

Mayor Timothy M. Keller

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

**INTER-OFFICE MEMORANDUM**

July 22, 2025

**TO:** Brook Bassan, President, City Council

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

**SUBJECT:** Approving as to form the Development Agreement for Serenade at Park Central

On July 26, 2024, the Metropolitan Redevelopment Agency (“MRA”) released the Housing Conversion RFP #01-2025, offering up to \$4 million in gap funding for a project that would convert an existing non-residential building (e.g. hotel or office) to residential use, and with at least 20% of the units affordable to households at or below 80% area median income (“AMI”) (i.e. “Workforce Housing”). Silverstone Equity Partners, LLC (“Developer”), in response to the RFP, submitted a proposal to redevelop the currently vacant “Two Park Central Tower,” located at 300 San Mateo Blvd NE, in the Near Heights Metropolitan Redevelopment Area.

The project application was deemed complete by MRA staff and determined to meet the threshold and review criteria of the RFP. Therefore, at their December 19, 2024 meeting, the Albuquerque Development Commission (“ADC”) recommended approval of the award of \$2,000,000 in gap financing to the Developer and directed MRA staff to proceed with the negotiations of the development agreement.

City of Albuquerque staff, including MRA and Health, Housing and Homelessness (“HHH”), have now negotiated a mutually-agreeable Draft Development Agreement with the Developer, for the conversion of the existing 10-story tower to be named “Serenade at Park Central” into a mixed-income, multi-family development, comprised of 110 rental units, 41 of which are proposed to be income-restricted Affordable to households at 80% AMI.

At their July 17, 2025 meeting, the ADC reviewed the draft Development Agreement and recommended Approval of the Agreement to City Council.

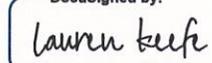
The development agreement and supporting materials are attached.

Approving, in form, the Development Agreement for Serenade at Park Central

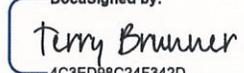
Approved:

 7/29/25  
Date  
Dr. Samantha Sengel  
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:  
 7/22/2025 | 2:50 PM MDT  
Date  
City Attorney

Recommended:

DocuSigned by:  
 7/22/2025 | 1:24 PM MDT  
Date  
Terry Brunner  
Director

## **Cover Analysis**

**1. What is it?**

This is a Development Agreement, which creates a public-private partnership between the developer (Silverstone Equity Partners, LLC) and the City. The Metropolitan Redevelopment Agency and the Department of Health, Housing and Homelessness will provide \$2 M in gap financing in exchange for the construction of 110 multifamily units, including 41 income-restricted units (“Workforce Housing”).

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

This will approve as to form the development agreement to provide gap financing to the Developer and to create a governing document to monitor and ensure compliance with the delivery of the project as proposed.

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

There is currently a city-wide housing shortage, and developers are facing escalated construction costs and high interest rates. This has halted some other major housing projects in Albuquerque from moving forward. Incentivizing the construction of 100+ units of housing, including 40+ income-restricted Affordable rental units, will help ensure the delivery of new housing to the city.

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

\$2,000,000 will be provided from the City’s Housing Forward Fund.

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

No.

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

If this project is not approved, the project might not be developed, and the city will potentially lose much-needed housing in the area.

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

No. The development property is privately owned and may not be developed by another entity.

**DEVELOPMENT AGREEMENT**

By and between the  
**City of Albuquerque, New Mexico,**  
**Department of Health, Housing & Homelessness**  
**and the Metropolitan Redevelopment Agency,**  
a municipal corporation,

and

**Silverstone Equity Partners LLC**  
**a Texas Limited Liability Company**  
**8850 Huffmeister Rd #200**  
**Houston, TX 77095**

for

**Serenade at Park Central**  
**300 San Mateo Blvd NE**  
**Albuquerque, NM 87108**

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

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## DEVELOPMENT 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 (the “City”), and **Silverstone Equity Partners LLC**, a limited liability company (the “Developer”). City and Developer 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 City adopted the Affordable Housing Implementing Ordinance (Sections 14-21-1 et seq.) to implement the city's affordable housing programs in accordance with the New Mexico Constitution, Article IX § 14, the Affordable Housing Act, NMSA 1978, §§ 6-27-1 et seq. and the Act Rules; and

WHEREAS, the New Mexico Metropolitan Redevelopment Code, Section 3-60A-1 et seq. NMSA 1978 (the "MR Code"), confers certain powers upon the municipality to promote catalytic developments within areas that have been deemed blighted by the governing body of the municipality and authorizes the municipality to create a Metropolitan Redevelopment Agency (MRA) for the purpose of elimination or prevention of slum or blight; and

WHEREAS, the City established a Housing Forward Fund (R-23-177) and directed the City's Health, Housing, and Homelessness (HHH) department to expend those funds on eligible affordable housing projects; and

WHEREAS, the Developer responded to a Housing Conversion Development Project Request for Proposals (RFP 01-2025), released by MRA and HHH, for up to \$4,000,000 in Gap Financing for funding of affordable rental housing in a Housing Conversion Development Project (non-residential converted to residential use) in a designated Metropolitan Redevelopment Area with at least 20% of the residential rental units designated for households at 80% Area Median Income (AMI) or below (the “Project”); and

WHEREAS, the Project (further described below) proposed by the developer includes a mixed-income market-rate and affordable rental housing development located at 300 San Mateo Blvd NE, within the northeast quadrant of Albuquerque, within the corporate limits of the city, and within the Near Heights Metropolitan Redevelopment Area with an approved Metropolitan Redevelopment Area Plan; and

WHEREAS, the Project is located in a Qualified Census Tract as defined by the US Department of Housing and Urban Development and in a Major Transit Corridor, established by the Albuquerque/Bernalillo County Comprehensive Plan, and is in an area appropriate for in-fill affordable housing; and

WHEREAS, the Project, the Developer proposed in response to RFP 01-2025 met the required threshold requirements, was reviewed and scored by an independent Review Committee, and the Albuquerque Development Commission (ADC) at their December 19, 2024 public hearing, awarded \$2,000,000 in Gap Financing to the Developer of the Project and directed MRA to commence negotiation of the development agreement; and

WHEREAS, the Developer is financing the project with private investment, which will fund a significant portion of the overall cost of the Project; and

WHEREAS, the Developer and Route 66 Multi Family ABQ LLC (the “Ownership Entity”) will develop, own, and operate the Project, either directly or through a wholly owned to-be-formed subsidiary; and

WHEREAS, the purpose of the Project is to construct approximately 110 multi-family housing rental units, including approximately 41 affordable multi-family housing rental units that are available to households at or below 80% of the Area Median Income (AMI) and 69 market-rate units available to households above 80% AMI on the Property as more particularly described herein; and

WHEREAS, the Developer is a for-profit corporation organized pursuant to the laws of the State of New Mexico; and

WHEREAS, the Developer and its Development/Supportive Services Team have the necessary construction, marketing, property management, and supportive services expertise to develop and market the Project; and

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

## **ARTICLE I**

### **Definitions**

Section 1.1 The Definitions in the Department of Family and Community Services Social Services Contracts Procurement Rules, and the Administrative Requirements for Social Services 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 paragraph.

Section 1.2 The definitions in the MR Code, if any, as they exist at the time of the execution of this Agreement are adopted by reference and incorporated herein as though set forth in full in this paragraph. However, in the event of a conflict between one or more definitions in the MR Code and this Agreement, the definitions set forth in this Agreement shall prevail.

Section 1.3 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 1.4 The following additional Definitions as shown in **Exhibit A** except where the context indicates otherwise, shall have the respective meanings set forth in **Exhibit A**.

Section 1.5 **Forgiveness Intent.** Notwithstanding anything to the contrary, it is the intent of the Parties that the City Loan, funded by the City Grant, shall not be subject to repayment so long as the Project remains in compliance with the affordability requirements and use restrictions set forth in this Agreement during the Affordability Period.

