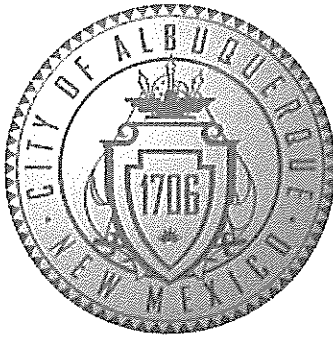


EC-23-379




**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

September 21, 2023

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT: Approval of the Farolito Senior Community Development Agreement with Greater Albuquerque Housing Partnership to Utilize HUD HOME Funds Towards the New Construction of a Senior Rental Housing Project.**


This request for approval is for the proposed Development Agreement between the City of Albuquerque and the Greater Albuquerque Housing Partnership, to provide gap financing towards the future new construction of the Farolito Senior Community, located at 10501 Central Avenue NE. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the Development Entity (as defined herein) for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The Project shall remain an affordable rental housing project, abiding by the High-HOME and Low-HOME rents for the 20-year HOME Affordability Period.

The project will leverage the City funds with a Low Income Housing Tax Credit Allocation from the New Mexico Mortgage Finance Authority and will count as the local contribution needed to make the project feasible.

This request is forwarded to the Council for consideration and approval.

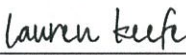
**Approval of the Farolito Senior Community Development Agreement with Greater Albuquerque Housing Partnership to Utilize HUD HOME Funds Towards the New Construction of a Senior Rental Housing Project.**

Approved:




Lawrence Rael                      Date  
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:  
                      10/3/2023 | 10:59 AM MDT  
1A21D96B32C74EE...  
Lauren Keefe                      Date  
City Attorney

DS  
PP

Recommended:

DocuSigned by:  
                      9/27/2023 | 7:26 AM MDT  
72F4E134004641B...  
Carol M. Pierce                      Date  
Director

## **Cover Analysis**

### **1. What is it?**

This request for approval is for the proposed Development Agreement between the City of Albuquerque and the Greater Albuquerque Housing Partnership, to provide gap financing towards the future new construction of the Farolito Senior Community, located at 10501 Central Avenue NE. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the Development Entity (as defined herein) for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The Project shall remain an affordable rental housing project, abiding by the High-HOME and Low-HOME rents for the 20-year HOME Affordability Period.

### **2. What will this piece of legislation do?**

This legislation will provide \$4,187,152.00 of HUD HOME Investment Partnerships grant funds towards the Farolito Senior Community, a \$24.75 Million project.

### **3. Why is this project needed?**

The funding will provide gap financing in the form of a local contribution from the City, which Greater Albuquerque Housing Partnership will leverage with Low Income Housing Tax Credits from the New Mexico Mortgage Finance Authority.

### **4. How much will it cost and what is the funding source?**

The Farolito Senior Community development has estimated project cost of \$24,750,000 of which, \$4,187,152.00 will be HUD HOME Funds through this request.

**5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

No. The funds are utilized in construction and secured through a City Mortgage, City Promissory Note, and City Restrictive Real Estate Covenants that ensures that there the project remains Affordable Housing for at least 20 years. It is necessary that any project revenue be utilized by the project for the long-term, as provided for in the Project's Pro-Forma.

**6. What will happen if the project is not approved?**

The funds proposed as part of this legislation account for approximately 16.9% of the project's total costs. Not approving the \$4,187,152 of HUD HOME Funds in this request will likely leave the developer with insufficient funds to proceed with the project.

**7. Is this service already provided by another entity?**

No. The new construction of senior housing units was awarded through a competitive procurement process (RFP-2023-352-FCS-RG), addressing the need for affordable housing. Greater Albuquerque Housing Partnership's proposal was the sole respondent for the HUD funds and was ultimately recommended for award.

## FISCAL IMPACT ANALYSIS

TITLE: Approval of the Farolito Senior Community Development Agreement with Greater Albuquerque Housing Partnership to Utilize HUD HOME Funds Towards the New Construction of a Senior Rental Housing Project.

R: O:  
FUND: 265

DEPT: Family and Community Services

- ☒ [X] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ [ ] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2024	Fiscal Years 2025	2026	Total
Base Salary/Wages	-			-
Temporary Wages	-			-
Fringe Benefits at	-		-	-
Fringe Benefits at	-	-		-
Subtotal Personnel	-	-	-	-
Operating Expenses	-			-
Property	-	-	-	-
Indirect Costs	-			-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[ x] Estimated revenues not affected				
[ ] Estimated revenue impact				
Amount of Grant	-	-		-
City Cash Match	-			-
City Inkind Match	-		-	-
City IDOH	-	-		-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

\* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** FCS is requesting approval of the Farolito Senior Community Development Agreement with Greater Albuquerque Housing Partnership for the New Construction of a Senior Rental Housing Project. The funding in the amount of \$4,187,152.00 of HOME funds including CHDO- set aside has previously been appropriated by Resolutions: R-22-23;R-2022-030 & R-23-115;R-2023-038 in the 2022 & 2023 HUD Action Plan.

### COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

APPROVED:

\_\_\_\_\_  
FISCAL MANAGER

\_\_\_\_\_  
DIRECTOR (date)

REVIEWED BY:

\_\_\_\_\_  
EXECUTIVE BUDGET ANALYST

\_\_\_\_\_  
BUDGET OFFICER (date)

\_\_\_\_\_  
CITY ECONOMIST

## DEVELOPMENT AGREEMENT

By and between the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation,  
and

Developer,  
**Greater Albuquerque Housing Partnership**, a New Mexico non-profit corporation, 320 Gold  
Avenue SW, Suite 918, Albuquerque, NM 87102

Date Executed: \_\_\_\_\_

## FAROLITO SENIOR COMMUNITY

10501 Central Avenue NE

**Parcel A as shown on the Boundary Survey of Tract C, Video Addition and Parcels of  
Land Owned by the State of New Mexico Situated Within the NW1/4 NW1/4 Sec.28,T10N,  
R4E, NMPM, April 2016, recorded with the County Clerk of Bernalillo County on  
February 12, 2020 as Doc. No. 2020013489, containing 2.2856 acres, more or less.**

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## **DEVELOPMENT AGREEMENT**

### **HOME Investment Partnerships Program (HOME) Grant Agreement**

THIS AGREEMENT is entered into upon the final date of signature below, by and between the **City of Albuquerque**, New Mexico, a municipal corporation (hereinafter “City”) and **The Greater Albuquerque Housing Partnership**, a New Mexico non-profit corporation, 320 Gold Avenue SW, Suite 918, Albuquerque, NM 87102, and/or assigns (hereinafter “Developer”). City and Developer are sometimes hereinafter referred to collectively as “the Parties” and individually as “a Party.”

### **RECITALS**

WHEREAS, the City, under the Federal National Affordable Housing Act of 1990/HOME Investment Partnerships Program (the “Act”), with HOME Grant Assistance Listing No. 14.239, and under its powers as a home rule city, is authorized to acquire, construct, improve, rehabilitate and conserve residential facilities intended for use as a place of residence for the intended occupants; and

WHEREAS, under the Act, a project may include acquiring, improving, constructing, rehabilitating and conserving land, buildings and improvements located within the City of Albuquerque; and

WHEREAS, the City has determined by Resolution adopted September 21, 1992, Enactment No. 134-1994, that a serious shortage of decent, safe, sanitary and affordable residential housing exists in the City of Albuquerque; and

WHEREAS, funding for the Project, described in Section 2.3 of this Agreement, was provided in the City’s 2022 Action Plan, approved by City Council on May 2, 2022, by Resolution R-22-23, and

WHEREAS, the Developer represents that it has the necessary construction and management expertise to develop and manage the Project; and

WHEREAS, the Developer has been evaluated and meets the requirements of a Community Housing Development Organization (CHDO) at the time of the award.

NOW THEREFORE, and in consideration of the premises and the mutual covenants hereinafter set forth, the Parties formally covenant and agree as follows:

### **ARTICLE I** **Definitions**

Section 1.1. The Definitions in the *Administrative Requirements for Social Service Contracts Awarded Under the City of Albuquerque*, as they exist at the time of the execution of this Agreement or as amended during the term of this Agreement are adopted by reference and incorporated herein as though set forth in full in this section.

Section 1.2. Capitalized terms shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement, capitalized terms shall retain their customary meaning.

Section 1.3. The additional definitions as shown in Exhibit A, except where the context indicates otherwise, shall have the respective meanings set forth in Exhibit A.

## **ARTICLE II**

### **Project Purpose and Description**

Section 2.1. Purpose of Project. The purpose of the Project is to construct eighty-two (82) units of mixed-income rental housing for seniors located at 10501 Central NE, of which all are affordable units designated for persons who are at or below 80% Area Median Income (AMI), with specific set-asides for households at or below 60% AMI, 50% AMI, and 30% AMI, as further described in Section 2.3, below.

Section 2.2. Project Term. The development of the Project and the provision of the Affordable Housing Units (as defined below) by the Developer are to commence dependent upon the award of Low Income Housing Tax Credits by the Mortgage Finance Authority to the Developer and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement, but in any event, the Project and all of the services required hereunder in connection with the Project, shall be continued for twenty (20) years from the City's Date of Project Completion in the HUD Integrated Disbursement and Information System (IDIS), and shall be referred to as the "HOME Affordability Period." **The Project contains twenty-two (22) HOME-assisted units (17 High-HOME and 5 Low-HOME), as stipulated in the Restrictive Real Estate Covenants, which shall abide by the High-HOME and Low-HOME rents for the entire 20-year HOME Affordability Period.**

Section 2.3. Project Description. The Project, named **Farolito Senior Community**, will be located at 10501 Central Avenue NE, as legally described in Exhibit B (hereinafter referred to as the "Real Property"). The Project shall consist of the construction and management of the four-story, multi-family building, including common space, landscaping, access, parking lots and grounds located on the aforementioned Real Property. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the Development Entity (as defined herein) for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The Project shall remain an affordable rental housing

project, abiding by the High-HOME and Low-HOME rents for the 20-year HOME Affordability Period, as more fully provided elsewhere in this Agreement.

Section 2.4. Development Single Purpose Entity. The Developer intends to form a single purpose entity ("Development Entity") and plans to use federal low income housing tax credits to partially fund the development of the Project. The Development Entity will develop, own, and operate the Project on the leased Real Property. Following the formation of the Development Entity, which will likely be a New Mexico limited liability limited partnership, the rights and obligations under this Agreement shall be assigned by the Developer to the Development Entity. An affiliate of the Developer will serve as the general partner of the Development Entity and a third party investor will serve as limited partner of the Development Entity.

Section 2.5. Management of Property. Developer shall manage Farolito Senior Community through a property management agreement with a professional property management company that has been approved by the City in writing. Monarch Properties, Inc. has been selected by the Developer as the property management company for Farolito Senior Community, and this selection is approved by the City. Any changes of property management company must also be approved in writing by the City.

### **ARTICLE III**

#### **Funds Committed to the Project**

##### **Section 3.1. Description of City Grant**

A. The City shall provide a grant (the "City Grant") to the Developer to assist in the Project financing, in an amount not to exceed **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**, from the U.S. Department of Housing and Urban Development HOME Investment Partnerships (HOME) funds, which includes HOME Community Housing Development Organization (CHDO) Set Aside funding in the amount of Three Hundred Thirty-Seven Thousand, Sixty-Seven Dollars and Twenty-Five Cents (\$337,067.25). The City Grant shall be forgiven at the end of the HOME Affordability Period if all conditions and requirements of this Development Agreement and related obligations are met.

B. At the closing of the City Grant (the "Closing," as defined in Exhibit A hereto), the Developer will loan the City Grant funds to the Development Entity, which loan will be evidenced by a Promissory Note (the "City HOME Note") in a form agreed upon prior to closing and secured by a Mortgage (the "City HOME Mortgage") in a form agreed upon prior to closing. The City HOME Note and City HOME Mortgage will be collaterally assigned to the City as security for the payment of the City Grant. The Developer and the Development Entity shall also sign at Closing, the Restrictive Real Estate Covenants in a form substantially similar to Exhibit I as attached hereto. The Closing shall occur on or before December 31, 2023 unless extended by the parties.

Section 3.2. Project Budget. The proposed Project Budget is attached as Exhibit E. If Pre-Development land acquisition or land donation are part of this Project but were funded separately,

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

the Schedules shown in Exhibit E shall be completed for those activities and shall be incorporated into the Project Budget shown in Exhibit E. The proposed Project Budget shall be subject to change or amendment from time to time, subject to prior written approval of the Authorized City Representative. The Authorized City Representative shall not unreasonably withhold such approval if (a) the combined amount of all sources of funds available remains sufficient to pay all anticipated costs of the Project, (b) the proposed amendment to the Project Budget does not adversely affect Developer's ability to complete the Project pursuant to this Agreement, (c) Developer promptly provides written notice of any such proposed amendment to the City, and (d) the proposed amendment does not reflect a material change to the Plans, Specifications and Elevations.

Section 3.3. Schedule of Grants. Attached hereto as Exhibit F and incorporated herein as though set forth in full in this paragraph is the schedule of grants from the City to be paid, and the terms thereof.

Section 3.4. Other Loans, Grants, and Subsidies. Other loans, grants, and subsidies, if applicable, are listed on the attached Exhibit E and incorporated herein as though set forth in full in this paragraph. Other than as set forth on Exhibit E, the Developer shall not encumber the Project without the City's consent.

Section 3.5. Tax Credits. The estimated amount of federal low income housing tax credits are listed on the attached Exhibit E and incorporated herein as though set forth in full in this paragraph. Should the Developer not receive an award of low-income housing tax credits from the New Mexico Mortgage Finance Authority ("MFA") by December 31, 2023, the City Grant funds designated in this Agreement may be undesignated and available for other affordable housing projects, as determined by the City. The Developer shall immediately notify the City of such failure within ten (10) business days of Developer's notification of such failure from the MFA. Failure to notify the City of the Developer's failure to receive an award of low-income housing tax credits is a material Event of Default.

Section 3.6. Request for Disbursement of Funds. The Developer may not request disbursement of funds under the Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. 24 CFR § 92.504(c)(3)(viii).

Section 3.7. Fees. The Developer shall not charge fees that are not customarily charged in rental housing. 24 CFR § 92.504(c)(3)(xi).

## **ARTICLE IV**

### **Commencement and Completion of the Project**

Section 4.1. Agreement to Construct and Complete the Project.

A. Developer shall construct the project in accordance with the Plans, Specifications and Elevations prepared by Developer, including any and all supplements, amendments and additions or deletions thereon or therein, as approved by the City in writing.

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

B. Developer shall construct the Project with all reasonable dispatch and according to the Development Schedule attached as Exhibit G. An updated Development Schedule shall be provided within sixty (60) days after execution of the Agreement and shall be provided as part of the subsequent quarterly reports. Failure to meet the Development Schedule after notice and cure under Article XI is a material Event of Default of this Agreement.

C. Developer shall have sole responsibility for construction of the Project and shall perform the responsibilities itself or through affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner Developer deems necessary or advisable, provided such manner is in conformance with all applicable funding sources. Developer shall procure from the appropriate state, county, municipal and other authorities and corporations appropriate building permits and certificates of occupancy, connection arrangements for the supply of gas, water, electricity and other utilities and discharge of sewage and industrial waste disposal for the operation of the Project.

