Limited Partnership ("Tax Exempt Applicant") respectfully requests the State Board of Equalization ("State Board") consider its tax appeal, as the State Board has jurisdiction under NRS 361 and NAC 361 to consider Tax Exempt Applicant's request for exemption. Alternatively, Tax Exempt Applicant requests the State Board remand the matter to the Clark County Board of Equalization ("County Board") to consider on the merits. NRS 361.345 provides the County Board clear authority to change a valuation when it is inequitable.

## POINTS AND AUTHORITIES

## I. INTRODUCTION

Nevada has the most severe shortage of affordable housing in the country for extremely low-income households.[1] Nearly 48% of the State's renters are excessively cost-burdened, which is among the highest rates in the country.[2] It was to confront this shortage that the Legislature expanded NRS 361.082, exempting qualified low-income housing from taxation to encourage the development of affordable housing that Nevadans need most. This appeal asks only that the exemption be given the effect the Legislature intended.

Tax Exempt Applicant operates a federally funded senior affordable housing project that serves exclusively low-income, senior residents. The property is located in Clark County, Nevada located at 8007 West Sahara Avenue ("Property"). On May 6, 2025, the Tax-Exempt Applicant petitioned Clark County ("County") for the NRS 361.082 property tax exemption ("Exemption") for fiscal years 2024-2025 and 2025-2026. *See* Clark County Record p. 24. The Clark County Assessor ("Assessor") granted the Property the Exemption for fiscal year 2025-2026, but not for 2024-2025. *Id.* Tax Exempt Applicant appealed the decision. On February 24th, 2026, the County Board refused to hear the appeal, declining jurisdiction without reaching the merits. *See* Minutes of the County Board Meeting, p. 39 attached hereto as Exhibit 1.

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[1] Dan Emmanuel et al., Nat'l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes*, at 22 (2026), https://nlihc.org/gap.

[2] *Id.* at 22-24.

## II. RELEVANT FACTUAL BACKGROUND

The County Board moved to decline jurisdiction over the 2024-2025 exemption, although conceding the Property qualified for the 2025-2026 tax year, because the Tax-Exempt Applicant did not apply timely for a tax exemption for the 2024-2025 tax year. *Id.* at 37-39. However, the Tax-Exempt Applicant could not have applied by June 15, 2024, because construction was not complete and the units were not occupied by qualified low-income tenants until late 2024. From January through June 2025, the project operated exclusively as low-income housing for seniors, meeting every statutory requirement.

On February 9, 2026, The Clark County District Attorney's Office recommended that the Exemption be denied on three grounds: the application was untimely; the Property was not occupied by June 15 under NAC 361.089; and Nevada law does not provide partial tax exemptions for low-income housing projects across a fiscal year. *See* Clark County Record p. 25. At its February 24, 2026 hearing, the County Board did not reach any of those grounds. Instead, the County Board voted to decline jurisdiction on the matter. *Id.* at 26.

## III. ARGUMENT

### A. Under Nevada Law, the State Board has Jurisdiction over the Appeal.

NRS 361.360 authorizes "[a]ny taxpayer aggrieved at the action of the county board of equalization in equalizing or failing to equalize," the value of property to appeal to the State Board on or before March 10. NAC 361.747(2)(c) confirms "the State Board may determine the question of whether real or personal property is exempt from taxation." The Tax-Exempt Applicant timely appealed to the State Board on March 9, 2026. *See* Clark County Record p. 21.

The County Board's vote to decline jurisdiction is itself an "action" within the meaning of NRS 361.360(1). A refusal to reach the merits aggrieves the Tax-Exempt Applicant no less than an outright denial on the merits. The State Board, therefore, has jurisdiction to decide the claim or, if necessary, to remand it. *See* NRS 361.360(6). The only timeliness question concerns the petition by the Tax-Exempt Applicant with the Assessor, which is a matter addressed below, not a defect in the State Board's power to hear the appeal.