## ARTICLE II Project Purpose and Description

Section 2.1. Purpose of Project. The purpose of the Project is to convert an existing vacant commercial ten-story office building into an approximately 110-unit multi-family rental housing development, including approximately 41 Affordable multi-family rental housing units and 69 market-rate units. Populations to be served by the affordable units will be households at or below 80% AMI. The remainder of the units will be available to households above 80% of AMI.

Section 2.2. Project Term. The development of the Project and the provision of the affordable units by the Developer are to commence upon the execution of this agreement, and shall be continued for thirty (30) years from the completion of the Project (“Affordability Period”). This Agreement shall terminate upon foreclosure or deed in lieu of foreclosure. The Ownership Entity shall not evict or terminate the tenancy of an existing tenant of any unit other than for good cause, and shall not increase the gross rent above the maximum allowed under the Code with respect to such Units for a period of three (3) years following the termination of this Agreement. If the Developer 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 this original agreement. If no additional City funds are infused in the Project, credit will be given for the number of years the Affordability Period has been met. If additional City funds are infused, the affordability period applicable to that funding source will commence anew, and the Project will be subject to all the new affordability requirements of that funding source. Upon conclusion

of the Affordability Period, and if no default has occurred, the Developer shall be released from all further affordability obligations, and no repayment of City Grant or Loan shall be required.

Section 2.3. **Project Description.** The Project, named Serenade at Park Central, is located in the northwest quadrant of a 3.37-acre site, comprised of two legal parcels, addressed as 300 San Mateo Boulevard NE, Albuquerque, NM 87108, and legally described in Exhibit B. The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project will also include an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total 41 Affordable rental units proposed, approximately 21 are to be studio units and 20 are to be one-bedroom units, all disbursed throughout the 10 floors of the building. The make-up and location of the units designated as Affordable per this Agreement may be assigned on a “floating” basis, meaning that specific unit numbers are not assigned as Affordable, but rather the total number of Affordable units mandated by this Agreement is available throughout the building depending on the availability of units at any given time and the eligible applicant pool for the Affordable units. The 41 affordable units must be available to households at or below 80% of the Area Median Income (AMI).

Section 2.4. **Management of Property.** This Agreement shall be assigned by the Developer to the Ownership Entity at Closing. The Developer shall cause the Affordable units to be managed through a property management agreement with a property management company with adequate experience and knowledge of HUD qualification requirements.

### **ARTICLE III**

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

Section 3.1 **Description of City Loan.** To assist with the Project, the City shall provide a grant to Developer in an amount not to exceed **TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00)** of Gap Financing (the “City Grant”). The City Grant will in turn be loaned by the Developer to the Ownership Entity (the “City Loan”), with such loan to be evidenced by a Promissory Note (the “City Note”) which will be secured by a Mortgage (the “City Mortgage”) encumbering the Project, in the attached forms substantially similar to **Exhibit D** and **Exhibit C**, respectively. The Promissory Note and Mortgage shall clearly provide that the City Loan is not repayable except in the event of a material breach of this Agreement, including a failure to maintain the required affordability commitments during the Affordability Period. The Developer shall sign at Closing of the City Loan a Collateral Assignment of the City Note and City Mortgage in substantially the form attached as **Exhibit K**, and the Restrictive Real Estate Covenants running to the benefit of the City in substantially the form attached as **Exhibit I**. The Developer and the Ownership Entity shall sign at Closing of the City Loan the Agreement to Assume Rights and Responsibilities in substantially the form attached as **Exhibit L**. Developer shall not enter into any subordination agreements related to the City Note and/or the City Mortgage without the City’s

written consent. The City acknowledges that the Fund and the construction lender(s) of the Project will propose changes to this Agreement, the City Note, City Mortgage, Collateral Assignment, Restrictive Real Estate Covenants and Subordination Agreement and Agreement to Assume Rights and Responsibilities. The City agrees to consider and negotiate such changes in good faith and in a commercially reasonable manner. The Developer shall provide the final form of the City Note, the City Mortgage, the Collateral Assignment, the Restrictive Real Estate Covenants, the Subordination Agreement, and the Agreement to Assume Rights and Responsibilities to the City for its review and approval prior to signing, and it is agreed that the City Note shall explicitly reflect the non-recourse and forgivable nature of the City Loan, contingent on compliance with the terms of this Agreement, and with the affordability requirements during the Affordability Period.

Section 3.2. Eligible Costs and Disbursement.

- A. Soft Costs & Hard Costs (disbursed by milestone). City of Albuquerque shall disperse all Eligible Costs funds to the Developer as follows:
- a. Thirty percent (30%) of funds will be disbursed on or after Construction Commencement;
  - b. An additional twenty-five percent (25%) of funds will be disbursed at fifty percent (50%) construction of the overall Project, including at least fifty percent (50%) of the Affordable units, as shown on the general contractor's invoices and certified by the Developer;
  - c. An additional twenty-five percent (25%) of funds will be disbursed at seventy-five (75%) of the overall Project, including at least seventy-five percent (75%) of the Affordable units, as shown on the general contractor's invoices and certified by the Developer;
  - d. An additional twenty percent (20%) of Grant Funds will be disbursed at Construction Completion, including one hundred percent (100%) of the Affordable units, as demonstrated by certificate of occupancy.
- B. To receive a funding disbursement, Developer shall provide City a Draw Request on City-approved form accompanied by third-party receipts of incurred Eligible Costs.

## ARTICLE IV

### Commencement and Completion of the Project

Section 4.1. Agreement to Construct and Complete the Project. Developer agrees that:

A. Developer shall construct the Project in accordance with the Plans, Specifications and Elevations (the "**Plans**") prepared by Developer, including any and all supplements, amendments and material additions or deletions thereon or therein, as approved by the City.

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.

C. Developer shall have sole responsibility for the construction of the Project and shall perform the responsibilities by itself or through affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner it deems necessary or advisable provided it 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 water, electricity and other utilities and discharge of sewage and industrial waste disposal for the operation of the Project.

D. Within sixty (60) days of the date of the authorized building permit approval, the Developer shall hold a ground-breaking ceremony in coordination with the City (“Construction Commencement Date”). The Developer shall work with MRA to schedule the groundbreaking in a manner and at a time that works for both the City of Albuquerque and the Developer. On or before the Construction Commencement Date, the Developer, at their own expense, shall collocate a promotional banner designed by MRA at the property line construction fencing, visible from the public right of way, which shall remain during the entire construction 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, 2027** (“Completion Date”), unless an extension is approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed. Failure to complete the construction by the Completion Date is a material Event of Default of this Agreement.

B. The completion date shall be evidenced to the City by (i) permanent Certificate(s) of Occupancy issued by the City; (ii) if applicable, a certificate 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) hosting a ribbon cutting ceremony in coordination with the City at time that works for both the City and Developer (“Construction Completion”). The date Developer provides documentation to the City that Developer has met all conditions listed herein for Construction Completion shall be the “Construction Completion Date.” Such documents shall be delivered to the City promptly but not later than thirty (30) days after the completion of the Project, unless an extension of such date has been agreed to in writing by the parties to this Agreement. Notwithstanding the foregoing, such certificates of occupancy shall be 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 prior to substantial completion and punch list walk through of the 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 forty-five (45) days after issuance 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 of 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.

Section 4.4 Notwithstanding anything to the contrary, no officer, member, partner, employee, or affiliate of the Developer or Ownership Entity shall have any personal liability for the repayment of the City Loan or performance of any obligation under this Agreement.