#### Section 4.2. Establishment of Completion Date.

A. The Developer shall complete the construction of the Project no later than September 30, 2025 (“Completion Date”). Failure to complete the construction by the Completion Date after notice and cure under Article XI, is a material Event of Default of this Agreement.

B. The Completion Date shall be evidenced to the City by (i) final inspection approval by the City of Albuquerque Building Safety Division of all building permits that lead to the completion of the Plans, Specifications and Elevations; (ii) if applicable, a letter of completion and acceptance by the City accepting public infrastructure required to be constructed; (iii) release of liens by contractors, subcontractors and suppliers employed in the project; and (iv) Certificate of Occupancy issued by the City. Such documents shall be delivered to the City promptly after completion of the Project but not later than thirty (30) days after receipt by the Developer, unless an extension of such date has been agreed to in writing by the parties to this Agreement. Notwithstanding the foregoing, such certificates shall state that they are given without prejudice to any rights of the City against any third party, existing at the date of such documents or which may subsequently come into being.

C. At all times during the construction phase, the City may conduct inspections of the Project during normal business hours after giving reasonable notice to Developer. Notwithstanding the above, within five (5) days after substantial completion of each building, Developer shall arrange for a Project walk through with the Developer’s Authorized Representative, City’s Authorized Representative, Construction Contractor and Independent Architect/Engineer to prepare the Project punch list on a unit by unit basis as well as common areas. Developer shall cause each item on the punch list to be remedied no later than thirty (30) days after issuance of the punch list or prior to rental of the apartment unit to the original renter, whichever occurs first.

Section 4.3. Developer to Pursue Remedies against Contractor and Subcontractors and their Sureties. In the event of default by any contractor or subcontractor under any contract made in connection with the Project, Developer shall promptly proceed either separately or in conjunction

with others to exhaust any remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor or subcontractor. Developer may prosecute or defend any action or proceeding or take other action involving such contractor or subcontractor or surety or other guarantor or indemnitor which Developer deems reasonably necessary.

**ARTICLE V**  
**Conditions**  
**Usage and Documentation of Loans or Grants**

Section 5.1. Conditions Precedent to Disbursements of City Loans or City Grants Authorized Under this Agreement. The City and Developer agree that the Developer shall, at the Developer's expense, provide the following documents prior to the commencement of construction.

A. Phase I environmental site assessment.

B. ALTA survey of the Real Property.

C. Developer shall assist the City in complying with all applicable Environmental Review and historic preservation requirements of the U.S. Department of Housing and Urban Development and the State Historic Preservation Office of New Mexico, prior to expending any City HOME funding stipulated under this Agreement. This Agreement does not constitute a full commitment of funds or site approval, and the commitment of funds or site approval may occur only upon satisfactory completion of environmental review and receipt by the City of an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The provision of any funds to the Project is conditioned on the City's determination to proceed with, modify or cancel the Project based on the results of the environmental review.

D. Plans, Specifications and Elevations for the Project. Developer shall submit one complete set of the Design and Development Plans, Specifications and Elevations for the Project to the City. The City shall review and approve the proposed Construction Plans, Specifications and Elevations prior to the commencement of any construction work pursuant hereto. In a case of material change, the Authorized Developer Representative shall certify to the City that such revised Plans, Specifications and Elevations (not to be confused with plans for building permits) will not materially affect the purpose of the Project as set forth herein, provided that no such material change shall be made without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, as determined in the City's sound governmental judgment in compliance with all applicable laws and ordinances. Plans for building permits and other approvals must also be submitted to the appropriate City Departments.

E. Evidence of procurement of all contractors and subcontractors in compliance with 2 CFR Part 200, 24 CFR Part 92 and applicable City regulations.

F. Title Insurance Commitment and Title Insurance Policy.

G. Affirmative Marketing Plan. Developer shall provide to the City an updated affirmative marketing plan along with procedures in conformance with 24 CFR §92.351 and the Fair Housing Act.

H. Schedule of Material Events and Activities. Developer shall provide to the City a projected schedule of material events and activities from the date of acquisition of the Real Property through the stabilized occupancy of the Project by eligible families.

Section 5.2. Use of Grant Proceeds, Repayment, Discharge. The City Grant shall be an amount of no greater than **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**. The City Grant includes all City funds allocated through this Agreement for this Project and shall be used for the development and construction of the Project, and no other purpose.

Section 5.3. Disbursement of City Grant Proceeds Authorized under this Agreement. The City Grant, authorized under this Agreement in the amount of **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**, shall be disbursed to the Developer to pay actual costs incurred by the Development Entity for purposes authorized under this Agreement and per the projected Project budget attached hereto and incorporated herein as Exhibit E.

A. In addition to any other requirements herein, City Grant disbursement shall only be made in the event Developer meets the criteria set forth herein at Section 5.1 and upon the execution of this Agreement by both parties.

B. Developer agrees to provide the City with a Request for City Grant Disbursement, in a form acceptable to the City and substantially similar to Exhibit H, not less than ten (10) days prior to the distribution date.

C. Developer shall submit supporting invoices and documentation for costs actually incurred by and paid for by Developer. Construction costs must be certified by the Architect/Engineer.

Section 5.4. HOME CHDO Funds. The City Grant, authorized under this Agreement in the amount of Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00) includes HOME CHDO Set Aside funds in the amount of **Three Hundred Thirty-Seven Thousand, Sixty-Seven Dollars and Twenty-Five Cents \$337,067.25**.

A. The Developer has been evaluated and meets the requirements of a CHDO as of the time of the award.

B. The Developer understands and agrees that it is subject to all HOME/CHDO requirements, including those described in 24 CFR §92.300, 24 CFR §92.301, and 24 CFR §92.303.

Section 5.4. Grant Documentation. Developer shall collaterally assign the City HOME Note to the City, and the City HOME Note shall be secured by City HOME Mortgage.

Section 5.5. Restrictive Real Estate Covenants. At Closing, Developer shall execute and deliver the Restrictive Real Estate Covenants to the City. To ensure the City's goals in regards to this Project, the City shall require the Restrictive Real Estate Covenants to be recorded at the Closing, which Restrictive Real Estate Covenants shall run with the land, binding upon the Developer, the Development Entity and their successors and assigns.

Section 5.6. Subordination and Release. Upon the City's approval of the Developer's financing arrangements, the City will subordinate the City HOME Mortgage to one or more mortgages for borrowed funds necessary to develop the Project by a Subordination of Mortgage, which form will be subject to negotiation and agreement between the City and the Developer's other lenders. However, the Restrictive Real Estate Covenants will not be subordinated and will continue to run with the land for the term of the Affordability Period.

## **ARTICLE VI**

### **Warranties and Obligations**

Section 6.1. Warranties and Obligations by the City. The City makes the following warranties as the basis for the undertakings on its part contained herein.

A. The City is a municipal corporation organized and existing under and pursuant to the laws of the State of New Mexico and is authorized by the Act to provide financing for, acquire, construct, own, lease, rehabilitate, improve, sell and otherwise assist projects for the purpose of providing adequate residential housing including residential housing for individuals and families of low and moderate income, which is at or below 80% AMI, by inducing private enterprise to locate, develop and expand such residential housing facilities in the City.

B. At Closing, the City shall file or cause to be filed the Restrictive Real Estate Covenants, Deed, City Mortgages and other title documents in the Office of the County Clerk of Bernalillo County.

Section 6.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. Developer is a New Mexico non-profit corporation duly organized and validly existing as such under the laws of the State of New Mexico with authority to perform the transactions set forth herein, that it has the power to enter into this Agreement and by proper action it has duly authorized the execution and delivery of this Agreement.

B. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the compliance with the terms and conditions of this Agreement violate or will violate the terms of Developer's Articles of Incorporation or Bylaws, nor conflict with or result in a breach of any of the terms, conditions or provisions of any corporate

restriction or any agreement or any instrument to which Developer is now a party or by which it is bound, nor constitute or will constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the Real Property or assets of Developer under the terms of any instrument or agreement.

C. There are no pending or threatened legal or administrative proceedings against Developer or affecting the Project which, if determined adversely, would have a material adverse effect on Developer or the Project.

D. The Restrictive Real Estate Covenants attached hereto as Exhibit I, will be binding on the Real Property and the Developer, its successors and assigns, who shall comply therewith.

E. During the HOME Affordability Period, the Developer, the Development Entity, and their successors and assigns, shall comply with the applicable provisions of the following:

1. Requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) and Section 104(d) of the Housing and Community Development Act of 1974, as applicable.

2. Regulations of the Uniform Administrative Requirements as described in 24 CFR §92.505, as applicable.

3. Local housing code requirements, and to allow the City to inspect the Real Property upon demand at all reasonable times.

4. The affirmative marketing plan submitted to the City along with procedures in compliance with 24 CFR §92.351 and the Fair Housing Act.

5. Maintain accurate records which document and verify affirmative marketing efforts.

6. Adhere to all applicable federal, state and local laws, in particular, but not limited to, labor and employment laws regarding construction of public works, including but not limited to: 24 CFR Part 70, and 24 CFR §92.354 (Davis-Bacon Act); 24 CFR Part 5, Subpart A, and 24 CFR §92.350 (Excluded Parties); 24 CFR Part 135 (Section 3); 24 CFR Part 8, 24 CFR §92.504; and 24 CFR §100.205 (Accessibility for Disabled Persons).

7. Maintain the Project as an affordable rental housing project for the HOME Affordability Period.

8. Adhere to initial rents for assisted units (if applicable) set forth in the Restrictive Real Estate Covenants attached to this Agreement as Exhibit I. Any rent increases of the assisted units must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established Utility Allowance, as it may be amended from time to time.

9. Maintain income verification of tenants and their family size residing in affordable units using 24 CFR §5.609 criteria. Income verification and family size documentation must be secured prior to occupancy of the affordable units, and thereafter verified and certified at least annually. Following occupancy, if an affordable unit's tenants' income exceeds 80% of the City's Median Income adjusted for family size, the tenant may remain in the unit; however, the tenant must pay the lesser of 30% of the adjusted monthly income for rent and utilities, or the market rent.

10. Use its best efforts to afford Minority and Women-Owned Business Enterprises (that is, businesses which are at least fifty-one percent owned and controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of this Agreement, as applicable.

11. Execute annual leases, unless otherwise mutually agreed between tenant and owner and permissible under the federal, state and local laws regarding the funding for this Project, with tenants in the affordable units in compliance with 24 CFR §92.253.

F. The Developer shall establish a maintenance reserve fund for the Project in an amount not less than Two Hundred Fifty Dollars and No Cents (\$250.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until all the terms of this Agreement are met and the HOME Affordability Period has expired. From time to time, the City may adjust the maintenance reserve amount to reflect current maintenance costs and will notify Developer in writing of any increase or decrease.

G. The Developer shall assure that the property manager for the facility participates in the Albuquerque Police Department's Crime Free Multi-Housing Program or such equivalent program as may be in existence, and obtains program certification within one year of execution of this Agreement and remains so certified thereafter during the term of this Agreement and until the HOME Affordability Period has expired. Failure to obtain the certifications, or revocation of the certification of the facility or the facility manager, after notice and cure under Section 11.1.B, shall constitute a material default of this Agreement.

H. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project or any portion thereof shall ever be used as a hotel, motel dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

I. At all times during the term of this Agreement and until the HOME Affordability Period has expired, the Project shall comply in all material respects with all applicable zoning and planning ordinances, building codes, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.

J. The Developer shall not, during the term of this Agreement, amend or change its Bylaws or Articles of Incorporation in any manner if such amendment or change would result in a conflict with the terms of this Agreement.

K. The Developer shall comply with the provisions of, and act in accordance with, all applicable federal laws, rules and regulations, and Executive Orders related to equal employment opportunity, affirmative action, equal access to programs and services, and the enforcement of Civil Rights, including, but not limited to, Section 3 of the Housing and Urban Development Act of 1968, Sections 103 and 109 of the Housing and Community Development Act of 1974, as amended, Title VI and Title VII of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act, as amended by the Housing for Older Persons Act of 1995), Sections 502, 503, 504 and 505 of the Rehabilitation Act of 1973, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, as amended, the Vietnam Era Veterans Readjustment Act of 1974, the 1986 U.S. Immigration Reform and Control Act, Americans with Disabilities Act of 1990, Executive Order 11063 of 1962 and Executive Order 11246 of 1965, as amended, and the Nontraditional Employment for Women Act of 1991; the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, as well as all rules and regulations pertaining to each such statute or ordinance; and will not discriminate against any person or applicant because of race, color, religion, sex, national origin or ancestry, physical or mental handicap, sexual orientation, gender identity, disability, or Vietnam-era or disabled veteran status, and will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified applicant for tenancy.

L. The Developer shall comply with all project requirements pursuant to 24 CFR §92.504(c)(3)(iii). Compliance with the project requirements in subpart F, as applicable to the Rental Housing Project, is required.

M. The Developer shall comply with Property Standards as set forth in 24 CFR §92.251). The housing must meet the property standards of 24 CFR §92.251 upon project completion, and must maintain the housing in compliance with 24 CFR §92.251 for the duration of the affordability period.

N. The Developer must comply with the requirements of 24 CFR §92.355 regarding Lead-Based Paint. Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

O. The Developer must comply with all other program requirements of 24 CFR §92.504(c)(3)(v)(A)-(F) (subpart H), including the following:

1. Affirmative marketing plan (24 CFR §92.351): Developer shall submit an affirmative marketing plan in accordance with 24 CFR §92.351 and the Fair Housing Act.

2. Pursuant to 24 CFR §92.350, Developer shall comply with all requirements set forth in 24 CFR Part 5, Subpart A, including nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, drug-free work place, and housing counseling. The non-discrimination requirements at Section 282 of the Act are applicable.

3. Developer must comply with all displacement, relocation, and acquisition requirements, pursuant to 24 CFR §92.353.

4. Developer must comply with all applicable labor requirements of 24 CFR §92.354, including as applicable, the Davis-Bacon Act (40 USC 3141), and the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 USC 3701).

5. Developer must comply with the conflict of interest provisions in 24 CFR §92.356(f).

6. Developer must comply with the provisions of 24 CFR §92.358 regarding consultant activities.

7. Developer must comply with the Violence Against Women Act (VAWA) requirements under 24 CFR §92.359, including the notice obligations and obligations under the emergency transfer plan.

P. The Developer represents that it has been evaluated and meets the requirements of a Community Housing Development Organization (CHDO) at the time of the award.

## **ARTICLE VII**

### **Monitoring/Reports Required**

Section 7.1. The Developer shall report, in writing, at least quarterly during the construction and lease-up phases of the Project. The quarterly report shall include the process of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed, and a certified rent roll showing household size, ethnicity, race, and whether the occupant is female head of household.

Section 7.2. Income received from the rental of affordable units, if funded by HOME, shall be considered Program Income and must comply with 24 CFR §92.503. A Program Income report detailing the uses of Program Income for the reporting period shall be provided by the Developer within thirty (30) days after the close of the quarter until the terms of this Agreement have been met.

Section 7.3. The Developer shall provide an annual report within ninety (90) days of the close of the Developer's fiscal year until the expiration of the HOME Affordability Period. The report shall include, but not be limited to, the financial statements for the Project, Income and Expense Statement for the Project, a Program Income budget, a certified rent roll showing household size, ethnicity, race, whether the occupant is female head of household, date of execution of the occupants' current lease, adjusted gross income and rental rates, and, if applicable, the proposed uses of Program Income for the forthcoming year.