The State Board has exercised jurisdiction in this posture before. In *Southwest Village Preservation, LP*, the County Board "determined it had jurisdiction over the exemption for [one] tax year, but not over [the other]", which is the identical split presented by the Tax-Exempt Applicant here. Case No. 24-109, at 1 (Nev. State Bd. of Equalization May 1, 2024). The State Board exercised jurisdiction over the declined year notwithstanding the County's refusal, holding that it "has jurisdiction to hear this matter under NRS 361.360 and NRS 361.400." *Id*. at 2. It further held that exemptions are "a component of the assessed tax, and therefore are subject to the equalization process," confirming the State Board's authority to review whether an exemption was improperly denied. *Id.* at 3. An exemption denial is within the State Board's appellate authority, and the County Board's denial of jurisdiction as to one year does not strip the State Board of its power to reach that year. The State Board should follow the same course here. Declining jurisdiction over the Tax-Exempt Applicant's petition would mark an arbitrary departure from the State Board's own recent reasoning. *Id*. at 3.

Additionally, the appearance, or lack thereof, of fiscal year 2024-2025 in the petition is a harmless variance. NRS 178.598 provides that any "error, defect, irregularity or variance which does not affect substantial rights shall be disregarded,". Substantial compliance excuses a party's literal noncompliance, "provided that the party complies with respect to the substance essential to every reasonable object of the rule." *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 665 (2013).[3] For the State Board to change course and not allow the Tax-Exempt Applicant to present its claim would constitute "harsh, unfair or absurd consequences" that should be avoided by its substantial compliance in filling out the form. *Markowitz,* 129 Nev. 660, 664. Additionally, the District Attorney's own opinion addresses the 2024-2025 tax year. *See* Clark County Record, p. 25-27. Considering the 2024-2025 Exemption prejudices neither the Assessor nor the State Board. Both had notice of this filing, and both have, in prior matters, reached exemption claims for a tax year the County Board declined to hear. *See Southwest Village Preservation, LP,* Case No. 24-109, at 2-3.

**B. The Tax-Exempt Applicant's failure to file earlier should be excused because circumstances beyond its control prevented the Property from documenting qualification.**

The Assessor does not dispute that the Property qualifies for the Exemption for the 2025-2026 tax year. *See* Clark County Record p. 24. Its objection is that the Tax-Exempt Applicant did not file by June 15, 2024 (NRS 361.155(1)), therefore it is one of timing. Based on the facts, the Tax-Exempt Applicant should be excused

[3] Citing *Stasher v. Harger-Haldeman*, 58 Cal. 2d 23, 29 (1962).

for its failure to meet timing because the June 15, 2024 deadline could not have been met by the Tax-Exempt Applicant. As Part C explains, the recorded covenant fixed the Property's exclusive low-income use well before June 15, 2024, and that use continued throughout the fiscal year. The Tax-Exempt Applicant contends only that it could not satisfy the Assessor's application process until the project was built and operating. This is a barrier to filing, not a defect in entitlement.

On June 15, 2024, the Property had no certificate of occupancy or rent roll. It could not assemble the occupancy-based documentation the application requires, and no amount of due diligence could have changed this. As Part D explains, occupancy is not the only path to qualification. The recorded covenant satisfies the regulation's "will be used exclusively" standard. *See* NAC 361.089(2)(b). However, the Assessor's application process demanded the occupancy proof the Tax-Exempt Applicant could not yet supply.

Here, Nevada's equitable-tolling doctrine should apply. Equitable tolling excuses an untimely filing where, "despite their exercise of diligence, extraordinary circumstances beyond their control prevented them from timely filing their claim. *Fausto v. Sanchez-Flores*, 137 Nev. 113, 117 (2021).[4] The Tax-Exempt Applicant's circumstance was extraordinary and outside of its control. The requirements of qualifying for the exemption turn on construction schedules, certificate of occupancy issuance, and tenant qualification. The Tax-Exempt Applicant diligently pursued the Exemption after the Property achieved qualifying status and has pressed the claim before the County Board and to the State Board. *See* Clark County Record p. 24.

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[4] Citing *Kwai Fun Wong v. Beebe,* 732 F.3d 1030, 1052 (9th Cir. 2013).

The State Board has applied that standard to exemption deadlines before. In *Joseph A. Vricella*, No. 23-143 at 2 (Nev. State Bd. of Equalization Dec. 15, 2023), the State Board exercised jurisdiction over untimely filings where the Tax-Exempt Applicant showed that circumstances beyond its control prevented timely filing. The Tax-Exempt Applicant's showing here, including the physical and regulatory impossibility of documenting qualification before June 15, 2024, should qualify as well.