## **ARTICLE V**

### **Real Property Duties and Responsibilities**

Section 5.1. At the closing of the construction financing of the Project, the Ownership Entity shall record the Restrictive Real Estate Covenants pursuant to Section 5.5 immediately upon the recording of the deed that will convey the title of the Real Property to the Ownership Entity. The Restrictive Real Estate Covenants will not be subordinated to any mortgage on the Real Property. Reports and documents listed below must be provided prior to Closing, but do not need to be duplicated. Depending on the nature of the report, if the report is stale, it shall be updated at Developer's expense before the loan of additional monies.

- A. Phase 1 Environmental survey.
- B. ALTA/ASCM Survey. ALTA survey of the Real Property at the expense of Developer.
- C. Developer shall assist the City in complying with all applicable Environmental Review and historic preservation requirements, if any, 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.

D. Geotechnical Investigation Report. The Developer shall or shall cause to be submitted to the City a Geotechnical Investigation Report in a form acceptable to the City.

E. Evidence of all other sources of financing dedicated to the Project.

F. Title Insurance Commitment and Title Insurance Policy.

G. 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 to eligible families.

H. If applicable, evidence of any required relocation actions, pursuant to the New Mexico Relocation Assistance Act, §§ 42-3-1 et seq. NMSA 1978, and the Albuquerque Uniform Housing Code, §§ 14-3-1-1 et seq. ROA 1994 and §§ 14-3-5-1 et seq. ROA 1994.

Section 5.2 Project Plans. Developer shall submit one complete final set of the Design and Development Plans, Specifications, and Elevations for the Project to the City (not to be confused with plans for building permits) (“Project Plans”). The City shall review the Project Plans prior to the commencement of any construction work pursuant hereto. In a case of material change to the Project, the Authorized Developer Representative shall certify to the City that such revised Project Plans 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.

Section 5.3 Construction Financing. Subsequent to the final approval of the development agreement, before any City funds are disbursed, the Developer shall submit, or cause to be submitted to the City, evidence of the commitments to the Developer providing the balance of all construction financing for this Project. In the case that the Developer cannot provide evidence to the City’s satisfaction that the Developer has secured sufficient financing, the City may terminate the agreement.

Section 5.4. Affirmative Marketing Plan. Developer, at the expense of Developer, shall provide to the City an updated affirmative marketing plan along with procedures in conformance with the Fair Housing Act, including 24 CFR Part 108.

Section 5.5. Restrictive Real Estate Covenants. At closing of the construction financing of the Project, the Ownership Entity shall execute and deliver 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 and to run with the land, binding upon the Ownership Entity, its successors and assigns. The Restrictive Real Estate Covenants shall be

recorded against the land in connection with the financing of the Project, prior to any other document recorded at such time.

Section 5.6. Subordination, No Effect on Restrictive Covenants. 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 Affordability Period. The City shall execute documents as may be necessary to effectuate such subordination as provided in Section 6.4 of this Agreement.

## **ARTICLE VI**

### **Usage and Documentation of City Funds**

Section 6.1. Use of Loan Proceeds, Repayment, Discharge. The City Grant shall be an amount not greater than **TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00)**, which includes all City funds allocated for this Project, and shall be used for the development and construction of the Project. The Parties acknowledge and agree that the City Grant, and by extension the City Loan, is structured as a conditional grant whose repayment shall not be required provided the Developer and Ownership Entity remain in compliance with the terms of this Agreement, and the Affordability Period and related covenants. This forgiveness provision shall be reflected in the City Loan documents.

Section 6.2. Disbursement of City Grant Proceeds Authorized under this Agreement. The City Grant, secured by a Collateral Assignment of the Mortgage, authorized under this Agreement in the amount of **TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00)**, shall be disbursed to the Developer and loaned to the Ownership Entity to pay actual costs incurred by the Ownership Entity for purposes authorized under this Agreement and per the projected project budget attached hereto and incorporated herein as **Exhibit E** and for no other purpose.

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, upon the execution of this Agreement by both parties.

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

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

Section 6.3. Loan Documentation. Developer shall execute and deliver a collateral assignment of the City Note and the City Mortgage to the City in the same amount encumbering the Real Property in order to evidence the obligation to repay the City Loan to the City.

The City acknowledges and agrees that the City Loan shall be structured as a non-recourse obligation against the Developer and the Ownership Entity, with no repayment obligation arising so long as the Developer and Ownership Entity comply with the terms of this Agreement and the Affordability requirements during the Affordability Period.

Section 6.4. Subordination and Release. The City Mortgage shall be subject and subordinate to any mortgage or bond securing the construction loan(s) and the initial permanent loan(s), and the New Mexico Mortgage Finance Authority Land Use Restriction Agreement, and City shall execute documents as may be necessary to effectuate such subordination in the form agreed to between the City and such lenders. The Restrictive Covenants will not be subordinated and will continue to run with the land for the term of the Affordability Period.

Section 6.5. Intercreditor Agreement / Subordination. The City agrees to reasonably consider subordinating any City Mortgage or similar instrument securing the City Loan to any senior financing required for the Project, and agrees to negotiate a commercially reasonable subordination or intercreditor agreement in good faith and upon request by Developer or Ownership Entity.

## **ARTICLE VII**

### **Warranties and Obligations**

Section 7.1. 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 lower income by inducing private enterprise to locate, develop and expand such residential housing facilities in the City.

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

C. Adhere to initial rents for Affordable units as published by the Mortgage Finance Authority annually. If utilities are not included in the rent, an allowance must be made using the City's established Utility Allowance.

Section 7.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

A. 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 or 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 or constitutes or will constitute a default under any of the foregoing or will result in the creation or imposition of any prohibited lien, charge or encumbrance, except for those expressly permitted under the Developer's financing arrangements approved by the City.

B. 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.

C. The Real Property shall be used towards the development of the Project.

D. The Restrictive Real Estate Covenants attached hereto as **Exhibit I** are binding on the Project and the Ownership Entity who shall comply therewith.

E. During the Affordability Period, the Developer and/or Ownership Entity shall comply with the following provisions including, but not limited, to:

1. If applicable, the New Mexico Relocation Assistance Act, §§ 42-3-1 et seq. NMSA 1978, and the Albuquerque Uniform Housing Code, §§ 14-3-1-1 et seq. ROA 1994 and §§ 14-3-5-1 et seq. ROA 1994.

2. Local housing code requirements and allow the City to inspect the Real Property, upon minimum (72) hour notice to Property Management.

3. Maintain accurate records that document and verify Affirmative marketing efforts according to the Affirmative marketing plan submitted to City along with procedures in conformance with the Fair Housing Act, as applicable.

4. The City shall have access to relevant financial records upon reasonable prior notice.

5. Adhere to all applicable federal, state and local laws, in particular, but not limited to, labor and employment laws regarding construction of public works.

6. Maintain the Project as an affordable rental housing project as provided by the Affordable Housing Ordinance and ensure that in the event that the Project ceases to be an

affordable rental housing project, the Developer will cause repayment of funds to City, in lieu of foreclosure, as provided elsewhere in this Agreement. In accordance with Section 6.1, it being understood that no repayment shall be required if affordability is maintained for the full Affordability Period.

7. Shall adhere to rent formula as set forth in the Restrictive Real Estate Covenants attached to this Agreement as **Exhibit I**, and executed and recorded at Closing. Any rent increases of the Affordable units other than those related to increases in the imputed income limits 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, revised as it may be from time to time. In the event of any conflict between the terms of this Section 7.2.F.7 and the terms of Section 42 of the Internal Revenue Code (the "Code"), the terms of the Code shall control.

8. 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.

9. Assist the City in complying with all applicable environmental assessment and historic preservation requirements of the U.S. Department of Housing and Urban Development and the State Historic Preservation Office of New Mexico, if any.

10. Use its best efforts to afford Minority and Women-Owned Business Enterprises (that is, businesses which are at least fifty-one percent [51%] owned and controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of this Agreement.

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.

12. The reporting and audit requirements shall sunset upon the later of (i) three years following the end of the Affordability Period or (ii) such period as required by applicable federal, state, or local record-keeping compliance requirements.