Section 7.4. At any time during normal business hours and as often as the City, its designee, or the appropriate funding entity may deem necessary, there shall be made available to

the City or the appropriate funding entity for examination, all of the Developer's records with respect to all matters covered by this Agreement. The Developer shall permit the City or the appropriate funding entity to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

Section 7.5. The Developer shall comply with all applicable monitoring provisions of the City's housing regulations including but not limited to the City's HOME Policies and Procedures and/or Workforce Housing Regulations, as determined by the City. The Developer shall report as required to the State Department of Workforce Solutions.

## **ARTICLE VIII**

### **Fees, Taxes, Insurance and Other Amounts Payable**

Section 8.1. Payment, Fees and Other Amounts Payable. Developer shall promptly pay or cause to be paid, as the same become due, all governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or other property constructed, installed or bought by Developer therein or thereon which, if not paid, will become a lien on the Real Property prior to or on a parity with the City Mortgages including all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom, provided that during such period, enforcement of any such contested item shall be effectively stayed. If Developer shall fail to pay any of the foregoing items required herein to be paid by Developer, the City may (but shall be under no obligation to) pay the same, and any amounts so advanced therefore by the City shall become an additional obligation of Developer to the City, which amounts, together with interest thereon at statutory judgment interest rate from the date thereof, Developer agrees to pay on demand. Any such amounts so advanced by the City shall be secured by the City Mortgages.

Section 8.2. Payments Required. The obligations of Developer to make the payments required in Section 8.1 hereof and to perform and observe the other agreements on its part contained in this Agreement shall be absolute and unconditional without offset or counterclaim for claims against the City or any other party.

Section 8.3. Maintenance of Project. Developer agrees that, during the term of this Agreement as described in Section 2.2, it shall, at its own expense, keep the Project in a reasonably safe condition and keep the buildings and all other improvements forming a part of the Project in good repair and in good operating condition making, from time to time, all necessary repairs thereto and renewals and replacements thereof. Any tangible property purchased or installed with proceeds from the City Grant or received in exchange for tangible property purchased or installed with proceeds from the City Grant shall become a part of the Project and the Real Property thereof.

Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the City of its intention to do so, Developer may, in good faith, contest any mechanic's or other liens filed or established against the Project and such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Developer determines or the City shall notify Developer that, in the opinion of the City, by non-payment of any such items, the City HOME Mortgage as to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture in which event the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 8.4. Insurance Required. During the construction period and throughout the term of this Agreement, Developer itself through its contractors, subcontractors or agents shall keep the Project insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto, including but not necessarily limited to the following coverage:

A. **COMPREHENSIVE GENERAL LIABILITY INSURANCE.** Developer shall obtain comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$2,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off the Project site and contractual liability coverage which shall specifically insure the indemnification provisions of this Agreement. The above requirement shall include but shall not be limited to protection against damage or destruction of public and private property, including telephone conduit, telegraph conduit, power conduit, telephone signal cables, fiber optics cables, television cables, computer cables, fire alarm circuits, gas mains, water service connections, sanitary sewer, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipelines, storm drains, storm inlet lines including all appurtenances thereto while located below the surface of the ground including injury or death to person or persons caused by Developer's operations including blasting and trenching, backfilling, tamping, with or without the use of mechanical equipment, and the collapse of or structural damage to a building, house or structure including power, telephone, telegraph, fire alarm, street light poles, curb, gutter and sidewalk on public or private property and destruction of or damage to other public or private property resulting therefrom including injury or death to person or persons and all causes by Developer's operations in the removal of other building structures including their supports, trees and utility poles or by excavation including blasting and trenching, backfilling, tamping with or without use of mechanical equipment. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls.

B. **OWNER'S PROTECTIVE PUBLIC LIABILITY INSURANCE.** Developer shall procure, or cause or be procured, and maintain, during the life of construction, an owner's

protective public liability insurance policy with liability limits in an amount not less than \$2,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

C. **WORKER'S COMPENSATION INSURANCE.** Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and maintain, during the life of the Project, complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

D. **BUILDER'S RISK INSURANCE.** Developer shall procure and maintain, until completion of the construction, builder's risk, vandalism and malicious mischief insurance. Alternatively, Developer shall procure and maintain insurance against loss or damage to the Project by fire, lightning, vandalism, and malicious mischief with the uniform extended coverage endorsement limited only as may be provided in the standard form or extended coverage endorsement at the time in use by the State of New Mexico to provide for not less than 90% recovery of the market value of the buildings and other improvements but in any event no less than the cost of fully paying the City Grant.

E. **INCREASED LIMITS:** At any time during the term of this Agreement, the City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply.

F. **PROOF OF INSURANCE:** During the term of this Agreement, not less than once each year, on or before May 31, Developer shall provide to the City without demand, or more frequently upon written demand, proof of all required insurance coverages.

Section 8.5. **Performance, Payment and Other Bonds.** Developer or Contractor shall furnish or cause to be furnished, performance and payment bonds as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts at least equal to the amount of the City Grant and in such form and with such sureties

as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U.S. Treasury Department. The performance bond shall also include coverage for any guaranty period provided by the contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedied as may be available against such surety. Developer shall cause the City to be named a joint obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish a letter or letters of credit in form satisfactory to the City as an alternative to the performance, payment bonds specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

Section 8.6. Additional Provisions Respecting Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained in generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. All applicable policies evidencing such insurance shall name both the City and Developer as named insured and the City shall be named as loss payee as to the City Mortgages under the builder's risk and property insurance required by this Agreement. An original or duplicate copy of the insurance policies providing the coverage required by Section 6 hereof shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed.

Section 8.7. Advances by City. If Developer shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating condition shall permit or shall fail to keep the buildings in good repair and good operating condition, the City may, but shall be under no obligation to, obtain the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements and all amounts so advanced therefore by the City shall become an additional obligation of Developer to the City which amounts, together with any interest thereon at the statutory judgment interest rate thereof, Developer agrees to pay on demand. Any such amounts advanced by the City shall be secured by the City HOME Mortgage and shall be paid upon demand by the City.

## **ARTICLE IX**

### **Damage, Destruction and Condemnation**

Section 9.1. Damage, Destruction and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the

Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or any person, firm or corporation, acting under governmental authority, Developer shall be obligated to continue to repay the City Grant as provided herein. Developer shall cause the net proceeds of insurance or from any award made in such eminent domain proceedings to be applied in one or more of the following ways as may be agreed in writing by the City and Developer:

A. The restoration of the buildings and other improvements located on the Real Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction or the exercise of eminent domain, provided such repair or re-construction is physically and economically feasible.

B. Repayment of the City Grant and extinguishment of the liens, in order of lien priority.

C. In the event City and Developer cannot agree on the approach to take, City shall make the final decision and Developer agrees to be bound by that decision.

## **ARTICLE X**

### **Special Covenants**

Section 10.1. City's Right of Access to the Project. Developer agrees that the City and any of its duly authorized agents shall have the right at all reasonable times to enter upon and examine and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Project.

Section 10.2. Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of a non-profit corporation and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3. Granting of Easements. If no event of default under this Agreement shall then be continuing, Developer may at any time grant easements, licenses, rights-of-way including the dedication of public roads, streets or highways, and other rights or privileges in the nature of easements with respect to any Real Property included in the Project, consistent with the purposes of the Project, or Developer may release existing easements, licenses, rights-of-way and other rights or privileges with or without consideration subject to review and approval by the City. Developer shall furnish to the City a survey showing such easement, license or right-of-way, a copy of the instrument of grant and a certificate executed by a duly Authorized Developer Representative stating that such grant or release is not detrimental to the proper conduct of the business of Developer and that such grant or release shall not impair the effective use or market value, or interfere with the effective operation of the Project.

Section 10.4. Release and Indemnification Agreement. Developer releases the City from, and covenants and agrees that the City shall not be liable to the Developer for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project or the use thereof.

Developer shall defend, indemnify and hold harmless the City from any loss, claim, damage, acts, penalty, liability, disbursement, litigation expense, attorney's fees and expense or court costs arising out of or in any way relating to this Agreement, the City Mortgages, the City Notes or any other cause whatsoever pertaining to the Project, subject to the limitations found in NMSA 1978 § 56-7-1. The City shall promptly, after receipt of notice of the existence of a claim in respect of which indemnity hereunder shall be sought or of the commencement of any action against the City in respect of which indemnity hereunder may be sought, notify Developer in writing of the existence of such claim or commencement of such action. This section shall not apply to the negligent act or failure of the City or of its officials, employees and agents.

This indemnification agreement shall survive the term or termination of this Agreement.

Section 10.5. Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein or in the City HOME Mortgage, during the HOME Affordability Period, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof without the prior written consent of the City. City consent must be given in writing and may require repayment of federal funds to the City. Any conveyance of the Project during the term of this Agreement shall incorporate the Restrictive Real Estate Covenants.

Section 10.6. Authority of Authorized City Representative. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 10.7. Authority of Authorized Developer Representative. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance by the City on the authority of the Authorized Developer Representative shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 10.8. Financial Statement of Developer. During the term of this Agreement, Developer agrees to furnish the City a copy of its audited annual financial statements at least annually. The report and the management letter made on the audit, shall, within thirty (30) days of receipt by the Developer, be transmitted to the City and made available by it for public inspection.

## **ARTICLE XI**

### **Events of Default Defined**

Section 11.1. Events of Default Defined. The following “material events of Default” under this Agreement, also referred to as “Events of Default” or “default” include any one or more of the following events:

A. Failure by Developer to pay within five (5) days of the receipt of notice of monies due any amount required to be paid pursuant to the City Grant.

B. Failure by Developer to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement (other than payment, which is governed under Section 11.1.A. of this Agreement), for a period of ten (10) days after written notice from City to Developer specifying such failure and requesting that it be remedied. Provided, however, if the default in question is not reasonably susceptible to cure within such ten (10) day period Developer shall not be in default if, within such ten (10) day period, Developer notifies City that it has undertaken reasonable measures to cure the default and specifies the nature of such measures, and the City verifies that measures have been undertaken and concurs that they are reasonable measures.

C. Occurrence of any event specifically identified throughout this Agreement as an Event of Default, although an Event of Default is not limited to those instances specifically identified. Should an event specifically identified in this Agreement as an Event of Default occur, the parties shall follow the notice provisions and procedures of Section 11.1.B.

D. Developer agrees that as long as this Agreement is in effect, it shall maintain its existence as a non-profit corporation, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity without the prior written consent of the City, which consent shall be at its reasonable discretion. Failure to abide by this subsection is an Event of Default.

E. The occurrence of an “Event of Default” under the City HOME Mortgage, City HOME Note, or the Restrictive Real Estate Covenants.

Section 11.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City nor any remedy conferred upon or reserved to the City pursuant to the City HOME Mortgage or the City HOME Note is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be herein expressly required.

Section 11.3. Agreement to Pay Attorneys’ Fees and Expenses. If Developer defaults under any of the provisions of this Agreement or the City HOME Mortgage, City HOME Note, or Restrictive Real Estate Covenants and the City employs attorneys or incurs other expenses for the enforcement of performance or observance or any obligations or agreement on the part of Developer herein

contained in this Agreement, the City HOME Mortgage, the City HOME Note, or Restrictive Real Estate Covenants, Developer agrees that it shall on demand therefor pay to the City the reasonable fees of such attorneys and such other reasonable expenses incurred by the City in preserving and protecting the City's rights under this Agreement.

Section 11.4. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either Party and thereafter waived by the Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 11.5. Redemption Period. In the event the City shall elect to foreclose the City Mortgages in accordance with this Agreement, the period of redemption shall be one (1) month in lieu of nine (9) months.

Section 11.6. Remedies Upon Default.

A. Upon any Event of Default ("Default") and regardless of any other notices previously provided, the City may send a Final Notice of Default to Developer describing the Default and requiring cure within fifteen (15) days from the date of the mailing or delivery of the Notice.

B. If the Default is not cured or arrangements satisfactory to the City made to cure the Default, the City may elect to (1) accelerate, impose interest and call due the City HOME Note and the City HOME Mortgage; and (2) sue for compensatory damages suffered by the City due to the Default as well as, if appropriate, punitive damages.

## **ARTICLE XII**

### **Miscellaneous**

Section 12.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City:

Authorized City Representative  
Director, Department of Family and Community Services  
Or Successor Department  
City of Albuquerque  
Post Office Box 1293  
Albuquerque, NM 87103

If to Developer:

Authorized Developer Representative  
Greater Albuquerque Housing Partnership  
320 Gold Avenue SW, Suite 918  
Albuquerque, NM 87102

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

The City and Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communication shall be sent.

Section 12.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, Developer and their respective successors and assigns, subject however to the limitations contained herein.

Section 12.3. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or the Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 12.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the City Mortgages, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties.

Section 12.5. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6. Other Instruments. Developer and the City covenant that they shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such instrument, supplemental hereto and further acts, instruments and transfers as may be required hereunder.

Section 12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico and the laws, rules and regulations of the City of Albuquerque, in addition to federal laws and regulations which apply to this Agreement.

Section 12.8. Recording. This Agreement as well as the City HOME Mortgage, City HOME Note, and Restrictive Real Estate Covenants and every assignment and modification thereof shall be recorded in the office of the County Clerk of Bernalillo County New Mexico.

Section 12.9. No Pecuniary Liability of City. No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the City or the breach thereof shall constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitations of the State of New Mexico or shall constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 12.10. Officials, Agents and Employees Not Personally Liable. No official, agent or employee of the City and no member of the City Council shall be personally liable on this Agreement.

Section 12.11. Waiver. No provisions of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waiver or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 12.12. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 12.13. Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

Section 12.14. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents shall be resolved in favor of the language in this Development Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 12.15. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 12.16. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 12.17. Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 12.18. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 12.19. Assignment and Subletting. Except for the assignment of this Agreement to the Development Entity, the Developer shall not delegate, assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in this Agreement or the

City HOME Mortgage, the City HOME Note, and the Restrictive Real Estate Covenants without the prior written approval of the City. The City has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the services required in this Agreement being performed by any other person or entity other than the Developer.

Section 12.20. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the Owner and Developer, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 12.21. Force Majeure. Except as expressly provided in this Agreement, neither City nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, pandemic, epidemic, or any other similar circumstances for which it is not responsible, are not within its control, or are not reasonably foreseeable. After the termination of any such event of Force Majeure forbearance shall terminate, the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines.

Section 12.22. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 12.23. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project.

Section 12.24. Savings. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 12.25. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the Closing but which are to be performed after the Closing as provided in this Agreement shall survive the closing of this transaction.

Section 12.26. Approval Required. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement. The effective date of this Agreement shall be the date of signature of the highest approval authority required by the City.

Section 12.27. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement and those contained in Exhibit I, Restrictive Real Estate Covenants, attached hereto.

Section 12.28. Electronic Signatures. In accordance with NMSA 1978 § 14-16-1 *et seq.*, the parties agree to accept the use of electronic signatures for purposes of this Agreement. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Where this Agreement requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all upon the final date of signature.

CITY OF ALBUQUERQUE

Approved By:

\_\_\_\_\_  
Lawrence Rael, Chief Administrative Officer  
City of Albuquerque

Date: \_\_\_\_\_

\_\_\_\_\_  
Carol M. Pierce, Director  
Department of Family and Community Services

Date: \_\_\_\_\_

\_\_\_\_\_  
Lauren Keefe, City Attorney

Date: \_\_\_\_\_

DEVELOPER:

Greater Albuquerque Housing Partnership  
(Signature below must be that of a board member or officer authorized to bind the corporation).