The excusal of the delay does not prejudice the Assessor. The Assessor granted the Tax-Exempt Applicant the identical Exemption for fiscal year 2025-2026 on the same application of the same Property. Qualification was conceded; therefore, the County has been on notice of the petition by the Tax-Exempt Applicant. The only consequence of excusing the deadline is that the Property, used exclusively by low-income seniors, is treated as exempt. This would be the exact result that NRS 361.082 was enacted to produce. Otherwise enforcing the deadline would improperly place tax liability on qualifying tax-exempt affordable housing, solely because the Property opened after the lien date.

**C. The Project qualifies for the Exemption for the full fiscal year 2024-2025, or in the alternative, for the third and fourth quarters.**

NRS 361.155(2) states that "exemptions apply on a fiscal year basis" and caps the amount of an exemption, thereby barring any Tax-Exempt Applicant from claiming more than its annual entitlement. This provision, however, does not speak to when qualification must occur. Additionally, NRS 361.450(2) sets the lien date for assessed property but does not reference a deadline for earning an exemption.

The Tax-Exempt Applicant acknowledges that Nevada provides no formula to prorate the Exemption by quarter. NRS 361.125 and NRS 361.484 do so for government entities and churches, but NRS 361.082 does not. The absence of a proration formula does not answer whether a project that qualifies mid-year is covered. Where statutory language permits more than one reasonable reading, the statute "may be examined through legislative history, reason, and considerations of public policy to determine the Legislature's intent." *Chanos v. Nev. Tax Comm'n*, 124 Nev. 232, 240 (2008). Purpose and regulation resolve any doubt in favor of coverage. The Legislature expanded NRS 361.082 (A.B. 62) to encourage affordable housing development. Reading the statute to deny relief to projects that open after July 1 would punish the very new construction it encourages.

The Property's only legally permissible use is low-income senior housing. The Tax-Exempt Applicant's Declaration of Restrictive Covenants, recorded December 20, 2022, binds the Property to that use exclusively while foreclosing all others. *See* Declaration of Restrictive Covenants attached hereto as Exhibit 2. These covenants remained in force throughout the 2024-2025 fiscal year; therefore, the use on which NRS 361.082 conditions the Exemption existed continuously. If the State Board concludes it cannot grant a full-year Exemption, the partial Exemption should be the correct result rather than denial.

**D. The District Attorney's recommendation does not defeat the Exemption.**

The District Attorney recommends denial of the Exemption because of an untimely application, the building "was not yet completed and rented to qualified residents by June 15, 2024," and Nevada law does not authorize prorated exemptions for low-income housing projects. *See* Clark County Record, p. 25. On the merits, the

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dispute is timing, not entitlement. The timeliness objection is answered in Part B: the June 15, 2024 deadline could not be met before the Property was built and equitable tolling excuses that delay. The objection to prorated exemptions is answered in Part C, asking for equitable relief and reliance on deed restrictions.

The occupancy objection misreads the statute. NRS 361.082 exempts units "occupied by *or used exclusively* for persons with low incomes." (emphasis added). It makes exclusively dedicated use an independent path to qualification. NAC 361.089(2)(b) confirms the point prospectively, reaching property that "*will be used* exclusively as low-income units as of June 15 of that year." (emphasis added). The Tax-Exempt Applicant's Declaration of Restrictive Covenants, recorded December 20, 2022, supplies that commitment, as do the federal affordability rules NRS 361.082 incorporates by reference which condition the Property's funding on recorded, long-term covenants that bind the units to exclusive low-income use. *See* Exhibit 2. The District Attorney's demand for a tenant status report imposes a requirement to supply proof of an occupied project, while subsection (2)(b) governs a committed project that is not yet occupied. Reading the statute to require tenant data from an unbuilt project would nullify the future-tense prong.

## IV. CONCLUSION

The Tax-Exempt Applicant respectfully requests that the State Board find that it has jurisdiction and grants the Exemption for the fiscal year 2024-2025, or in the alternative, the third and fourth quarters of fiscal year 2024-2025. The Property qualified for the Exemption throughout that period, and a deadline should not deny relief.