F. In the event of material increases in operating costs, property taxes, or utility costs that threaten project viability, the City agrees to work in good faith to consider adjustments to allowable rent levels or other financial relief, subject to applicable law, except that the affordability requirements for the Affordable units shall not be modified.

G. The Developer shall establish a maintenance/replacement reserve fund for the Project in an amount not less than Three Hundred Dollars and No Cents (\$300.00) per Affordable unit per annum, within 90 days of achieving 100% occupancy and Certificate of Occupancy as

issued by the City of Albuquerque until all the terms of this Agreement are met and the 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 at least annually. However, the City may not increase the maintenance reserve amount by more than three percent (3%) per annum.

H. 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 similar program as may be in existence at that time and obtains program certification within one year of execution of this Agreement and remains so certified thereafter. Failure to obtain the certifications, or revocation of the certification of the facility or the facility manager, shall constitute default of this Agreement.

I. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project nor 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.

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

K. Developer shall not, during the term of this Agreement, amend or change its By-Laws or Articles of Incorporation or the governing documents of the Ownership Entity in any manner if such amendment or change would result in a conflict with the terms of this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Developer shall have the right to admit as a partner of the Ownership Entity, or allow transfer or exit of the Fund, the limited partner of the Fund or interests in any limited partners, as allowed by the [Amended and Restated Agreement of Limited Partnership] of the Ownership Entity (the "Partnership Agreement"), or as otherwise described in Section 11.6 of this Agreement, which will not conflict with the terms of this Agreement.

L. The Developer shall comply with the applicable provisions of, and act in accordance with, all 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, 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, and 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, age, family status, 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.

M. Required Assurances: During the performance of this Agreement, the Developer agrees as follows:

1. Compliance with Civil Rights Laws and Executive Orders:

a. The Developer will 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, 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. In addition, the Contractor will comply with the New Mexico Community Rights Act and the Albuquerque Human Rights Ordinance.

b. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, gender, gender identity, sexual preference, sexual orientation, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status.

c. The Developer will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified employee or applicant for employment.

d. The Developer will ensure and maintain a working environment free of sexual harassment and other unlawful forms of harassment, intimidation, and coercion in all facilities at which the Developer's employees are assigned to work.

e. The Developer will in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, gender, gender identity, sexual

preference, sexual orientation, age, national origin or ancestry, or physical or mental handicap or disability.

2. Use of Funds for Sectarian Religious Purposes: The Developer covenants and agrees that no funds awarded through this program will be used for sectarian religious purposes, and specifically that:

- a. there will be no religious test for eligibility;
- b. there will be no requirement for attendance at religious services;
- c. there will be no inquiry as to religious preference or affiliation;
- d. there will be no proselytizing; and
- e. Services provided will be essentially secular.

N. The Developer shall comply with all applicable affordable housing requirements, including, but not limited to:

1. Provide the City with an approved schedule of activities from the date of acquisition of the Real Property through completion of construction of the Project.

2. If applicable, take any required relocation actions, pursuant to the New Mexico Relocation Assistance Act, §§ 42-3-1 et seq. NMSA 1978, and the Albuquerque Uniform Housing Code, §§ 14-3-1-1 et seq. ROA 1994 and §§ 14-3-5-1 et seq. ROA 1994.

3. Local housing code requirements and allow the City to inspect the Property.

4. Submit an affirmative marketing plan and procedures in conformance with the Fair Housing Act to the City no less than sixty (60) days after execution of this Agreement. This plan is subject to approval by the City and if required, Developer agrees to make any modifications deemed necessary by the City.

5. Maintain accurate records which document and verify Affirmative Marketing efforts.

6. The City requires its developers to pay adequate wages on Public Works (construction) projects. The Developer will abide by New Mexico Public Works Prevailing Wage Rates for Construction contracts or Federal Davis-Bacon Wage Rates (if applicable) and maintain/provide all compliance documents as requested by the City. NM Prevailing Wage Rate information can be found at the New Mexico Department of Workforce Solutions website: <https://www.dws.state.nm.us/public-works>.

7. The Developer shall secure income verification of the tenants of the Affordable units as defined in 24 CFR Part 5. Income verification and family size documentation must be secured prior to rental of the Affordable units.

8. The Developer shall provide the City quarterly performance reports and financial reports during the acquisition and construction phase of the Project and for the terms of this Agreement. Reports are due ten (10) days after the end of the reporting quarter and shall be in accordance with City of Albuquerque reporting instructions.

O. The Plans and Specification for the construction of the Project shall be reviewed by the City.

P. The provisions contained herein shall be binding on the successors and assigns of Developer during the Affordability Period.

Q. Developer shall have sole responsibility for construction of the units and may perform the same by itself or through affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner it deems necessary or advisable provided it is in conformance with the terms of this Agreement. 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 units.

R. Developer will conduct its operations in accordance with *the Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque*, as amended. Any exception or waiver to these requirements must be approved in writing by the Director of the Department of Health, Housing and Homelessness.

## **ARTICLE VIII**

### **Monitoring/Reports Required**

Section 8.1. 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 8.2. The Developer shall report annually within 120 days of the close of the Ownership Entity'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 Affordable housing component of the Project, including but not limited to Income and Expense Statement for the Project, a Program Income budget, if applicable, for 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. For purposes of complying with the Administrative Requirements, the Ownership Entity may utilize Program Income for the Project, including Project maintenance, in addition to the City funding.

Section 8.3. 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 8.4. The Developer shall comply with all applicable monitoring provisions of the City's housing regulations, including but not limited to the City's Affordable Housing Regulations.

## **Article IX**

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

Section 9.1. 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 on the Real Property, which, if not paid, will become a lien on the Real Property prior to or on a parity with the City Mortgage 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 Mortgage.

Section 9.2. Payments Required. The obligations of Developer to make the payments required in Section 9.1 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional without offset or counterclaim for claims against the City or any other party.

Section 9.3. Maintenance of Project. Developer agrees that, during the term of this Agreement, it shall, at its own expense, keep, or cause to be kept, the Project in as reasonably safe condition as its operations shall permit 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 Funds or Loans or received in exchange for tangible property purchased or installed with proceeds from the City Funds or Loans 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 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 9.4. 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 Note.

E. **INCREASED LIMITS:** 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:** Prior to any funding and 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 demand, proof of all required insurance coverages.

Section 9.5. Performance, Payment and Other Bonds. Developer or Contractor shall furnish or cause to be furnished, performance and payment bonds, or other security such as an irrevocable letter of credit, acceptable to the City, 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 Note 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 an irrevocable 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 9.6. Application of Net Proceeds of Insurance. The Net Proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the Net Proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 9.7. 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's 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 9.8. 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 Mortgage and shall be paid upon demand by the City.

## **ARTICLE X**

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

Section 10.1. 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 have the right to use the net proceeds of insurance or from any award made in such eminent domain proceedings to be applied to 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 that such proceeds are sufficient to rebuild the Project.

Section 10.2. Partial Damage, Destruction, and Condemnation. Subject to the terms of the Mortgages encumbering the Project and the rights of any senior lender, if the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the City Loan, in a manner that provides adequate security to the City for repayment of the remaining balance of the City Loan. In the event

City and Developer cannot agree on the approach to take, City shall make the final decision (in its reasonable discretion and considering input from Developer in good faith) and Developer agrees to be bound by that decision. In the event of any conflicts between the terms of mortgages encumbering the Project regarding the application of casualty proceeds or condemnation proceeds, the terms of the mortgages shall control in the order of their priority.

## **ARTICLE XI**

### **Special Covenants**

Section 11.1. 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, during regular business hours, upon reasonable notice, and subject to the rights of the tenants 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 11.2. 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 limited liability company and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 11.3. Granting of Easements. If no Event of Default under this Agreement shall then be continuing, the Ownership Entity 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, free from the lien of the City Mortgage or Ownership Entity 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 or the Ownership Entity 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 or representative of the Ownership Entity stating that such grant or release is not detrimental to the proper conduct of the business of Developer or the Ownership Entity and that such grant or release shall not impair the effective use of market value or interfere with the effective operation of the Project.