By: \_\_\_\_\_  
Felipe Rael, Executive Director

## **Exhibit A**

### **Definitions**

The following additional terms, except where the context indicates otherwise, shall have the respective meanings set forth below:

1. “Act” means the HOME Investment Partnerships Act at Title II of the Cranston-Gonzales National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*
2. “AMI” means Area Median Income which is the annual income figure for a specific geographic area which is determined annually by the U.S. Department of Housing and Urban Development and adjusted for family size.
3. “Authorized City Representative” for the purposes of this Agreement shall be the Director of the Department of Family and Community Services or his/her designee.
4. “Authorized Developer Representative” means the person designated and legally authorized to act on behalf of the Developer.
5. “Buildings” means those certain buildings and all other structures, improvements, equipment, fixtures and facilities described or shown in the plans and specifications forming a part of the Project which are now or hereafter located on the Real Property as they may at any time exist.
6. “City” means the Department of Family and Community Services, City of Albuquerque, New Mexico, which is acting on behalf of the City as manager of this Agreement and does not obligate other City Departments which have separate and distinct obligations in regard to planning, zoning, inspections, licensing and permitting.
7. “City Grant” means that amount of funds authorized under this Agreement and provided through the City to construct the Project.
8. “City HOME Mortgage” means the mortgage against the Real Property, in substantially the form set forth in Exhibit C attached hereto, executed by the Developer in favor of the City to secure repayment of the City Grant in accordance with Section 5.2 herein.
9. “City HOME Note” means the promissory note, substantially in the form attached hereto as Exhibit D, which evidences the obligation of the City Grant, in accordance with Section 5.2 herein.
10. “City Mortgage” means the City HOME Mortgage.
11. “City Note” means the City HOME Note.

12. “Closing” means the event of the real estate closing of the City Grant and transfer of the Real Property wherein all parties and all sources of Project funding are identified as shown in Exhibit E, and the City HOME Mortgage, the City HOME Note, and the Restrictive Real Estate Covenants are executed by Developer in favor of the City and recorded in the County Clerk’s office.
13. “Completion Date” means the date of completion of the construction of the Project as that date shall be certified pursuant to Section 4.2 hereof.
14. “Construction Period” means the period between the beginning of construction or installation of the Project and the Completion Date.
15. “Council” means the Council of the City or any successor governing body of the City.
16. “Developer” means the natural or artificial person who enters into a Development Agreement with the City for the purpose of constructing, owning or managing a Project under the Act. The term Developer includes the initial entity, its partners, successors, assigns, agents and representatives.
17. “HOME Affordability Period” means twenty (20) years from the City’s completion of the Project in the HUD Integrated Disbursement and Information System (IDIS).
18. “HOME Assisted Unit” means that residential unit, which either directly, or indirectly, has received financial assistance for acquisition and/or construction from funds authorized in the Act. In rental projects where the funds provided through the Act are only a portion of the total Project cost, a prorated number of units shall be defined in Exhibit I – Restrictive Real Estate Covenants and designated as floating HOME-assisted units.
19. “Net Proceeds” when used with respect to any insurance payment or condemnation award means the gross proceeds from the insurance payment or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorney’s fees) incurred in the collection of such gross proceeds.
20. “Person” means any natural person, firm association, trust, partnership, corporation or public body.
21. “Plans, Specifications and Elevations” means the plans, specifications and elevations for the Project as they shall be revised by Developer pursuant to Section 5.1 hereof.
22. “Program Income” means that portion of income generated from the Project subject to the requirements of 24 CFR Part 92 for HOME funded projects.
23. “Project” means the residential apartment development to be constructed upon the Real Property, including Buildings, related on-site and off-site improvements, equipment and related rights therein.

24. “Real Property” or “Property” means the real estate that is described in Exhibit B, and improvements thereon (if any), interest in real estate and other rights purchased under this Agreement and any instrument supplementing or amending this Agreement together with all additions thereto and substitutions therefore, less such real estate and interests in real estate taken by the exercise of the power of eminent domain as provided herein.

25. “Restrictive Real Estate Covenants” means those real estate covenants imposed on the Property in the form attached as Exhibit I to insure the City’s goals in regards to the Project.

26. “Special Needs” households means people experiencing homelessness and/or people with physical or developmental disabilities or chronic mental illnesses as defined in HUD’s Handbook 4571.2, Section 1-5, Parts A.2. and A.3.

27. “Utility Allowance” is the amount established by a schedule that is appropriate for a specific rent to cover the cost of utilities that are paid to the utility company as approved by the City.

## **Exhibit B**

Greater Albuquerque Housing Partnership  
Farolito Senior Community

10501 Central Avenue NE

**Parcel A as shown on the Boundary Survey of Tract C, Video Addition and Parcels of Land Owned by the State of New Mexico Situated Within the NW1/4 NW1/4 Sec.28,T10N, R4E, NMPM, April 2016, recorded with the County Clerk of Bernalillo County on February 12, 2020 as Doc. No. 2020013489, containing 2.2856 acres, more or less.**

**Exhibit C**

**Greater Albuquerque Housing Partnership**

**FAROLITO SENIOR COMMUNITY**

HOME Investment Partnerships (HOME)  
**MORTGAGE AND SECURITY AGREEMENT**  
(Not to Exceed the Principal Sum of \$8,374,304.00)

KNOW ALL MEN BY THESE PRESENTS THAT this instrument ("Mortgage") made this \_\_\_\_ day of \_\_\_\_\_, 2023, between FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership, whose address is 320 Gold Avenue SW, Suite 918, Albuquerque, NM 87102, as mortgagor ("Borrower"), and THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, a New Mexico non-profit corporation, whose address is 320 Gold Avenue SW, Suite 918, Albuquerque, NM 87102, as mortgagee ("Lender").

**WITNESSETH:**

WHEREAS, Borrower is indebted to Lender for the City Grant in the amount of **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**, which indebtedness is evidenced by that certain Promissory Note of even date herewith (the "City Note"); and

WHEREAS, Lender has entered into that certain agreement, entitled "Development Agreement" with the City of Albuquerque, New Mexico, and THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP ("Development Agreement") as of \_\_\_\_\_, 2023, which Development Agreement has been assigned by Lender to Borrower and assumed by Borrower and provides for the Borrower to construct a certain affordable housing project ("Project"), as defined and described in said Development Agreement; and

WHEREAS, the Borrower and Lender have also filed certain Restrictive Real Estate Covenants in favor of the City which restrict the use of the real property described below for the purposes underlying the grant evidenced by the City Note; and

WHEREAS, the Project shall be continued for twenty (20) years from the completion of the project in the Department of Housing and Urban Development's (HUD's) Integrated Disbursement Information System (which 20-year period is hereinafter identified as the "Affordability Period").

NOW THEREFORE, BORROWER DOES HEREBY MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, AND GRANT A SECURITY INTEREST IN AND CONVEY TO LENDER, its successors and assigns, all of Borrower's estate, right, title, and interest in, to and under any and all of the following described real property, whether now owned or hereafter held or acquired, with mortgage covenants:

(a) All of Borrower's fee simple estate and interest in those certain parcels of real property situated in the City of Albuquerque, County of Bernalillo, and State of New Mexico, and containing:

**Parcel A as shown on the Boundary Survey of Tract C, Video Addition and Parcels of Land Owned by the State of New Mexico Situated Within the NW1/4 NW1/4 Sec.28,T10N, R4E, NMPM, April 2016, recorded with the County Clerk of Bernalillo County on February 12, 2020 as Doc. No. 2020013489, containing 2.2856 acres, more or less.**

Which has the address of 10501 Central NE, Albuquerque, New Mexico 87123, and which is referred to hereafter as the "Property;"

(b) All rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "Rents"), including but not limited to those payable pursuant to any leases or licenses to use the Property, subject to the right, power and authority hereinafter given to Borrower to collect and apply such Rents and all leasehold estates, right, title and interest of Borrower in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Borrower thereunder, including without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

(c) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditament, and appurtenances belonging or in anywise appertaining to the aforesaid Property, now existing or hereafter acquired, installed, or constructed and the reversion or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Borrower of, in, and to the same, and of, in and to every part and parcel thereof;

(d) All right, title and interest of Borrower, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property to the centerline hereof;

(e) All right, title and interest of Borrower in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the City Note);

(f) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Borrower;

(g) To the extent assignable, any and all plans, specifications, site plans, drawings, renderings and schematics, however characterized, from time to time prepared for use in connection with the construction and operation of the Project;

(h) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Property or the Project, including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to hotel operations, franchise agreements and other similar agreements;

(i) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, bar or restaurant permits, liquor or cabaret licenses, food service operation licenses, elevator licenses, warranties and guaranties; and

(j) All municipal or utility deposits made by or on behalf of Borrower or made in connection with the Property or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Borrower hereunder, and any and all other assets revenues and profits of any kind of the Project.

(k) All right, title and interest of Borrower in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired by Borrower;

(l) All interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property;

(m) All easement, rights-of-way and rights used in connection therewith or as a means of access thereto or which are otherwise of benefit thereto or to the users thereof, and all tenements, hereditaments and appurtenances thereof and thereto;

(n) All the estate, right, title, interest, other claim or demand which Borrower now has or may hereafter acquire in any contract for the sale or other disposition of the Property or any portion thereof, and any and all proceeds to Borrower thereunder;

(o) All the estate, interest, right, title, other claim or demand, which Borrower now has or may hereafter acquire in any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

(p) All the estate, interest, right, title and other claim or demand which Borrower now has or may hereafter acquire with respect to the proceeds of insurance in effect with respect to all or any part of the Property; and,

(q) All the estate, interest, right, title and other claim or demand which Borrower now has or may hereafter acquire against anyone with respect to any damage to all or any part of the Property, including without limitation, damage arising from any defect in or with respect to the design or construction of all or any part of the Improvements and damage resulting therefrom.

All and the entire estate, property and interest hereby conveyed to Lender and herein described in the foregoing subparagraphs (a) through (q) shall sometimes hereinafter be collectively referred to as the "Property." All of the assignments hereinabove referenced are subject to the right of Borrower to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid loan indebtedness, exclusive of interest thereon, which may be outstanding at any time is **Eight Million, Three Hundred Seventy-Four Thousand, Three Hundred Four Dollars and No Cents (\$8,374,304.00)**, provided that the maximum amount secured by this Mortgage shall not in any way imply that Lender shall be obligated to advance any amounts at any time.

### **THE SECURED OBLIGATION**

This Mortgage secures the performance of the following obligations: (i) the repayment of the indebtedness evidenced by the City Note as disbursed to Borrower from time to time, together with interest thereon, in accordance with the payment provisions set forth in the Agreement, the City Note, the Restrictive Real Estate Covenants and all renewals, extensions and modifications thereof, and the performance of all covenants contained therein, and the payment of such amounts, if any, advanced, or costs incurred by Lender in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or City Note; (ii) the performance of the covenants, agreements and obligations of Borrower contained herein, and as also contained in the Agreement, the City Note and the Restrictive Real Estate Covenants, and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of advances made for the payment of taxes, tax increment payments, assessments, insurance premiums, and other costs incurred for the protection of the Real Property or the Project, if not paid by Borrower as required by law or this Mortgage.

### **ARTICLE I** **COVENANTS AND AGREEMENTS OF BORROWER**

To protect the security of this Mortgage, Borrower hereby covenants and agrees as follows:

1.1. Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the City Note, and charges, fees and other sums as provided by the Restrictive Real Estate Covenants and the Agreement, and the principal of and interest on, any future advances secured by this Mortgage. This Mortgage, the City Note, the Restrictive Real Estate Covenants and the Agreement and any other instrument given to evidence or further secure

the payment and performance of any obligation secured hereby, may hereafter be referred to as the “Loan Instruments.”

1.2. Application of Payments. All payments under the Loan Instruments and this Mortgage shall be applied by Lender as follows:

- (a) First, to any tax payment not paid by Borrower and fire, flood and other hazard insurance premiums required by this Mortgage and not paid by Borrower;
- (b) Second, to interest due under the Note;
- (c) Third, to the principal; and
- (d) Fourth, to late charges due under the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, if any, of the Periodic Payments.

1.3. Maintenance, Repair, Alterations. To keep the Property in good condition and repair; to construct or alter existing and future improvements of any kind only in accordance with plans and specifications that have been approved in writing by Lender, which approval not be withheld unreasonably (except alterations as may be required by laws, ordinances or regulations and minor alterations in the normal course of business); not to demolish any of the Improvements; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvements which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor (subject to the right to contest mechanic’s and materialman’s liens pursuant to the section entitled “Liens”), to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Property; to keep and maintain abutting grounds, sidewalks, roads, parking and landscaping areas in good and neat order and repair; not to commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation.

1.4. Required Insurance. To provide, maintain and keep in force to the extent from time to time required by Lender, and as required by the Loan Instruments, the following policies of insurance:

- (a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as “fire and extended coverage,” in an amount not less than one hundred percent (100%) of the full replacement costs of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor). The policies of insurance carried in accordance with this subparagraph (a) shall contain the “Replacement Cost Endorsement;”
- (b) Comprehensive public liability insurance on an “occurrence basis” against claims for “personal injury” including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit reasonable determined by Lender with respect to personal injury or death to any one or more persons or damage to property;

- (c) Insurance against loss or damage to any personal property that is part of the Property by fire and other risks covered by insurance of the type now known as “fire and extended coverage,” in an amount not less than one hundred percent (100%) of the insurable value of such personal property, excepting collision on any motor vehicles constituting part thereof;
- (d) Business interruption insurance and/or loss of “rental value” insurance in such amounts as are satisfactory to Lender;
- (e) During the course of any construction or repair of Improvements on the Property, comprehensive public liability insurance including Builder’s Risk and Fire Insurance (including coverage for elevators and escalators, if any, on the Property and if any construction of new Improvements occurs after execution of this Mortgage, completed operations coverage for two years after construction of the Improvements has been completed) on an “occurrence basis” against claims for “personal injury,” including without limitation bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit of not less than that required by Lender with respect to personal injury or death to any one or more persons or damage to property;
- (f) During the course of any construction or repair of Improvements on the Property, worker’s compensation insurance (including employer’s liability insurance, if required by Lender) for all employees in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;
- (g) During the course of any construction or repair of Improvements on the Property, builder’s completed value risk insurance against “all risks of physical loss,” including collapse and transit coverage, during construction of such Improvements, with deductibles reasonably acceptable to Lender, in non-reporting form, covering the total values of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the “permission to occupy upon completion of work or occupancy” endorsement;
- (h) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are satisfactory to Lender; and
- (i) Such other insurance, and in such amounts, as may from time to time be required by Lender against the same or other hazards.

1.5. Delivery of Certificate, Payment of Premiums. Upon execution hereof and thereafter upon written request by Lender, Borrower shall furnish Lender with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. Prior to the expiration of each such policy, Borrower shall furnish Lender with evidence satisfactory to Lender of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event Borrower fails to provide, maintain, keep in force or deliver and

furnish to Lender the policies of insurance required by this Section, Lender may procure such insurance or single interest insurance for such risks covering Lender's interest and Borrower will pay all premiums thereon promptly upon demand by Lender.