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Senior Housing Limited Partnership

## EXHIBIT INDEX

EXHIBIT 1

(Clark County Record)

EXHIBIT 2

(Declaration of Restrictive Covenants)

# DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS , **WEST SAHARA SENIOR HOUSING LIMITED PARTNERSHIP**, a Nevada limited partnership, having its principal office at 2655 S Rainbow Boulevard, Suite 401, Las Vegas, NV 89146 (the "**Owner**"), is the owner in fee simple of certain real property located at 8007 West Sahara Avenue in Las Vegas, Nevada 89117, as more particularly described in Exhibit A ( "Property"); and

WHEREAS, the Owner is in the process of developing on the Property a one hundred seventy-one (171)-unit (inclusive of one (1) manager's unit) senior housing project (the "Project"); and

WHEREAS, Owner will use funds loaned to Owner in the principal amount of Six Million and no/100 Dollars ($6,000,000) by the County of Clark ( "County"), a political subdivision of the State of Nevada, pursuant to the Clark County, Nevada Community Housing Fund ("CHF") Program Guide and Application Instructions ("County's CHF Program Guide"), as may be updated from time to time, and pursuant to certain documents executed between the parties, including a CHF Agreement dated December 1, 2022 ("CHF Agreement") by and between Owner and County.

WHEREAS, the CHF requires compliance with the rules, regulations, and requirements of that program for a minimum period of thirty (30) years from the Project Completion Date, as defined in this Declaration of Restrictive Covenants and subject to the terms and conditions in the County's CHF Program Guide and the terms of the CHF Agreement (hereinafter this "Declaration");

NOW, THEREFORE, Owner hereby declares that the Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, improved, and sold subject this Declaration.

## SECTION I – KEY ENFORCEMENT PROVISIONS

### A. Covenant Running with the Land

This Declaration shall be deemed and shall constitute a covenant running with the land for the benefit of the County and its successors and assigns and shall pass to and be binding upon all heirs, successors and assigns in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, successors and assigns to such interests. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or any interest therein (excepting only leases of units in the Project) shall conclusively be held to have been executed, delivered, and accepted subject to this Declaration, regardless of whether any or all of such covenants contained herein are set forth in such contract, deed or other instrument. If a portion or portions of the Property, or interest or interests in the Property are conveyed, all such covenants contained herein shall run to each portion of or interest in the Property.

### B. Duration

1) Notwithstanding any repayment by the Owner, this Declaration shall remain in effect until the expiration of the Affordability Period, which shall begin with initial occupancy of the Project and

EXHIBIT 2

## SECTION II – PROJECT DESCRIPTION

The Project is a 171-unit new construction rental development more particularly described in Exhibit A (the "Property"). The Project consists of one residential structure, containing 171 units (inclusive of one unrestricted manager's unit). The overall unit breakdown includes four (4) one (1)-bedroom units that will be restricted at 30% of AMI, seventy-six (76) one (1)-bedroom units that will be restricted at 50% of AMI, fifty (50) two (2)-bedroom units that will be restricted at 50% of AMI, four (4) one (1)-bedroom units that will be restricted at 70% AMI, thirty-six (36) two (2)-bedroom units that will be restricted at 70% AMI, and one (1) non-income producing manager's unit. All units (other than the one manager's unit) are designated as senior housing.

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed by the duly authorized representative of the Owner on the date set opposite his signature below.

**WEST SAHARA SENIOR HOUSING LP,**
a Nevada limited partnership

By: WEST SAHARA SENIOR HOUSING, LLC, a Nevada limited liability company, its General Partner

By: WEST SAHARA SENIOR HOUSING GG, LLC, a Nevada limited liability company, its Manager

12-20-22
Date

By: [signature]
George Gekakis
Its: its Manager

George Gekakis

STATE OF NEVADA )
) ss.
COUNTY OF CLARK )

BE IT REMEMBERED, that on this 20 day of December, 2022, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared George Gekakis, to me personally known to be the same persons who executed the above and foregoing instrument of writing, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal on the day and year last above written.

[signature]
Notary Public

Marina A. Adamy
#13-12358-1
Exp: 03-02-23

MARINA A. ADAMY
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 03-02-23
Certificate No: 13-12358-1

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