Section 11.4. 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, except for any loss, damage, injury, or death caused by the direct or indirect gross negligence or willful misconduct by the City, its employees, agents, assigns, contractors, or subcontractors, as applicable, 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, attorneys fees and expense or court costs arising out of or in any way relating to this Agreement, the City Mortgage, the Partnership Note or any other cause whatsoever pertaining to the Project, subject to the limitations found in NMSA 1978 § 56-7-1 and except for causes arising from the direct or indirect gross negligence or willful misconduct by the City, its employees, agents, assigns, contractors, or subcontractors, as applicable provided such indemnification shall not exceed the amount of the City Grant disbursed to date. 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 to act of the City or of its officials, employees and agents.

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

Section. 11.5. Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein including the financing referenced in **Exhibit F** or in the City Mortgage, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof during the Affordability Period without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any conveyance of the Project during the term of this Agreement shall incorporate the covenants found in **Exhibit I** and agreements contained herein.

Section 11.6. Exceptions. Notwithstanding the foregoing or anything contained herein to the contrary, the following shall not constitute a sale, transfer, or conveyance, cause a default under this Agreement, or cause an acceleration of the City Loan: (A) the withdrawal, removal, and/or replacement of a managing member or general partner of the Ownership Entity pursuant to the terms of the Partnership Agreement of the Ownership Entity; (B) an admission or withdrawal of a limited partner Fund into or from the Ownership Entity, or a transfer of an investor member's or partner Fund's interest in the Ownership Entity; (C) the execution, delivery, and effectuation of a purchase option and right of first refusal agreement (the "Option"), as described in the Partnership Agreement of the Ownership Entity; (D) the exercise of the Option by the Project sponsor(s) identified therein; (E) the execution and recording of condominium documents, if any; (F) the transfer of the Residential Units following completion of construction to the Ownership Entity; (G) the conversion of construction loan(s) into permanent financing; (H) the pledge to a limited partner by a general partner of an interest in the Partnership Agreement of the Ownership Entity, as security for the performance of all of a general partner's obligations under such Partnership Agreement; (I) the pledge to a construction or permanent lender, by the Ownership Entity, its general partner or limited partner of each of their respective interests pursuant to the Partnership Agreement of the Ownership Entity, as security for the performance of all of the Ownership Entity's obligations under the construction or permanent loan; and (J) a transfer of the Project or

interests in the Ownership Entity to another affiliated or experienced affordable housing operator, with City approval not to be unreasonably withheld, conditioned, or delayed.

Notwithstanding the foregoing, the City's consent to (a) the exercise of the Option by the Project sponsor identified therein, and to (b) the assumption without penalty of the City Note by the Project sponsor shall be required and such consent shall not be unreasonably withheld, conditioned, or delayed whatsoever.

**Section 11.7. Redevelopment Tax Abatement.** In order to permit the Project to be exempt from property taxation in accordance with City Council Resolution R-24-75, and pursuant to Section 7-36-3.1 NMSA 1978, the Developer shall, at the Developer's discretion, convey the Property to the City, and the City shall accept such conveyance, at or following Construction Completion. Such reconveyance shall be by special warranty deed and such other transfer or conveyance documents, including a bill of sale, as appropriate to vest good title to the Property in the City. The City shall expressly assume and take the Property subject to the terms of a Land Lease between the Developer and the City. (the "Land Lease") and also subject to all other liens, claims and encumbrances of record. The developer shall be responsible for all closing costs and title insurance associated with the conveyance.

The City agrees that for so long as the City owns the Property following the conveyance pursuant to this Article XI, it will not sell, convey, mortgage, encumber or otherwise dispose of all or any part of the Property, so long as no Event of Default has occurred and is continuing under the Land Lease. So long as there is no Event of Default under the Land Lease, the Lessee shall have, hold, and enjoy throughout the Lessee term peaceful, quiet, and undisputed possession of the Property following the conveyance.

Following the reconveyance of the Property to the City pursuant to Section 11.7, the Developer shall have the continuing option, at any time and without penalty, to elect to require the City to sell all of its right, title and interest in the Property to the Developer pursuant to the terms set forth in this Section 11.7. The Developer shall exercise such option by delivering written notes of such exercise to the City (the "Option Notice"). In the event the Developer exercises its option hereunder, the purchase and sale shall close no later than thirty (30) days following the City's receipt of the Option Notice. At the closing, the City will, upon receipt of the purchase price described in the following sentence, deliver to the Developer a Quit Claim conveying to the Developer all of the City's right, title and interest in and to the Property, as such Property then exists and otherwise without representation or warranty of any kind. The purchase price payable by the Developer under this Section 11.7 shall be the sum of the following: (a) an amount of money equal to any Rent and additional amounts then due and payable to the City under the Land Lease (if any); plus (b) the sum of one dollar.

**Section 11.8. 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 11.9. 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 11.10. 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 within ninety (90) days of the end of the Developer's fiscal year.

## **ARTICLE XII**

### **Events of Default Defined and Remedies Upon Default**

Section 12.1. Events of Default Defined. The following shall be "material events of Default" under this Agreement, also referred to as "Events of Default" or "default," and shall mean, whenever they are used in this Agreement, any one or more of the following events:

A. Failure by Developer to pay within fifteen (15) days or designated time period in Partnership Note, whichever is greater, of the receipt of notice of monies due any amount required to be paid pursuant to the Partnership Note.

B. Failure by Developer to materially observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, or under the City Mortgage or City Note (other than payment, which is governed under Section 12.1.A of this Agreement) for a period of thirty (30) 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 thirty (30) day period, Developer shall not be in default if, within such ten day period, Developer notifies City that it has undertaken reasonable measures to cure the default and specifies the nature of such measures. If Developer or Ownership Entity fails to take corrective action or to cure the default within a reasonable time, a limited partner of the Ownership Entity may, but is not required to, (i) remove and replace the general partner with a substitute general partner in accordance with the Partnership Agreement of the Ownership Entity and reasonably acceptable to the City, and the substitute general partner shall effect a cure, or (ii) cure any default, which cure the City shall accept or reject on the same basis as if made or tendered by the Developer or Ownership Entity. Such cures by the limited partner of the Ownership Entity, if pursued, shall be made within a reasonable time thereafter in accordance with the foregoing provisions.

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

D. Developer agrees that as long as this Agreement is in effect, it 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 written approval by City.

E. Notwithstanding anything to the contrary herein, the Developer shall be entitled to receive thirty (30) days’ written notice and opportunity to cure any alleged Event of Default before the City may exercise any remedies hereunder, except in cases of gross negligence or willful misconduct. If such default is not reasonably curable within thirty (30) days, but Developer is diligently pursuing cure, the cure period may be extended at the discretion of the City for a period of time reasonably necessary to complete the cure.

Section 12.2. 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 Mortgage or the City 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 12.3. Agreement to Pay Attorneys’ Fees and Expenses. If Developer materially defaults under any of the provisions of this Agreement or the City Mortgage, City Note or the Restrictive Real Estate Covenants and the City employs attorneys, in house or outside, 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 Mortgage, the City Note or the Restrictive Real Estate Covenants, Developer agrees that it shall on demand therefore pay to the City the reasonable and documented out-of-pocket fees of such attorneys and such other reasonable expenses incurred by the City.

Section 12.4. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any 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 12.5. Redemption Period. In the event the City shall elect to foreclose the City Mortgage, the period of redemption shall be one month in lieu of nine months.

Section 12.6. 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 thirty (30) 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 Note and the City Mortgage only in the event of a material breach or permanent abandonment of the Project; and (2) sue for compensatory damages suffered by the City due to the Default as well as, if appropriate, punitive damages.