1.6. Insurance Proceeds. That after the happening of any casualty to the Property or any part thereof, Borrower shall give prompt written notice thereof to Lender. All proceeds of insurance payable with respect to any such casualty shall be paid to Lender, and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender. Lender is hereby authorized and empowered by Borrower to settle, adjust or compromise any claims of loss, damage or destruction under any policy or policies of insurance, provides that Borrower consent to any such settlement, adjustment or compromise, which consent shall not be withheld unreasonably. Except to the extent that insurance proceeds are received by Lender and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Borrower for repairing or maintaining the Property as provided in Section 1.2 hereof or restoring all damage or destruction to the Property, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any Default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.7. Assignment of Policies upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Borrower in and to all policies of insurance required by this Mortgage shall inure to the benefit of and pass to the successor in interest of Borrower or the purchaser or grantee of the Property.

1.8. Indemnifications; Subrogation.

- (a) If Lender is made a party defendant to any litigation concerning this Mortgage or the Property or any part thereof or interest therein, or the occupancy thereof by Borrower, then Borrower shall indemnify, defend and hold Lender harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Lender in any such litigation, whether or not any such litigation is prosecuted to judgment. Notwithstanding the foregoing, such agreement to indemnify, to the extent, but only to the extent, it relates to the construction, installation, alteration, modification, repair, maintenance, servicing, demolition, excavation, drilling, reworking, grading, paving, clearing, site preparation or development, of real property, or any improvement of any kind whether on, above, or under real property, including without limitation, buildings, shafts, wells and structures, shall not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by Lender or its agents or employees; or (ii) the giving of or the failure to give directions or instructions by the Lender or its agents or employees, where such giving or failure to give directions is the primary cause of bodily injury to persons or damage to property. If Lender commences an action against Borrower to enforce any of the terms hereof or because of the breach of Borrower of any of the terms hereof, or for the recovery of any sum secured hereby, Borrower shall

pay to Lender reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

- (b) Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.
- (c) All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance of any interference with any use of the Property or any part thereof; (iv) any title defect or encumbrance or any eviction from the Property or any part hereof by title paramount or otherwise; (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

1.9. Taxes and Impositions.

- (a) Borrower agrees to pay, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.
- (b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Borrower pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or

assessment imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Borrower shall pay and discharge the same as herein provided with respect to the payment of Impositions. Anything to the contrary herein notwithstanding, Borrower shall have no obligation to pay any franchise, estate, inheritance income, excess profits or similar tax levied on Lender or on the obligations secured hereby.

- (c) Subject to the provisions of subparagraph (d) of this Section 1.9., Borrower covenants to furnish Lender upon Lender's request from time to time official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payments thereof.
- (d) Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.9., unless Borrower has given prior written notice to Lender of Borrower's intent to contest or object to an Imposition, and unless, at Lender's sole option, (i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, in order to satisfy such Imposition prior to final determination of such proceedings; or (ii) Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; or (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

1.10. Utilities. To pay when due all utility charges which are incurred by Borrower for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.11. Actions Affecting Property. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Lender; and to pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Lender may appear.

1.12. Actions by Lender to Preserve Property. That should Borrower fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Lender, in its sole and absolute discretion, but without any obligation to do so and without releasing Borrower from any obligation, without prior notice or demand upon Borrower, may make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Lender shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which it may consider necessary or proper to keep the Property in good condition and repair; (iii) to appear and participate in any

action or proceeding affecting or which may affect the security hereof or the rights or powers of the Lender; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Lender may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Borrower shall, immediately upon demand therefor by Lender, pay all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

1.13. Survival of Covenants and Warranties. To satisfy and perform fully and faithfully the obligations of Borrower contained in the Loan Instruments, and each agreement of Borrower incorporated by reference therein or herein, and any modification or amendment thereof. All representations, warranties and covenants of Borrower contained therein or incorporated by reference shall survive the closing and funding of any loan evidenced by the Loan Instruments and shall remain continuing obligations, warranties and representations of Borrower during any time when any portion of the obligations secured by this Mortgage remains outstanding.

1.14. Eminent Domain. That should the Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding or in any other manner ("Condemnation"), or should Borrower receive any notice or other information regarding such proceeding, Borrower shall give prompt written notice thereof to Lender. Lender shall be entitled to join in any action or proceedings for compensation, award and other payments or relief for Condemnation ("Proceeds") and shall be entitled to hold all Proceeds therefrom. All Proceeds shall be paid to Lender and shall be applied by Lender to any indebtedness secured hereby and in such order as Lender may determine.

1.15. Additional Security. That in the event Lender at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.16. Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Lender" shall mean the owner and holder of the Note, whether or not named as Lender herein.

1.17. Inspections. That Lender, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.18. Liens. To pay and discharge promptly, at Borrower's cost and expense, all liens, encumbrances and charges upon the Property, or any part thereof or interest therein; provided that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than fifty-five (55) days after the performance thereof. Borrower shall have the right to contest in good faith

the validity of any such lien, encumbrance or charge, provided Borrower shall first deposit with Lender a bond or other security satisfactory to Lender in such amounts as Lender shall reasonably require, but not more than one hundred twenty-five percent (125%) of the amount of the claim, and provide further that Borrower shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Borrower shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.19. Easements. The existence and lien of this Mortgage shall not impede or affect the right of Borrower from time to time with respect to all or a portion of the Premises, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Borrower.

## **ARTICLE II**

### **ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

2.1. Assignment of Rents. Borrower hereby assigns and transfers to Lender all the rents, issues and profits of the Property, including but not limited to those payable pursuant to any Lease, and hereby gives to and confers upon Lender the right, power and authority to collect such rents, issues and profits. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower or Lender, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Borrower shall have the right to collect such rents, issues and profits (but not more than two (2) months in advance) prior to or at any time there is not an event of default under any of the Loan Instruments. The assignment of rents, issues and profits of the Property in this Article II is intended to be an absolute assignment from Borrower to Lender and not merely the passing of a security interest. The rents, issues and profits are hereby assigned absolutely by Borrower to Lender contingent only upon the occurrence of a Default hereunder.

2.2. Collection upon Default. Upon any Default, Borrower may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Lender may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any Default or notice of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default.

## **ARTICLE III**

### **SECURITY AGREEMENT**

3.1. Creation of a Security Interest. Borrower hereby grants to Lender a security interest in the Personal Property, wherever located, including but not limited to those items described in the granting clause (b), above, and all property of similar type or kind, wherever located, and the proceeds therefrom, for the purpose of securing all obligations of Borrower contained in any of the Loan Instruments.

3.2. Warranties, Representatives and Covenants of Borrower. Borrower hereby warrants, represents and covenants as follows:

- (a) Except for the security interest granted hereby, Borrower is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the interest, encumbrance or adverse claims thereon of any person claiming by, under or through Borrower, except for such liens and encumbrances as may be expressly permitted by the Loan Instruments. Borrower will notify Lender of, and will defend the Personal Property against, all claims and demands of all persons claiming any interest therein by, under or through Borrower.
- (b) The Personal Property is not used or bought for personal, family or household purposes.
- (c) The Personal Property will be kept on or at the Property and Borrower will not remove the Personal Property from the Property without the prior written consent of Lender, except such portions or items of Personal Property as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower.
- (d) Borrower maintains its principal place of business in the State of New Mexico and Borrower will immediately notify Lender in writing of any change in its place of business as set forth in the beginning of this Mortgage.
- (e) Borrower approves Lender to execute and file one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of New Mexico in form satisfactory to Lender, and, if required by Lender, to pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable.
- (f) All covenants and obligations of Borrower contained herein relating to the Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.
- (g) This Mortgage constitutes a Security Agreement as the term is used in the Uniform Commercial Code of New Mexico.

#### **ARTICLE IV**

#### **REMEDIES UPON DEFAULT**

4.1. Events of Default. Any of the following events shall be deemed an event of default ("Default") hereunder:

- (a) Failure to pay installment of principle or interest or any other sum secured hereby by its due date and such failure is not cured within five (5) business days after receipt of written notice from the Lender, such failure to pay or cure shall constitute an immediate default entitling the Lender to exercise any remedy hereafter

described in this paragraph, or elsewhere in this Mortgage, the City Note, or the Agreement; or

- (b) Borrower shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce to the appointment of any trustee, receiver or liquidator of Borrower or of all or any part of the Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;
- (c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Borrower seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Borrower or of all or any part of the Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Borrower and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive);
- (d) There has occurred a breach of or default, not otherwise referred to in this Section 4.1, under any term, covenant, agreement, condition, provision, representation or warranty contained in the City Note or any other Loan Instruments or any part thereof, subject to any notice of cure rights expressly set forth in such Loan Instruments.

4.2. Acceleration upon Default, Additional Remedies. In the event of any Default, Lender may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Lender may:

- (a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Borrower, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured hereby, all in such order as Lender may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Default and, notwithstanding the continuance in

possession of the Property or the collection, receipt and application of rents, issues or profits, Lender shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any Default;

- (b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;
- (c) Exercise any other remedy available under the laws of the State of New Mexico.

4.3. Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, pledge, lien assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Lender or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender and Lender may pursue inconsistent remedies.

4.4 Notice to the City of Albuquerque of any Event of Default. Lender shall notify the City of Albuquerque should any Event of Default occur.

## **ARTICLE V**

### **MISCELLANEOUS**

5.1. Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico.

5.2. Borrower Waiver of Rights. To the extent permitted by law, Borrower waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before the sale of any portion of the Property, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the City Note, the Loan Instruments or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Borrower, for Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of

election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. If this Mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of New Mexico pertaining to the rights and remedies of sureties.

5.3. No Waiver. The waiver by the Lender of any breach of any term, covenant or condition contained in this Mortgage, the City Note, or all other Loan Instruments shall not be deemed to be a waiver thereof on any subsequent occasion. The Lender shall not be deemed to have waived any term, covenant, or condition of this Mortgage, the City Note or all other Loan Instruments unless Lender has signed a written waiver waiving the term, covenant, or condition.

5.4. Limitation of Interest. This Mortgage, the City Note, and all other Loan Instruments between Borrower and Lender are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of deferment in accordance with the City Note or any other present or future agreement, or advancement of the proceeds of the loan evidenced thereby, acceleration of maturity of the loan, or otherwise, shall the total amount paid or agreed to be paid to the hold of the City Note for the loan, use forbearance or detention of the money to be loaned under the City Note, including without limitation all non-default interest, all default interest, any commitment or loan fees, all late charges, and all reimbursable charges or costs (including, but without limitation, inspection fees and appraisal review fees) which may be treated as interest, exceed the maximum permissible under applicable law, if any. If, from any circumstance whatsoever, fulfillment of any provision hereof or of the Agreement, the City Note or any other Loan Instruments shall or would involve transcending the limit of validity prescribed by applicable law, if any, then ipso facto, the obligation of the undersigned to be fulfilled shall be reduced to the limit of such validity. To the extent the undersigned has the power to do so, the undersigned agrees that the only such laws relevant to maximum permissible interest shall be any relevant laws of the State of New Mexico in effect on the date of the City Note. The provision of this paragraph shall never be superseded or waived and shall control every other provision of the Note, the Agreement, and all other Loan Instruments. In the event any holder of the City Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the City Note to a rate in excess of that permitted to be charged by the laws of the State of New Mexico, all such sums deemed to constitute interest in excess of the legal rate shall, at the election of Lender in its discretion, be immediately applied to principal or returned to the Borrower upon such determination.

5.5. Statements by Borrower and Lender. Borrower and Lender, within ten (10) days after written request therefor, will furnish to the other a written statement stating the unpaid principal of and interest on the City Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest.

5.6. Release by Lender. Upon payment of all sums hereby, Lender shall release to Borrower, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder.

5.7. Notice. Whenever Borrower or Lender shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing, shall be personally delivered, mailed by certified U.S. mail, return receipt requested, delivery by express courier service, and any such notice shall be effective upon actual receipt or receipt showing denial of delivery. Addresses for notice hereunder are as follows:

**LENDER:**

Greater Albuquerque Housing Partnership  
320 Gold Avenue SW, Suite 918  
Albuquerque, NM 87102

**BORROWER:**

Farolito Apartments Limited Partnership LLLP  
320 Gold Avenue SW, Suite 918  
Albuquerque, NM 87102

**CITY of ALBUQUERQUE:**

Director, Department of Family and Community Services  
P.O. Box 1293  
Room 504  
Albuquerque, NM 87103

Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.8. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured hereby, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the indebtedness, and all payments made on the indebtedness, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the indebtedness which is not secured or fully secured by the lien of this Mortgage. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

Mortgage shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the Lender or Borrower in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Mortgage.

5.9. Due on Sale. Except as otherwise expressly provided in the City Note or Loan Instruments, if at any time:

- (a) Borrower should, without the prior written consent of Lender, assign, sell, convey or otherwise transfer its interest in the Property or any part thereof, including without limitation as assignment in liquidation or dissolution of Borrower, or
- (b) by operation of law, including without limitation, merger, consolidation, reorganization or the like, the Borrower's interest in the Property or any part thereof should be assigned, sold or otherwise transferred without the prior consent in writing of Lender, then Lender may, at its sole option, declare all sums secured hereby immediately due and payable. Consent to such a transaction shall not be deemed to be a waiver of Lender's right to require such consent to further or successive transactions.

5.10. Headings and Captions. Captions and headings of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

5.11. Redemption Period. In the event of foreclosure of this Mortgage, the period of foreclosure shall be one month in lieu of the statutory redemption period of nine months.

5.12. Subordination and Release. Upon the City's approval of the Developer's financing arrangements, the City will subordinate the City Mortgage to one or more mortgages for borrowed funds necessary to develop the Project. However, the Restrictive Covenants will not be subordinated and will continue to run with the land for the term of the HOME Affordability Period.

(THIS SPACE INTENTIONALLY LEFT BLANK)

FAROLITO APARTMENTS LIMITED  
PARTNERSHIP LLLP, a New Mexico limited  
liability limited partnership

By: FAROLITO SENIOR LLC, a New Mexico  
limited liability company, General Partner

By: THE GREATER ALBUQUERQUE  
HOUSING PARTNERSHIP, Manager

By: \_\_\_\_\_  
Felipe Rael, Executive Director

STATE OF NEW MEXICO     )  
  ) ss:  
COUNTY OF BERNALILLO     )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2023, by Felipe Rael, Executive Director of THE GREATER ALBUQUERQUE HOUSING  
PARTNERSHIP, Manager of FAROLITO SENIOR LLC, General Partner of FAROLITO  
APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited  
partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## Exhibit D

### Greater Albuquerque Housing Partnership

#### FAROLITO SENIOR COMMUNITY HOME Investment Partnerships (HOME) PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability partnership ("Maker"), promises to pay to the order of THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, a New Mexico nonprofit corporation ("Holder"), or its assigns, the principal sum of **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**, which is the value of a City HOME Investment Partnership Grant, or so much thereof as shall have been advanced to Maker by Holder from time to time, together with all charges as provided herein and in the Mortgage, as hereinafter defined, and accrued interest on the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On \_\_\_\_\_, 2023, Holder and the City of Albuquerque, New Mexico (the "City"), entered into a Development Agreement, (the "Development Agreement"), concerning the construction and development of an affordable housing community known as the Sterling Apartments Project in the City of Albuquerque, New Mexico (the "Project") and, pursuant to the Development Agreement, a Grant has been made to Holder by the City (the "Grant").

The loan represented by this Promissory Note ("Note") is being made with the Grant. In consideration for the loan evidenced hereby, Maker agrees that it will comply with the applicable obligations and use restrictions respecting the Project set forth in the Restrictive Real Estate Covenants, dated \_\_\_\_\_, 2023 (the "Restrictive Real Estate Covenants"). Maker agrees that it will reasonably cooperate with Holder in connection with Holder's audit and other reporting requirements to the City and the State of New Mexico in connection with the loan evidenced hereby.

The Note will accrue interest at the rate of \_\_\_\_\_ (\_\_\_%) per annum.

The proceeds of the loan evidenced by this Note may be assigned, with the prior written approval of both the City and Holder, to any successors, assignees or purchasers of the Project (each a "Successor Owner") who agree in writing to assume all obligations of Maker under the Development Agreement, the Mortgage, as herein defined, and this Note, and Maker will thereupon be released from all future liability hereunder, and such Successor Owner(s) will thereafter be treated as the "Maker" for all purposes hereunder.

On or before January 1, \_\_\_\_, and on or before each January 1 thereafter, the Maker shall make a payment on this Note to the extent of Residual Receipts for the immediately preceding year. "Residual Receipts" shall mean Net Cash Flow of the Maker (as that term is defined in the Amended and Restated Agreement of Limited Partnership of the Maker dated as of \_\_\_\_\_, 2023) (the "Partnership Agreement") to the extent remaining to be distributed after the Partnership Services Fee (as that term is described in the Partnership

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

Agreement) in the priority set forth in Section \_\_\_\_ of the Partnership Agreement. If not sooner paid, the entire outstanding balance of the principal sum and all accrued and unpaid interest thereon will be immediately due and payable in full on the earlier of (i) December 31, \_\_\_\_, (ii) upon Maker's default or breach of this Note, subject to the notice and cure provisions set forth herein, or (iii) in the event of a sale or refinancing of the Project.

All payments of principal and interest hereunder are payable in lawful money of the United States at Holder's office at 320 Gold Ave., SW, Suite 918, Albuquerque, New Mexico 87102, or at such other place as Holder may from time to time give notice in writing to Maker. All payments received hereunder will be applied first to accrued interest as of the date of payment and then to the outstanding principal balance of this Note.

This Note is secured by a Mortgage and Security Agreement of even date herewith, recorded in the real property records of Bernalillo County, New Mexico (the "Mortgage"), conveying a mortgage and security interest in the Project and the real property constituting the site therefor. All of the provisions of the Mortgage are incorporated herein by reference.

Prepayments of all or any part of the balance of this Note may be made at any time and from time to time by Maker. No premium or penalty will be charged in connection with such prepayment.

The occurrence of any of the following is a default of the terms of this Note: (i) Maker fails to pay when due any installment of principal or interest hereunder; (ii) Maker dissolves or otherwise fails to maintain its status as a New Mexico limited liability limited partnership; or (iii) Maker fails to perform the covenants contained in this Note, the Mortgage, the Development Agreement or the Restrictive Real Estate Covenants.

In the event the City requires repayment by Holder of the Grant, or any part thereof, Holder may, at its option, accelerate the indebtedness evidenced hereby to the extent of such repayment obligation, subject to the terms herein, including the notice and cure provisions below. If Holder fails to make any such repayment when due, Maker will have the right to make the required repayment directly to the City and will be entitled to full credit for all such payments against amounts otherwise due to Holder under this Note.

Upon an event of default hereunder, Holder shall provide notice thereof to Maker (a "Default Notice") and to the City of Albuquerque. Maker will have thirty (30) days after receipt of a Default Notice to cure the default addressed therein (the "Cure Period"). If such default is reasonably capable of being cured within the Cure Period, Maker will have such period to effect a cure prior to exercise of remedies by Holder under this Note and the Mortgage. If such default is such that it is not reasonably capable of being cured within the Cure Period and if Maker initiates corrective action within the Cure Period and diligently and in good faith works to effect a cure as soon as possible, then Maker shall have such additional time as is reasonably necessary to cure such default. Unless and until Maker receives a Default Notice, no action or inaction by or on behalf of Maker will be deemed an event of default hereunder, triggering Maker's obligation to cure or to pay the indebtedness evidenced hereby. In the event Maker receives a Default Notice and fails to cure the applicable default or Maker and Holder have not agreed in writing to a settlement thereof within the Cure Period, as extended, the whole unpaid balance hereof will, at

once or at any time thereafter during the continuance of such default, at the option of Holder, become immediately due and payable, and Maker will pay on demand to Holder all costs and expenses, including reasonable attorney's fees, incurred by Holder in pursuing its remedies under this Note.

Maker's limited partner (the "Limited Partner") may, at its option, cure any default for a period of thirty (30) days following notice thereof, which period may be extended with the prior consent of Holder if the Limited Partner has initiated efforts to cure the default within such thirty (30) day period and continues to diligently pursue those efforts to completion. Any cure of any default made or tendered by the Limited Partner will be deemed to be a cure by Maker and will be accepted or rejected on the same basis as if made or tendered by Maker.

All notices to Maker given hereunder must be in writing, must be hand delivered or sent by overnight courier or by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

Maker: Farolito Apartments Limited Partnership LLLP  
320 Gold Ave., SW, Suite 918  
Albuquerque, New Mexico 87102

Limited Partner: TBD

City of Albuquerque: Director, Department of Family and Community Services  
P.O. Box 1293  
Room 504  
Albuquerque, NM 87103

Any such notice will be deemed effective when hand delivered, or one business day after timely delivery to an overnight courier for next day delivery to Maker (as evidenced by a receipt from the overnight courier), or three days after notice is deposited with the U.S. Postal Service. Copies of all notices hereunder or under the Mortgage sent to Maker must also be sent to the Limited Partner at the address set forth above. Any notice hereunder or under the Mortgage delivered to Maker will be deemed ineffective and not delivered until a copy of such notice is delivered to the Limited Partner

Except to the extent expressly provided herein, Maker waives presentment for payment, notice of protest and notice of dishonor. Maker consents to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to Maker and without affecting its liability.

Failure to accelerate the indebtedness evidenced hereby by reason of default in the payment of an installment of principal, interest, or principal and interest, or the acceptance of a past due installment of the same, will not be construed as a novation of this Note or as a waiver of the right of Holder to thereafter insist upon strict compliance with the terms of this Note without previous

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

notice of such intention being given to Maker. This Note cannot be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

As used herein, the terms "Maker" and "Holder" will be deemed to include their respective successors, legal representatives and assigns, whether voluntary by action of the parties or involuntary by operation of law. This Note will be construed according to the laws of the State of New Mexico.

Any and all references in this Note to any other document or documents are references to such document or documents as the same may from time to time be modified, amended, renewed, consolidated or extended.

The representative of Maker subscribing below represents that he has full power, authority and legal right to execute and deliver this Note and that the debt evidenced hereby constitutes a valid and binding obligation of Maker.

Holder agrees that it shall not assign or transfer this Loan (or any interest therein) to any third party without the prior written consent of Maker and Limited Partner.

This Note is executed in Albuquerque, New Mexico on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

FAROLITO APARTMENTS LIMITED PARTNERSHIP  
LLLP, a New Mexico limited liability limited partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Authorized Agent

## **Exhibit E**

### **Project Budget (on following pages)**

**Enter data in green cells only**

: 82 Units

<b>Total Development Costs</b>	<b>\$24,750,000</b>	
<b>Construction Interest Calculation</b>		
Construction Loan Amount	\$10,377,712	
Interest Rate	7.95%	
Estimated First Draw Amount	\$0	
Months of Construction	36.0	
Months Const. Loan Outstanding After Completion	7.0	
Average Outstanding Balance	21%	
Interest on first draw, during construction period	\$0	
Interest on remaining funds during construction	\$231,232	
Construction interest after completion	\$481,256	
<b>Total Construction Interest</b>	<b>\$712,498</b>	

Construction Contingency is 5.6%  
General Requirements is 4.9% of construction costs  
Builder's Overhead is 1.6% of construction costs  
Builder Profit is 4.9% of construction costs

Later in this template, you will calculate the maximum allowable HOME investment and the minimum required number of HOME-assisted units. These calculations take place on the Cost Allocation tab. For these calculations, you need to have identified any development costs that are not HOME-eligible. List the ineligible costs here (these costs can be funded from other sources of funds, but cannot be funded by HOME).

Total Non-HOME-Bigible Costs	\$0
------------------------------	-----

ter Albuquerque Housing Partnership  
ito Senior Community  
E \$4,187,152 Grant

## Operating Expenses

Enter data in green cells only

Project Name - Farolito Senior Community : 82 Units

Expense	Annual Cost	Monthly Cost	Per Unit Per Year	Comment
<b>Administrative / Management Expenses</b>				
Management Fee	\$46,967	\$3,914	\$573	
Management Administrative Payroll Costs	\$69,321	\$5,777	\$845	
Renting / Advertising / Marketing Expenses	\$4,920	\$410	\$60	
Legal Fees	\$2,000	\$167	\$24	
Accounting / Audit Fees	\$8,750	\$729	\$107	
Telephone	\$6,650	\$554	\$81	
Office Supplies	\$12,764	\$1,064	\$156	
PJ Monitoring Fee (if any)		\$0		
MFA Compliance Fee	\$4,100	\$342	\$50	
3rd Party Compliance File Review	\$3,754	\$313	\$46	
<b>Operations and Maintenance Expenses</b>				
Security		\$0		
Operations and Maintenance Payroll Costs	\$61,063	\$5,089	\$745	
Repairs Supplies	\$18,600	\$1,550	\$227	
Repairs Contracts		\$0		
Elevator (if any)	\$10,704	\$892	\$131	
Other Mechanical Equipment		\$0		
Interior Painting		\$0		
Exterminating	\$3,000	\$250	\$37	
Lawn and Landscaping	\$12,190	\$1,016	\$149	
Garbage Removal	\$10,400	\$867	\$127	
Snow Removal		\$0		
Resident Service Cost		\$0		
		\$0		
		\$0		
<b>Utilities Paid by the Property</b>				
Electricity	\$16,500	\$1,375	\$201	
Natural Gas, Oil, Other Fuel	\$2,500	\$208	\$30	
Sewer and Water	\$25,755	\$2,146	\$314	
		\$0		
<b>Taxes / Insurance / Other Expenses</b>				
Real Estate Taxes	\$21,671	\$1,806	\$264	
Payroll Taxes				
Other Taxes and Licenses	\$32,850	\$2,738	\$401	SLO Lease & Demo
Property Insurance	\$31,332	\$2,611	\$382	
Workers Compensation Insurance				
Health Insurance / Other Employee Benefits				
Security	\$11,000	\$917	\$134	
Enrichment Services	\$2,500	\$208	\$30	
<b>TOTAL OPERATING EXPENSES</b>	<b>\$419,291</b>	<b>\$34,941</b>	<b>\$5,113</b>	
Reserve for Replacement Deposit	\$20,500	\$1,708	\$250	
<b>TOTAL EXPENSES PLUS RESERVE</b>	<b>\$439,791</b>	<b>\$36,649</b>	<b>\$5,363</b>	
<b>SUBTOTAL ADMINISTRATIVE EXPENSES</b>	<b>\$159,226</b>	<b>\$13,269</b>	<b>\$1,942</b>	
<b>SUBTOTAL O&amp;M EXPENSES</b>	<b>\$115,957</b>	<b>\$9,663</b>	<b>\$1,414</b>	
<b>SUBTOTAL OWNER PAID UTILITIES</b>	<b>\$44,755</b>	<b>\$3,730</b>	<b>\$546</b>	
<b>SUBTOTAL TAXES / INSURANCE / OTHER</b>	<b>\$99,353</b>	<b>\$8,279</b>	<b>\$1,212</b>	
<b>TOTAL OPERATING EXPENSES</b>	<b>\$419,291</b>	<b>\$34,941</b>	<b>\$5,113</b>	

**Enter data in green cells only**

[illegible]

Rent Loss Rates (As % of GPR)	HOME Units	Market Rate Units	Other Affordable Units
Rent Loss Year 1 (Lease-Up)	20.0%	20.0%	20.0%
Stabilized Rent Loss Rate (after Year 1)	5.0%	5.0%	5.0%

Other Revenue			
			per month
			per month
			per month
			per month
			per month
			per month
<b>Total Other Revenue</b>		<b>\$0</b>	per month

## Sources and Uses of Funds

Enter data in green cells only

### Project Name - Farolito Senior Community : 82 Units

In this template, the underwriter enters all proposed Sources of Funds (including HOME) on this tab (other than those that were already entered on the First Mortgage Sizing tab). The Uses of Funds are repeated below (from the Development Costs tab). Then the template verifies whether the Sources and Uses are in balance; be sure that Sources and Uses are balanced before moving forward. If there are insufficient Sources, potential solutions include deferring a greater portion of the developer fee, increasing HOME funding, and obtaining increased funding from some other source. If there are excess Sources, the HOME underwriter should consider reducing the proposed HOME funding.

PJs must perform cost allocation separately from this tool to verify that the proposed amount of HOME funding is within the allowable maximum HOME investment.

Sources of Funds	Amount	HOME?	Comment
First Mortgage Loan (proposed amount)	\$4,200,000	No	
Amortizing Second Mortgage Loan	\$0	0	
HOME	\$4,187,152	Yes	
GAHP General Partner Loan	\$1,000,000	No	
	\$0	0	
	\$0	0	
Deferred Developer Fee	\$1,164,624		
Developer Cash Investment	\$100		
Tax Credit Equity (proposed amount)	\$14,198,124		
<b>Total Sources of Funds</b>	<b>\$24,750,000</b>		

Total HOME Funding \$4,187,152  
Developer Investment for Financial Analysis \$1,164,724 (used in Operating Pro Forma for IRR, etc.)