**ARTICLE XIII**  
**Miscellaneous**

Section 13.1 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 Health, Housing & Homelessness  
City of Albuquerque  
Post Office Box 1293  
Albuquerque, NM 87103

with copies to:  
Authorized City Representative  
Director, Metropolitan Redevelopment Agency  
City of Albuquerque  
Post Office Box 1293  
Albuquerque, NM 87103

If to Developer:               Authorized Developer Representative  
Silverstone Equity Partners LLC  
8850 Huffmeister Rd #200,  
Houston, TX 77095

with copies to:  
Authorized Developer Representative  
Route 66 Multi Family ABQ LLC  
355 Bunker Hill Rd.  
Houston, TX 77024

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

Section 13.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and Developer, and their respective successors and assigns, subject, however to the limitations contained herein.

Section 13.3. Separability. 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 of, or the Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 13.4. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the City Mortgage, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties. The City is authorized to enter into amendments to this Agreement which do not materially adversely impact the City's rights or obligations pursuant to this Agreement.

Section 13.5. 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 13.6. 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 13.7. Governing Law and Forum. 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, as applicable.

Section 13.8. Recording. This Agreement as well as the City Mortgage and the 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, by the title company selected by Developer for the closing of the construction financing on the Project, in accordance with the terms of this Agreement related to recording real estate obligations related to the Project or Real Estate.

Section 13.9. 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 13.10. 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 13.11. 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 waive 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 13.12. 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 13.13. 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 13.14. 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 13.15. 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 13.16. 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 13.17. 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 13.18. 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 13.19. Assignment and Subletting. Except for the contemplated assignment of this Agreement by the Developer to the Ownership Entity, the Developer shall not otherwise 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 Mortgage, the City 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 or the Ownership Entity, unless removal of Developer from Ownership Entity by a limited partner and in accordance with Ownership Entity's Partnership Agreement occurs. If such removal event occurs, City shall not unreasonably withhold approval of transfer or assignment of Agreement to a qualified entity mutually approved by City and Ownership Entity, to fulfill duties of this Agreement.

Section 13.20. 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 contractor, 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 13.21. Appropriations. Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council un-appropriates and deauthorizes funds during a fiscal year, this Agreement may be terminated, upon thirty (30) days' written notice given by the City to all other parties to this Agreement. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by all parties and shall be final. Notwithstanding the foregoing, the City may not terminate this Agreement based upon insufficient appropriations or deauthorization as it relates to the conveyance of the Land and Land Value after the Date of Conveyance, except as otherwise allowed within this Agreement or under the law.

Section 13.22. 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 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, or any other similar

circumstances for which it is not responsible or which are not within its control. After the termination of any such event of Force Majeure forbearance shall terminate, and the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines.

Section 13.23. Conflict of Interest: No member, officer, or employee of the Contractor, or any other person who exercises any functions or responsibilities with respect to the programs of the Contractor during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. The Contractor shall incorporate, or cause to be incorporated in all such subsequent agreements or sub-agreements, a provision prohibiting such interest pursuant to the purposes of this Section.

Section 13.24. 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 or both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 13.25. 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 13.26. 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 13.27. 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 13.28. 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 upon the last date of signature.

Section 13.29. 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 13.30. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. 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.

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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

Silverstone Equity Partners LLC.  
(Signature below must be that of a board member or officer authorized to bind the corporation).

Approved By:

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

\_\_\_\_\_  
Samantha Sengel, EdD  
Chief Administrative Officer  
City of Albuquerque

Sandeep Patel  
Managing Partner

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

\_\_\_\_\_  
Taxpayer Identification Number

93-3307236  
Federal Taxpayer Identification Number

## **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. “Adjusted Income” means the Annual Income of a household less any eligible allowances as specified in 24 CFR 5.611.
3. “Adjusted Monthly Income” means one twelfth of Adjusted Income.
4. “Affordable” means the total housing cost, which includes principal, interest, taxes and insurance, does not generally exceed 30% of the household annual income.
5. “Affordable housing” or “Affordable unit” means that residential unit, which either directly or indirectly has received financial assistance for acquisition and/or rehabilitation from funds authorized in the Agreement. In rental projects where the funds provided through the Agreement are only a portion of the total Project cost, a prorated number of units shall be defined in the Agreement and designated as floating Affordable units.
6. “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.
7. “Annual Income” means the anticipated total income from all sources, as defined in 24 CFR 5.609, to be received by the Family Head and spouse and each additional member of the household during a twelve-month period.
8. “Authorized City Representative” for the purposes of this Agreement shall be the Director of the Department of Health, Housing and Homelessness, or his/her designee.
9. “Authorized Developer Representative” means the person designated to act on behalf of the Developer.
10. “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.

11. “City” means the City of Albuquerque, New Mexico, and the Department acting on behalf of the City as manager of this Agreement, which in this case is the Department of Health, Housing and Homelessness. This Agreement does not obligate other City Departments, which have separate and distinct obligations with regard to planning, zoning, inspections, licensing, and permitting.
12. “City Loan” means that amount of the General Fund Loan in the amount of \$2,000,000.00 authorized under this Agreement and provided through the City to construct the Project.
13. “City’s Low Income” families means households earning Family Income of 80% or less of the City’s median income for the area, as determined by the U. S. Department of Housing and Urban Development.
14. “City Mortgage” means the mortgage against the Real Property, in substantially the form set forth in **Exhibit C** attached hereto, executed by the Partnership/ Ownership Entity in favor of the Developer to secure repayment of the Developer Loan in the event of a default, and which has been collaterally assigned by the Developer to the City to secure repayment of the City Loan made from the Gross Receipts Tax Funds in the event of a default under this Development Agreement.
15. “City Note” means the promissory note, substantially in the form attached hereto as **Exhibit D**, which evidences the obligation of the Partnership/Ownership Entity to repay the Developer Loan, and which has been collaterally assigned by the Developer to the City to secure repayment of the City Loan made from the Gross Receipts Tax Funds in the event of a default under this Development Agreement.
16. “City’s Very Low-Income” families means households earning Family Income of 50% or less of Area Median Family Income.
17. “Completion Date” means the date of completion of the rehabilitation of the Project as that date shall be certified pursuant to Section 4.2 hereof.
18. “Rehabilitation Period” means the period between the beginning of construction or installation of the Project and the Completion Date.
19. “Council” means the Council of the City or any successor governing body of the City.
20. “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.

21. “Developer’s Fees” means those fees earned by the Developer involved in the Project which are the result of services provided to obtain Project financing, managing the rehabilitation of the Project, and maintaining and/or managing the Project after completion of rehabilitation.
22. “Family” means one or more individuals residing in a household.
23. “Family Income” means the gross annual income earned or received through all sources by a Family.
24. “General Fund” means those funds provided by Resolution 189, Enactment Number 51-1997 of the City Council of the City of Albuquerque.
25. “Home Investment Partnership Program” means the program authorized by the Act of the Federal U.S. Department of Housing and Urban Development that provides funds to the City of Albuquerque in support of affordable housing development.
26. “Housing Quality Standards” means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment, or any subsequent housing standard as required by the Department of Housing and Urban Development for affordable housing (currently NSPIRE standards will replace HQS standards in October 2024).
27. “Income Determination Criteria” means those income inclusions and exclusions as permitted under 24 CFR Part 5.609.
28. “Independent Engineer” means an engineer or architect or engineering or architectural firm approved by the City qualified to practice the profession of engineering or architecture under the laws of the State and who or which is not an employee of the City.
29. “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 attorneys’ fees) incurred in the collection of such gross proceeds.
30. “Permitted Encumbrances” means as of any particular time
  - i. liens for taxes and special assessments on the Project contested or not then delinquent as permitted by Article IX hereof;
  - ii. utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions that shall not materially interfere with or impair Developer’s use of the Project (or if no operations are being conducted therein, the operations for which the Project was designed);