Uses of Funds / Total Development Cost	Amount	Comment
Acquisition Costs	\$100,000	
Site Work Costs	\$0	
Construction / Rehabilitation Costs	\$19,926,254	
Architectural / Engineering Costs	\$787,914	
Other Owner Costs	\$545,776	
Construction Interest	\$712,498	
Other Interim Financing Costs	\$388,308	
Permanent Financing Costs	\$44,250	
Developer's Fee	\$1,660,000	
Initial Project Reserves	\$400,000	
Project Management Costs	\$185,000	
Other Development Costs	\$0	
<b>Total Uses of Funds</b>	<b>\$24,750,000</b>	

Subsidy layering gap (before HOME funding) \$4,187,152 (Total Uses of Funds minus Total Sources of Funds other than HOME)

## Sources and Uses by Month

Enter data in green cells only

Project Name - Farolito Senior Community : 82 Units

Months of Construction

16

Months Const. Loan Outstanding After Completion

7

Development Costs (Uses of Funds)	Total	Initial Closing / First Draw	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
<b>Acquisition Costs</b>								
Land	\$100,000	\$100,000	\$0	\$0	\$0	\$0	\$0	\$0
Existing Structures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Site Work Costs (not included in construction contract)</b>								
Demolition/Clearance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Site Remediation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Improvements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Construction / Rehabilitation Costs (construction)</b>								
Site Work Included in Construction Contract	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
New Construction	\$15,338,337	\$0	\$958,646	\$958,646	\$958,646	\$958,646	\$958,646	\$958,646
Rehabilitation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
General Requirements	\$873,888	\$0	\$54,618	\$54,618	\$54,618	\$54,618	\$54,618	\$54,618
Builder's Overhead	\$291,296	\$0	\$18,206	\$18,206	\$18,206	\$18,206	\$18,206	\$18,206
Builder Profit	\$873,888	\$0	\$54,618	\$54,618	\$54,618	\$54,618	\$54,618	\$54,618
Performance Bond Premium	\$189,100	\$189,100	\$0	\$0	\$0	\$0	\$0	\$0
Construction Contingency	\$945,298	\$0	\$59,081	\$59,081	\$59,081	\$59,081	\$59,081	\$59,081
Gross Receipts Tax	\$1,339,447	\$0	\$83,715	\$83,715	\$83,715	\$83,715	\$83,715	\$83,715
Security & Access Control	\$75,000	\$0	\$4,688	\$4,688	\$4,688	\$4,688	\$4,688	\$4,688
<b>Architectural and Engineering Fees</b>								
Architect Fee -- Design	\$584,867	\$584,867	\$0	\$0	\$0	\$0	\$0	\$0
Architect Fee -- Construction Supervision	\$101,060	\$0	\$6,316	\$6,316	\$6,316	\$6,316	\$6,316	\$6,316
Engineering Fees	\$50,000	\$0	\$3,125	\$3,125	\$3,125	\$3,125	\$3,125	\$3,125
LEED Certification	\$51,987	\$0	\$3,249	\$3,249	\$3,249	\$3,249	\$3,249	\$3,249
<b>Other Owner Costs</b>								
Protect Consultant Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Owner Attorney Fees (initial closing)	\$35,000	\$35,000	\$0	\$0	\$0	\$0	\$0	\$0
Owner Attorney Fees (final closing)	\$25,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Syndication Costs	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Other Owner Organizational Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Market Study	\$6,000	\$6,000	\$0	\$0	\$0	\$0	\$0	\$0
Survey	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Appraisal Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Environmental Studies	\$15,800	\$15,800	\$0	\$0	\$0	\$0	\$0	\$0
Capital Needs Assessment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Tap Fees and Impact Fees	\$100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Building Permits and Fees	\$112,459	\$112,459	\$0	\$0	\$0	\$0	\$0	\$0
Tax Credit Fees	\$125,767	\$125,767	\$0	\$0	\$0	\$0	\$0	\$0
Soft Cost Contingency	\$25,000	\$0	\$1,563	\$1,563	\$1,563	\$1,563	\$1,563	\$1,563
Special Inspections	\$60,000	\$60,000	\$0	\$0	\$0	\$0	\$0	\$0
Tax Credit Application Fee	\$750	\$750	\$0	\$0	\$0	\$0	\$0	\$0
<b>Interim Financing Costs (excluding interest)</b>								
Construction Period Insurance	\$100,000	\$100,000	\$0	\$0	\$0	\$0	\$0	\$0
Construction Period Taxes	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Construction Interest is Calculated Below								
Construction Loan Origination Fee	\$105,583	\$105,583	\$0	\$0	\$0	\$0	\$0	\$0
Construction Loan Legal Fees	\$25,000	\$25,000	\$0	\$0	\$0	\$0	\$0	\$0
Other Construction Loan Fees	\$2,500	\$2,500	\$0	\$0	\$0	\$0	\$0	\$0
Bond Costs of Issuance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Title and Recording Costs (for the construction loan)	\$115,225	\$115,225	\$0	\$0	\$0	\$0	\$0	\$0
Construction Lender Inspections	\$30,000	\$0	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Permanent Financing Costs</b>								
Credit Report	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Lender Origination / Financing Fee	\$27,750	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Lender's Counsel Fee	\$2,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Lender Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Title and Recording Costs (for permanent financing)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Establish Tax and Insurance Escrows	\$14,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer's Fee	\$1,660,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Initial Project Reserves</b>								
Initial Rent-Up Reserve (not HOME eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Operating Reserve (HOME-eligible portion)	\$400,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Debt Service Reserve (not HOME eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Replacement Reserve (not HOME eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

# **Project Name - Farolito Senior Community : 82 Units**

Project Administration and Management Costs								
Marketing/Management	\$100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Furniture, Fixtures & Equipment	\$85,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Tenant Relocation Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Development Costs								
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<b>Total Development Costs (TDC)</b>	<b>\$24,017,502</b>	<b>\$1,598,051</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>
--------------------------------------	---------------------	--------------------	--------------------	--------------------	--------------------	--------------------	--------------------	--------------------

<b>TDC Excluding Construction Interest</b>	<b>\$24,017,502</b>	<b>\$1,598,051</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>
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Sources of Funds	Total	Initial Closing / First Draw	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
First Mortgage Loan (proposed amount)	\$4,200,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Amortizing Second Mortgage Loan	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
HOME	\$4,187,152	\$0	\$718,057	\$1,249,825	\$1,249,825	\$550,730	\$0	\$0
GAHP General Partner Loan	\$1,000,000	\$0	\$0	\$0	\$0	\$144,507	\$855,493	\$0
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Deferred Developer Fee	\$1,164,624	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Cash Investment	\$100	\$100	\$0	\$0	\$0	\$0	\$0	\$0
Tax Credit Equity (proposed amount)	\$14,198,124	\$1,597,951	\$531,768	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

<b>Total Sources Before Construction Loan</b>	<b>\$24,750,000</b>	<b>\$1,598,051</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$1,249,825</b>	<b>\$695,237</b>	<b>\$855,493</b>	<b>\$0</b>
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<b>Construction Loan Draw Needed (Before Interest)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$554,588</b>	<b>\$394,332</b>	<b>\$1,249,825</b>
--	------------	------------	------------	------------	------------	------------------	------------------	--------------------

Construction Loan Beginning Balance		\$0	\$0	\$0	\$0	\$0	\$556,425	\$955,750
Plus This Draw		\$0	\$0	\$0	\$0	\$554,588	\$394,332	\$1,249,825
Plus Interest (Total Interest at immediate right)	\$706,631	\$0	\$0	\$0	\$0	\$1,837	\$4,993	\$10,472
Equals Ending Balance		\$0	\$0	\$0	\$0	\$556,425	\$955,750	\$2,216,047

Construction interest estimate from Development Costs tab	\$712,498
---	-----------

Construction interest estimate from detailed Sources and Uses By Month	\$706,631
--	-----------

Construction interest calculated above is 99.2% of the Construction Interest estimate from Development Costs tab.

## Exhibit F

### Schedule of City Grant and Grant Payback Schedule

Source of Fund	Amount	Forgiven
City HOME Funds	\$4,187,152	End of Affordability Period

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## Exhibit G

### Project Development Schedule

#### Construction Schedule

Project Name - Farolito Senior Community : 82 Units

Enter data in green cells only

The HOME Final Rule's definition of *commitment* specifies that if a project includes rehabilitation or new construction, a construction schedule is required at or before the time of the commitment. Additionally, construction must be scheduled to start within twelve months after the commitment date, and construction must be scheduled to be completed within four years after the commitment date.

				Total	Per Unit	
Intended HOME Commitment Date	March 10, 2023			\$16,079,291	\$196,089	Hard cost before contingency
Initial Closing Date	December 1, 2023			\$900,860	\$10,986	5.6% Hard cost contingency
Construction Start Date	January 2, 2024	9.8	months after HOME Commitment Date	\$1,264,390	\$15,419	7.9% GR / BO / BP
Other construction milestone #1				\$400,000	\$4,878	Initial reserves
Other construction milestone #2				\$3,940,497	\$48,055	Soft costs before contingency
Other construction milestone #3				\$25,000	\$305	0.6% Soft cost contingency
Other construction milestone #4				\$1,660,000	\$20,244	8.3% Developer fee (gross)
First Building Completion Date	March 1, 2025			<b>\$24,270,038</b>	<b>\$295,976</b>	<b>Total Uses of Funds</b>
Last Building Completion Date	March 1, 2025	13.9	months construction time			
		23.7	months after HOME Commitment Date			
Achievement of Sustaining Occupancy	July 1, 2025	4.0	months lease-up time			
Closing of Permanent Financing	October 1, 2025	7.0	months after construction completion			

Below, please include any comments about the construction schedule

We are estimating 14 months of construction, four months leaseup and stabilization 3 month after 100% occupancy.

**Budgeted construction cost is \$196,089 per unit. Budgeted hard cost contingency is 5.6% of hard cost.**

**Budgeted soft costs are \$48,055 per unit. Budgeted soft cost contingency is 0.6% of soft cost.**

**The budgeted developer fee is \$20,244 per unit before any deferral. This is 8.3% of total hard cost + total soft cost.**

**Exhibit H**  
**Request for City Grant Disbursement**

**City of Albuquerque**  
**Department of Family and Community Services**  
**Financial Status Report and Request for Reimbursement**

1. Agency Name and Mailing Address:		2. Telephone Number:
3. Project Title:	4. Contract Number:	5. Request Number:
6. Name of Contact Person:	7. Request for the Period : From: _____ To: _____	8. Billing Date:

9. Financial Expenditure Category	Approved Budget	Amount of this Request	Total Requests to Date	Balance Remaining	Matching Funds Expended to Date
Salaries and Wages					
Payroll Taxes & Employee Benefits					
Contractual Services					
Audit Costs					
Consumable Supplies					
Telephone					
Postage Shipped					
Occupancy: Rent					
Occupancy: Utilities					
Occupancy: Other					
Equipment Lease					
Equipment Maintenance					
Printing and Publication					
Travel: Local					
Travel: Out-of-Town					
Conferences, Meetings					
Assistance/Beneficiaries					
Membership Dues					
Equipment, Land, Buildings					
Insurance					
Indirect Costs					

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
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Total					
-------	--	--	--	--	--

10. Certification: I hereby certify that the funds for which reimbursement is being herein requested have been or will be utilized to provide services to the Community Development Project described in the Agreement executed between the City of Albuquerque and the above named agency which I represent and I further certify that the amount requested herein is true and just, that payment has not been received, and that (1) this Reimbursement Request represents expenditures incurred and eligible under applicable local, state and Federal regulations; (2) that said expenditures are supported by vendor's invoices and other documented liabilities in our records; and (3) funds received as a result of the Request will be expended within three (3) working days.

a. Signature of Authorized Official	b. Title
b. Typed Name	d. Date

### Instructions for Completing Financial Status Report and Request for Reimbursement

1. Enter the name and mailing address of the agency submitting the report.
2. Enter the telephone number of the agency.
3. Enter the title of the City-funded project for which reimbursement is being requested.
4. Enter the contract number assigned to the project by the City.
5. For each contract. Requests for Reimbursement must be numbered sequentially, with the first request numbered "1" and so on for succeeding requests. Enter the number of this request.
6. Enter the name of a contact person at the agency from whom information about the request may be obtained.
7. Enter the starting date and ending date of the period for which reimbursement is being requested.
8. Enter the date that the request will be submitted to the City.
9. In the column headed "Approved Budget," enter the amounts for each line item in the most recent project budget approved by the City.

In the column headed "Amount of this Request," enter the amount of the reimbursement requested for each line item in the approved budget. In the column headed "Total Requests to Date," enter the sum of this request and all previous reimbursements paid by the City for each line item in the approved budget. In the column headed "Other Funds Expended to Date," enter the amounts of matching funds or program income applied to the project expended for each line item, if such funds are required under the terms of the contract.

10. An authorized official of the agency must certify that funds were used according to City requirements.

10a. The official must sign to certify the Financial Status Report.

10b. Enter the typed title of the official signing the Financial Status Report.

10c. Enter the typed name of the official.

10d. Enter the date the official signed the Report.

## Exhibit I

### Greater Albuquerque Housing Partnership

### FAROLITO SENIOT COMMUNITY

### RESTRICTIVE REAL ESTATE COVENANTS

Made in Albuquerque, New Mexico

Date \_\_\_\_\_

These Restrictive Real Estate Covenants (the “Covenants”) are made by The **Greater Albuquerque Housing Partnership**, a non-profit corporation (“Owner”) in favor the of the City of Albuquerque whose address is One Civic Plaza, Albuquerque, New Mexico, 87102, Post Office Box 1293, Albuquerque, NM, 87103, a municipal corporation (“City”), and shall run with the land until the end of the Affordability Period (as defined herein) unless earlier modified or released by the City.

1. Recitals

A. The Owner is the owner in fee simple of that certain real estate (“Real Property”) in Bernalillo County New Mexico, which is located in Albuquerque, NM and whose legal description is:

**Parcel A as sown on the Boundary Survey of Tract C, Video Addition and Parcels of Land Owned by the State of New Mexico Situated Within the NW1/4 NW1/4 Sec.28,T10N, R4E, NMPM, April 2016, recorded with the County Clerk of Bernalillo County on February 12, 2020 as Doc. No. 2020013489, containing 2.2856 acres, more or less.**

B. For consideration for the assistance given by the City for the benefit of the Owner, the Owner has agreed to restrictions on the use and rental of the Property in order to implement the Project. The Property shall be used only for the Project. The Project, named **Farolito Senior Community**, will be located at 10501 Central Avenue NE, as legally described in Exhibit B (hereinafter referred to as the “Real Property”). The Project shall consist of the construction and management of the four-story, multi-family building, including common space, landscaping, access, parking lots and grounds located on the aforementioned Real Property. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the project for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The Project shall remain an affordable rental housing project, abiding by the High HOME and Low HOME rents for the 20-year HOME Affordability Period, as more fully provided elsewhere in this Agreement.

Greater Albuquerque Housing Partnership  
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## 2. Definitions

“Act” means the Federal National Affordable Housing Act of 1990/HOME Investment Partnerships Program.

“Affordability Period” means the period commencing on the date of these covenants and ending on the date that is twenty (20) years from the completion of the Project in HUD’s Integrated Disbursement Information System (IDIS) for the contribution of HOME funds.

“AMI” means Area Median Income which is the annual income figure for a specific geographic area which is determined annually by the U.S. Department of Housing and Urban Development and adjusted for family size.

“HOME Investment Partnerships Program” means the programs authorized by the Act of the federal U.S. Department of Housing and Urban Development that provides funds for the City of Albuquerque in support of affordable housing development.

“HOME Assisted Unit” means that residential unit, which either directly, or indirectly, has received financial assistance for acquisition and/or construction from funds authorized in the Act.

“Program Income” means that portion of income generated from the Project subject to the requirements of 24 CFR Part 92 for HOME funded projects and the Workforce Housing Regulations for Workforce Housing Trust funded projects.

“Project” means the construction of the residential units upon the Property, including Buildings, related on-site and off-site improvements, equipment and related rights therein.

“Utility Allowance” is the amount established by a schedule that is appropriate for a specific rent to cover the cost of utilities that are paid to the utility company as approved by the City.

## 3. Restrictive Covenants

A. Use of Property. During the Affordability Period, the Property shall be used as and only for the Project. The Project, named **Farolito Senior Community**, will be located at 10501 Central Avenue NE, as legally described in Exhibit B (hereinafter referred to as the “Real Property”). The Project shall consist of the construction and management of the four-story, multi-family building, including common space, landscaping, access, parking lots and grounds located on the aforementioned Real Property. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the project for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The

Project shall remain an affordable rental housing project, abiding by the High HOME and Low HOME rents for the 20-year HOME Affordability Period, as more fully provided elsewhere in this Agreement.

B. Income Qualifications. The Owner shall determine the annual income of a household occupying or seeking to occupy affordable units, in accordance with 24 CFR §5.609. The income of an affordable household shall not exceed eighty percent (80%) of the City's median income. The Owner shall determine whether the annual income of household(s) occupying or seeking to occupy affordable units, exceeds the applicable income limit prior to admission of the household(s) to occupancy, and then annually thereafter.

C. Rent Determination.

(1) Rents charged occupants of the affordable units must be the lesser of the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR §888.111; or a rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the areas, as determined by HUD, with adjustment for number of bedrooms in the unit.

(2) The rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(3) The Owner shall ensure that each household occupying the affordable units will have an executed lease with the Owner in compliance with 24 CFR §92.253. The term of any lease shall be for a period of twelve (12) months, unless such time period is waived in writing for a compelling reason by the household seeking occupancy. The City in its discretion may determine whether a reason is compelling.

(4) **The following is the breakdown of the Twenty-two (22) "floating" HOME-assisted units:**

(a) Initial gross rents (rent plus tenant paid utility costs) for a maximum of **Seventeen (17) HOME-assisted units** shall comply with **High HOME** rents (as updated by HUD) and shall not exceed the rents published by HUD, based on bedroom size.

(b) Initial gross rents (rent plus tenant paid utility costs) for the remaining **Five (5) HOME assisted units** shall comply with **Low HOME** rents (as updated by HUD) and shall not exceed the rents published by HUD, based on bedroom size.

(5) Any rent increases of the affordable units must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established utility allowance.

(6) HOME assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants, if actions are

being taken to ensure that a vacancy is filled in accordance with subsection 3B. above, until the noncompliance is corrected.

(7) In the event a tenant's income exceeds 80% of median income following initial occupancy, the tenant must pay 30% of tenant's adjusted income as rent, or the market rate for the neighborhood, whichever is less.

(8) The Owner shall ensure that each household occupying the HOME assisted units will have an executed lease with the Owner in compliance with 24 CFR §92.253.

4. Crime Free Multi-Housing Program. The Owner shall insure that the property manager for the facility participates in the Albuquerque Police Department's Crime Free Multi-Housing Program and obtains program certification within one year of execution of this Agreement. City shall be notified by Owner if facility is in jeopardy of losing its Crime Free Multi-Housing Certification. Failure to obtain the program certification, or revocation of the certification from the facility manager, shall constitute default of this Agreement.

5. Maintenance Reserve Fund. The Owner shall establish a maintenance reserve fund for the Project in an amount not less than Three Hundred Dollars (\$300.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until the completion of the Affordability Period.

6. Encumbrances. The Owner covenants and agrees that it shall not refinance, mortgage, suffer or allow the creation of a lien, nor otherwise encumber the Real Property, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, as determined in the City's sound governmental judgment in compliance with all applicable laws and ordinances.

7. Property Standards Requirements. The project will meet all Housing Quality Standards, or other physical property standards regulated by HUD, and local building code requirements, and allow the City to inspect the property, for the duration of the Covenants.

8. Monitoring/Reporting Requirements.

A. The Owner shall report, in writing, at least quarterly during the construction and lease-up phases of the Project. The quarterly report shall include the process of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed.

B. The City, at its discretion, may require a reasonable administrative fee from the Owner for the purpose of monitoring the project.

C. Income received from the rental of affordable units, if funded by HOME, shall be considered Program Income and must comply with 24 CFR §92.503. A Program Income report detailing the uses of Program Income for the reporting period, will be provided by the Owner

within thirty (30) days after the close of the quarter until the terms of this Agreement have been met.

D. The Owner shall report annually within 90 days of the close of the Owner's fiscal year until the terms of this Agreement have been met. The report shall include, but not be limited to, the financial statements for the Project, Income and Expense Statement for the Project, a Program Income budget, if applicable, the proposed uses of Program Income for the forthcoming year, and a certified rent roll showing household size, ethnicity, race, whether the occupant is female head of household, date of execution of the occupants' current lease, adjusted gross income and rental rates.

E. At any time during normal business hours and as often as the City and/or the appropriate funding entity may deem necessary, there shall be made available to the City for examination, all of the Owner's records with respect to all matters covered by this Agreement. The Owner shall permit the City and/or the appropriate funding entity to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Development Agreement.

9. Term. The Owner's obligations designated herein are to commence upon the execution of this Restrictive Real Estate Covenants by the last party to sign ("Commencement Date"), and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Development Agreement but, in any event, the Project and all of the services required hereunder in connection with the Project shall be continued until the expiration of the Affordability Period. If the Owner can provide sufficient credible evidence that the building placed on the Project's land is functionally obsolete or has reached the end of its useful life and financing the redevelopment of the building as an affordable housing project is not economically feasible, the City's governing body may approve the demolition of the building. A new building shall be built upon the Project's land that shall at a minimum include the same affordability requirements as specified in the original agreement.

10. Covenants Running with Property. These Restrictive Real Estate Covenants shall be and constitute covenants running with the Property during the Affordability Period and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

11. Binding Effect. Upon execution of this Agreement by the Owner, these terms, conditions and covenants under this Agreement shall be binding and inure to the benefit of the parties and their representative.

12. Construction and Severability. If any part of these Restrictive Real Estate Covenants are held to be invalid or unenforceable, the remainder of the Restrictive Real Estate Covenants will remain valid and enforceable if the remainder is reasonably capable of completion.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2023

THE GREATER ALBUQUERQUE HOUSING  
PARTNERSHIP  
a New Mexico nonprofit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Authorized Agent

STATE OF NEW MEXICO       )  
  ) SS  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2023, by  
\_\_\_\_\_ of The Greater Albuquerque Housing Partnership, a New  
Mexico nonprofit corporation.

\_\_\_\_\_  
**Notary Public**

My Commission Expires:

\_\_\_\_\_

## Exhibit J

### COLLATERAL ASSIGNMENT OF PROMISSORY NOTE AND MORTGAGE

THIS COLLATERAL ASSIGNMENT OF PROMISSORY NOTE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Assignment"), dated \_\_\_\_\_, 2023, is made by THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, a New Mexico non-profit corporation ("Assignor"), in favor of the CITY OF ALBUQUERQUE, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico ("Assignee").

#### Recitals

1. Assignor is an affiliate of FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability company ("Owner"), and a sponsor of the development of the real property located in Albuquerque, New Mexico, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property"), into an affordable housing community known as the Farolito Senior Community Project (the "Project").

2. Pursuant to the Development Agreement dated \_\_\_\_\_, 2023 (the "Development Agreement"), Assignee granted \$4,187,152 of funds to Assignor (the "City Grant"), and Assignor will loan, as of the date hereof, such funds to Owner for the construction and development of the Project (the "Loan").

3. Owner executed the Promissory Note of even date herewith in the principal amount of \$4,187,152 to evidence the Loan, payable to Assignor (the "City Note").

4. The Note is secured by the Mortgage, Assignment of Rents, and Security Agreement of even date herewith for the benefit of the Assignor, recorded in the real property records of the County of Bernalillo, New Mexico (the "City Mortgage"), encumbering title to the Property.

5. Assignor now desires to assign its rights under the Note and the Mortgage to Assignee in order to secure Owner's performance of its obligations under the Development Agreement and the Restrictive Real Estate Covenants, dated \_\_\_\_\_, 2023 (the "Restrictive Covenants").

#### Assignment

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Assignor, subject to the limitation set forth below, hereby grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee all of Assignor's rights in the City Note and the City Mortgage, including without limitation, all monies now owing or that may hereafter become due or owing with respect to the City Note and the full benefit of all the powers, covenants and provisos contained in the City Note and the City Mortgage.

Assignor represents and warrants that, as of the date hereof, there have been no amendments or modifications, either oral or written, to the City Note or the City Mortgage, and that none of the Property has been released from the lien of the City Mortgage. Assignor further represents and warrants that (i) there has been no prior assignment of Assignor's rights under the City Note or the City Mortgage, and Assignor will make no other assignment thereof; and (ii) Assignor has good right to assign its rights under the City Note and City Mortgage, and to grant the rights herein granted; and (iii) neither the City Note nor the City Mortgage will be amended or reassigned without Assignee's prior written consent, which consent will not be unreasonably withheld or delayed.

In the event of a default of the Loan, Assignor covenants and agrees to do all things reasonably necessary to give effect to the intent of this Assignment, including but not limited to, immediately furnishing to Assignee copies of all notices of default relating to the Loan, executing any other documents necessary or reasonably requested to protect the interest of Assignee and to confirm the existence of this Assignment and, if necessary, to join with Assignee in asserting any claims against Owner, its successors and assigns, as the maker of the City Note, and to remit any proceeds collected thereafter on the City Note and the City Mortgage to Assignee.

This is a collateral assignment securing any obligation to repay the City Grant under the Development Agreement or the Restrictive Covenants. The Owner and Assignor shall be jointly and severally liable to the Assignee to perform all terms and conditions of the Development Agreement. Notwithstanding anything to the contrary in this Assignment, so long as there is not an event of default beyond all applicable notice and cure periods under the City Note or the City Mortgage (including an event of default arising from Owner's failure to comply with the Restrictive Covenants or the Development Agreement), Assignor will be entitled to retain all payments received in connection with the Note, and Assignee will have no right whatsoever to exercise any of its rights under this Assignment until Assignee has declared an event of default of the Loan as provided in the City Note and the City Mortgage.

Assignor agrees that Assignee may enforce Assignor's rights with respect to the City Note and the City Mortgage upon any event of default (after the expiration of all applicable notice and cure periods) occasioned by the failure of Owner to comply with the covenants set forth in the City Note or the City Mortgage, and in particular, in the event of any failure to comply with the Restrictive Covenants or the Development Agreement.

Failure or delay on the part of Assignee to exercise any of its rights hereunder will not operate as a waiver of such rights unless so agreed in writing by Assignee, nor will any single or partial exercise by Assignee of any of its rights hereunder preclude the exercise of any other rights hereunder, and the waiver by Assignee of any default by Assignor hereunder will not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

This Assignment and the covenants contained herein will inure to the benefit and be binding upon the successors and assigns of the respective parties hereto.

EXECUTED as of the date first set forth above.

THE GREATER ALBUQUERQUE HOUSING  
PARTNERSHIP, a New Mexico nonprofit corporation

By: FELIPE RAEL  
Its: Executive Director

[illegible]

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Felipe Rael as Executive Director of THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, a New Mexico nonprofit corporation.

Notary Public

My Commission Expires:\_\_\_\_\_

The undersigned consents to the assignment of the Note and the Mortgage as set forth above as collateral for the Funds Grant, and to the rights granted to Assignee thereby.

FAROLITO APARTMENTS LIMITED  
PARTNERSHIP LLLP, a New Mexico limited  
liability limited partnership

By: FAROLIO SENIOR LLC, a New Mexico  
limited liability company, General Partner

By: THE GREATER  
ALBUQUERQUE HOUSING  
PARTNERSHIP, Manager

By: \_\_\_\_\_  
Felipe Rael, Executive Director

[illegible]

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Felipe Rael, Executive Director of THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, Manager of FAROLIO SENIOR LLC, General Partner of FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires: \_\_\_\_\_

## Exhibit K

### AGREEMENT TO ASSUME RIGHTS AND RESPONSIBILITIES

THIS AGREEMENT is entered into by and between the CITY OF ALBUQUERQUE, Albuquerque, New Mexico, a municipal corporation, (hereinafter City), FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership (hereinafter Developer or Assignee), and GREATER ALBUQUERQUE HOUSING PARTNERSHIP, a New Mexico nonprofit corporation, or (hereinafter Assignor), on the \_\_\_\_ day of \_\_\_\_\_, 2023. City, Developer, and Assignor are sometimes hereinafter referred to collectively as the Parties and individually as a Party.

#### RECITALS:

WHEREAS, the City has determined by Resolution adopted September 21, 1992, Enactment No. 134-1994, that a serious shortage of decent, safe, sanitary and affordable residential housing exists in the City of Albuquerque; and

WHEREAS, the Project, named **Farolito Senior Community**, will be located at 10501 Central Avenue NE, as legally described in Exhibit B (hereinafter referred to as the "Real Property"). The Project shall consist of the construction and management of the four-story, multi-family building, including common space, landscaping, access, parking lots and grounds located on the aforementioned Real Property. The Project includes the construction of 82 residential units for seniors age 55 and older on land owned by the New Mexico State Land Office, which will be leased by the project for a minimum term of 60 years. The development will contain seventy-two (72) 1-bedroom and ten (10) 2-bedroom rental housing units, and common space totaling approximately 76,675 heated square feet. Of the 82 units, 13 units shall be for households at or below 80% AMI, 28 units shall be for households at or below 60% of AMI, 16 units shall be for households at or below 50% AMI, and 25 units shall be for households at or below 30% AMI. The Project shall remain an affordable rental housing project, abiding by the High HOME and Low HOME rents for the 20-year HOME Affordability Period, as more fully provided elsewhere in this Agreement.

WHEREAS, the Developer has the necessary construction, and marketing expertise to develop and market the Project; and

WHEREAS, the Developer has been awarded a Low-Income Housing Tax Credit (LIHTC) allocation from the New Mexico Mortgage Finance Authority (hereinafter "MFA") which will reduce the overall cost of the Project; and

WHEREAS, in order to obtain the benefits of LIHTCs and other tax benefits, the Project will be owned by FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, whose sole general partner is the Assignor; and

WHEREAS, the City entered into that certain Development Agreement dated \_\_\_\_\_, 2023, with the Assignor under which the City agreed to advance no more than **Four Million, One Hundred Eighty-Seven Thousand, One Hundred Fifty-Two Dollars and No Cents (\$4,187,152.00)**, to construct the Project.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties formally covenant and agree as follows:

1. The Developer shall assume all contractual rights and responsibilities previously assigned by the Assignor in the Development Agreement, which agreement is attached hereto and incorporated herein by reference; in particular, but not limited to, the Developer shall:

- A. Implement all Project activities as described in said Development Agreement and shall execute such documents in its own name.
- B. Adhere to all Restrictive Covenants contained in said Development Agreement and shall execute such documents in its own name.

The Assignor agrees to remain jointly and severally liable for such contractual rights and responsibilities under the Development Agreement.

2. Approval Required: This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement.

IN WITNESS WHEREOF, the City, Developer and the Assignor have executed this Agreement as of the date first above written.

**CITY:**

CITY OF ALBUQUERQUE

By \_\_\_\_\_  
Lawrence Rael  
Chief Administrative Officer

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF BERNALILLO        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared Lawrence Rael, Chief Administrative Officer of the CITY OF ALBUQUERQUE, a New Mexico municipal corporation, on behalf of the City.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Greater Albuquerque Housing Partnership  
Farolito Senior Community  
HOME \$4,187,152 Grant  
2023

**DEVELOPER:**

FAROLITO APARTMENTS LIMITED  
PARTNERSHIP LLLP, a New Mexico limited  
liability limited partnership

By: FAROLITO SENIOR LLC, a New Mexico  
limited liability company, General Partner

By: THE GREATER  
ALBUQUERQUE HOUSING  
PARTNERSHIP, Manager

By: \_\_\_\_\_  
Felipe Rael, Executive Director

[illegible]

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Felipe Rael, Executive Director of THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, Manager of FAROLITO SENIOR LLC, General Partner of FAROLITO APARTMENTS LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires: \_\_\_\_\_

**ASSIGNOR:**

**THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP**

By: \_\_\_\_\_  
FELIPE RAEL, Executive Director

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF BERNALILLO        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared FELIPE RAEL, the Executive Director of THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP, and acknowledged that he executed the same as his free act and deed on behalf of the THE GREATER ALBUQUERQUE HOUSING PARTNERSHIP.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public