- iii. mechanic's liens, security interests or other encumbrances to the extent permitted by Article VIII hereof;
  - iv. liens resulting from governmental regulations on the use and occupancy of the Project;
  - v. liens subordinate to the lien given to the City under and subject to the terms of this Agreement and to which the City has consented;
  - vi. liens arising by reason of deposits with or the giving of any form of security to or required by any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license by Developer or to enable Developer to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with worker's compensation or other insurance or to share in the privileges or benefits required for entities participating in such arrangements;
  - vii. any judgment lien against Developer so long as the finality of such judgment is being contested and execution thereof is stayed by appropriate proceedings promptly initiated and diligently conducted; and viii) such minor defects, irregularities, encumbrances, easements, rights-of-way, reservations, patents, and clouds on title as normally exist with respect to properties similar in character to the Project and as so not in the aggregate materially impair the Real Property affected thereby for the purpose for which it is acquired or is held by Developer;
  - viii. any encumbrances identified on the Developer or Ownership Entity's title insurance policy.
31. "Person" means any natural person, firm association, trust, partnership, corporation or public body.
32. "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.
33. "Program Income" means that portion of income generated from the Project subject to the requirements of the Affordable Housing Ordinance, in addition to all applicable requirements of the City's *Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque*.
34. "Real Property" or "Property" means the real estate that consists of all the property described on **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 therefor, less such real estate and interests in real estate taken by the exercise of the power of eminent domain as provided herein.

35. “Restrictive Real Estate Covenants” means those real estate covenants imposed on the Real Property, in substantially the form attached as **Exhibit I** to insure the City’s goals in regards to the Project.
36. “Special Needs” households means homeless people 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.
37. “Subordination Agreement” means the agreement whereby the City agrees to subordinate the lien of the City Mortgage to all other Project financing, in substantially the form attached as **Exhibit J**.
38. “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.
39. “Workforce Housing” means rental and/or for-sale housing that is affordable in accordance with the City of Albuquerque Workforce Housing Opportunity Act (Sections 14-9-1 et seq. ROA 1994).

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## **Exhibit B**

### **Legal Description**

PARCELS B-1 AND C-1-A TIJERAS PLACE ADDITION BEING COMPRISED OF PARCELS 8, C-1, C-2, D & E; LOTS 13 AND 14, BLOCK 25, TIJERAS PLACE ADDITION; PORTIONS OF VACATED ORTIZ DRIVE NE, ZIA ROAD NE; AND TRACTS IDENTIFIED AS "3-6-EL-2" & "3-7-EL-1", BEING PORTIONS OF LOTS 11 & 12, BLOCK 19, TIJERAS PLACE ADDITION

**Exhibit C**

**MORTGAGE, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT  
(\$2,000,000.00 Loan)**

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Mortgage**”) is made as of \_\_\_\_\_, 2025, by Route 66 Multi Family ABQ LLC, a Texas Limited Liability Company, whose address is 355 Bunker Hill Rd., Houston, TX 77024, as mortgagor (“**Borrower**”) and **Silverstone Equity Partners, LLP**, a Texas Limited Liability Company, whose address is 8850 Huffmeister Rd #200, Houston, TX 77095, as mortgagee (“**Lender**”).

Borrower, in consideration of the indebtedness herein recited hereby mortgages, warrants, grants, conveys and assigns to Lender, Borrower’s leasehold interest in the real property located in the City of Albuquerque, County of Bernalillo, New Mexico as described on Exhibit A attached hereto and incorporated herein by this reference (the “**Land**”).

TOGETHER WITH all of Borrower’s interest in any and all buildings and improvements now or hereafter erected on the Land, including but not limited to the fixtures, appurtenances, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements, but specifically excluding personality of tenants in the buildings (the “**Improvements**”). The Land and Improvements are referred to collectively as the “**Property**.”

For purposes of this Mortgage, “fixtures” shall be deemed to include, to the fullest extent allowed by law, all equipment and machinery now or at any time hereafter located in, on, under or about the Property or appurtenant thereto, that is used in connection therewith and which is or becomes so related to the Property that an interest arises in it under real estate law. Such fixtures shall include, without limitation, all machinery, equipment (including without limitation pipes, furnaces, conveyors, drums, fire sprinklers and alarms systems, and air conditioning, heating, refrigerating, electronic monitoring, food storage, food processing, trash and garbage removal and maintenance equipment), office equipment, built-in tables, chairs, planters, desks, sofas, shelves, lockers, cabinets, safes, furnishings, appliances including without limitation iceboxes, refrigerators, dishwashers, stoves, ovens, microwave ovens, trash compactors, washers, dryers, fans, heaters, water heaters and incinerators), rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures.

TOGETHER WITH, all rents, issues, profits, royalties, deposits, receipts, revenues,

income and all other benefits derived from the Property (collectively, the “**Rents**”), subject to the right, power and authority hereinafter given to Borrower to collect and apply the Rents.

Borrower and Lender covenant and agree as follows:

1. **Note; Other Obligations Secured.** This Mortgage is given to secure to Lender: (1) the repayment of the indebtedness evidenced by Borrower’s Promissory Note (the “**Note**”) of even date herewith in the principal sum of **TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00)** from **City General Funds**, according to the terms of the Note payable to order of Lender, and extensions or renewals thereof; (2) the performance of each agreement and covenant of Borrower incorporated by reference or contained herein; and (3) payment of additional sums and interest thereon which may hereafter be loaned by Lender to Borrower, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage.
2. **Payment of Principal.** Borrower shall promptly pay when due the principal of the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower’s other covenants contained in the Note.
3. **Prior Mortgages and Deeds of Trust Charges Liens.** Borrower shall perform all or Borrower’s obligations under any prior mortgage and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Mortgage. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this Section 3 if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.
4. **Property Insurance.**
  - a. Borrower shall keep the Improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term “extended coverage” in an amount at least equal to the lesser of (1) the insurable value of the Property or (2) an amount sufficient to pay the sums secured by this Mortgage as well as any prior encumbrances on the Property. All of the foregoing shall be known as “**Property Insurance.**”
  - b. The insurance carrier providing the Property Insurance shall be qualified to write Property Insurance in New Mexico and shall be chosen by Borrower subject to Lender’s right to reject the chosen carrier for reasonable cause. All Property Insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at

least ten (10) days before cancellation, termination or any material change of coverage. Property Insurance policies shall be furnished to Lender at or before closing, Lender shall have the right to hold the policies and renewals thereof.

- c. In the event of loss, Borrower shall give prompt notice to the Property Insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.
  - d. Property Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the Property Insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with Section 13 by tender to Borrower that the Property Insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the Property Insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage or any part thereof.
  - e. Any such application of proceeds to principal shall not extend or postpone the due date of any required payments under the Note or change the amount of such payments. Notwithstanding anything herein to the contrary, if under Section 15 the Property is acquired by Lender, all right, title and interest of Borrower in and to any Property Insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.
  - f. All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior mortgage with respect to said insurance carriers, policies and proceeds.
  - g. Borrower shall be in compliance with the requirements of this Section 4 if Borrower is in compliance with the insurance requirements set forth in any prior mortgage secured by the Property, or any other mortgage which may have or attain priority to this Mortgage.
5. **Preservation and Maintenance of Property.** Borrower shall keep the property in good repair and shall not commit waste or permit impairment or deterioration of the Property. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the

Property.

**6. Protection of Lender's Security.**

- a. Except when Borrower has exercised Borrower's rights under Section 3 above, if the Borrower fails to perform the covenants and agreements contained in this Mortgage, or if a default occurs in a prior lien, or if an action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:
  - i. any general or special taxes or ditch or water assessments levied or accruing against the Property;
  - ii. the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
  - iii. sums due on any prior lien or encumbrance on the Property;
  - iv. the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of the Lender or holder of the certificate of purchase;
  - v. all other costs and expenses allowable by the evidence of debt or this Mortgage; and
  - vi. such other costs and expenses which may be authorized by a court of competent jurisdiction.
- b. Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.
- c. Any amounts disbursed by Lender pursuant to this Section 6, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in Section 1. Nothing contained in this Section 6 shall require Lender to

incur any expense or take any action hereunder.

7. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower written notice prior to any such inspection specifying reasonable cause thereof related to Lender's interest in the Property.
8. **Condemnation.**
  - a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior mortgage.
  - b. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to Borrower's equity in the Property immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Mortgage and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking; provided that the proceeds paid to Lender shall not exceed all amounts secured by this Mortgage. Notwithstanding anything to the contrary contained herein but subject to the rights of any senior lender, so long as the value of Lender's lien is not impaired, any condemnation proceeds may be used by Borrower for repair and/or restoration of the Project.
  - c. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.
  - d. Any such application of proceeds to principal shall not extend or postpone the due date of any required payments under the Note or change the amount of such payments.
  - e. Borrower shall be in compliance with the requirements of this Section 8 if Borrower

is in compliance with provisions regarding condemnation set forth in any prior mortgage secured by the Property, or any other mortgage which may have or attain priority to this Mortgage.

9. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Mortgage. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower nor Borrower's successors in interest.
10. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.
11. **Remedies Cumulative.** Each remedy provided in the Note and this Mortgage is distinct from and cumulative to all other rights or remedies under the Note and this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
12. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 20. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the sections in this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.
13. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be in writing and shall be given and be effective upon (1) delivery to Borrower and Borrower's Limited Partner, or (2) mailing such notice by first class U.S. mail, addressed to Borrower and Borrower's Limited Partner at Borrower's and Borrower's Limited Partner's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender, or (2) mailing such notice by first class U.S. mail, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in any manner designated herein. Borrower's Limited Partner's address is:

**Silverstone Equity Partners LLC**  
8850 Huffmeister Rd #200

Houston, TX 77095

14. **Governing Law; Forum Selection; Severability.** The Note and this Mortgage shall be governed by the law of New Mexico, and the laws, rules and regulations of the City of Albuquerque. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a court located in Bernalillo County, New Mexico. The parties irrevocably submit themselves to and consent to the jurisdiction of such courts. The provisions of this Section 14 shall survive the termination of this Agreement. In the event that any provision or clause of this Mortgage or the Note conflicts with the law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and Note are declared to be severable.
15. **Acceleration; Foreclosure; Other Remedies.** At any time upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, or upon any default in a prior lien upon the property, subject to any cure period provided therein, Lender, at Lender's option, may declare the indebtedness secured hereby to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceeding and may invoke any one or more other remedies permitted by applicable law or provided in this Mortgage or in the Note. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports. Notwithstanding any other provisions of this Mortgage or the Note to the contrary, Borrower may not, until the end of the Compliance Period (as such term is defined in Borrower's Partnership Agreement), exercise its rights under this Mortgage without the prior written consent of the Borrower's Limited Partner.
16. **Borrower's Right to Cure Default.** Whenever foreclosure is commenced for non-payment of any sums due hereunder, Borrower or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, reasonable attorney's fees and other fees all in the manner provided by law. Upon such payment, this Mortgage and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued. The Limited Partner shall have the right, but not the obligation, to cure defaults hereunder in the same manner as set out in the Note.
17. **Assignment of Rents; Appointment of Receiver; Lender In Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under Section 15 or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.
  - a. Lender shall be entitled to a receiver for the Property after Acceleration under Section 15, and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a

matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice, notice being hereby expressly waived.

- b. Upon Acceleration under Section 15 or abandonment of the Property, Lender in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.
18. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall cause the release of this Mortgage. Borrower shall pay all costs of recordation.
  19. **Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the property under state or federal law presently existing or hereafter enacted.
  20. **Transfer of the Property, Assumption.** The following events shall be referred to herein as a “**Transfer**”: (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, a general partnership interest or more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, or (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Mortgage, (ii) the creation of a purchase money security interest for household appliances, (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant, (iv) a transfer of limited partnership interests of Borrower, or (v) the removal or substitution of the general partner of Borrower in accordance to the Amended and Restated Agreement of Limited Partnership of the Borrower. At the election of Lender, in the event of each and every Transfer:
    - a. All sums secured by this Mortgage shall become immediately due and payable (an Acceleration).
    - b. If a Transfer occurs and should Lender not exercise Lender’s option pursuant to Section 20(a) to Accelerate, the transferee shall be deemed to have assumed all of the obligations of Borrower under this Mortgage including all sums secured hereby

whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with the transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to the transferee of undisbursed reserve funds on payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

- c. Should Lender not elect to Accelerate upon the occurrence of such transfer then, subject to Section 20(b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.
21. **Subordination.** Lender agrees that the lien of this Mortgage shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code), including the City's **Restrictive Real Estate Covenants** recorded against the Property, provided that such Restrictive Real Estate Covenants, by their terms, must terminate upon foreclosure under this Mortgage or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.
  22. **No Oral Agreements.** Pursuant to Section 58-6-5 NMSA 1978, a contract, promise or commitment to loan money or to grant, extend or renew credit, or any modification thereof, in an amount greater than Twenty-five Thousand Dollars and No/100 Dollars (\$25,000.00) not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party's authorized representatives.
  23. **Maximum Amount of Indebtedness.** Notwithstanding any provision to the contrary in this Mortgage or the Note which permits any additional sums to be advanced on or after the date of this Mortgage, whether as additional loans or for any payments authorized by this Mortgage, the total indebtedness secured by this Mortgage shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note set forth in Section 1 of this Mortgage.
  24. **Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Mortgage.



**Exhibit D**

**PROMISSORY NOTE**

**\$2,000,000.00**

FOR VALUE RECEIVED, the undersigned, ROUTE 66 MULTI FAMILY ABQ LLC, a Texas limited liability company ("Maker"), promises to pay to the order of SILVERSTONE EQUITY PARTNERS LLC, a Texas limited liability company ("Holder"), the principal sum of **TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00)**, or so much thereof as may have been advanced to Maker by Holder, together with all charges as provided herein and accrued interest on the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On \_\_\_\_\_, 2025, 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 **Serenade at Park Central** 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 \_\_\_\_\_, 2025 (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 a minimum of one percent (1%) 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 \_\_\_\_\_, 2026, 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 to the extent remaining to be distributed after the Partnership Services Fee (as that term is described in the Partnership Agreement) in the priority set forth in 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: **8850 Huffmeister Rd #200, Houston, TX 77095**, 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"). 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: ROUTE 66 MULTI FAMILY ABQ LLC  
355 Bunker Hill Rd.  
Houston, TX 77024

Limited Partner: \_\_\_\_\_ LLP

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 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 \_\_\_\_\_, 2025.

ROUTE 66 MULTI FAMILY ABQ LLC  
By ROUTE 66 MULTI FAMILY ABQ  
LLC, Managing Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Sandeep Patel, Managing Partner

**Exhibit E**

**PROJECT BUDGET**

**FINANCIAL SCHEDULES FROM APPENDIX B (on following pages):**

- 1. Development Costs**
- 2. Sources and Uses of Funds**
- 3. Rents and Income**
- 4. Operating Expenses**
- 5. Sources and Uses by Month**

**(BUDGET PAGES TO BE INSERTED ON THE FOLLOWING PAGES)**

**Exhibit F**

**Grant Payment Schedule**

<b>Source of Fund</b>	<b>Amount</b>	<b>Forgiven</b>
<b>City General Funds (Construction)</b>	<b>\$2,000,000.00</b>	<b>End of Affordability Period- 30 Years</b>

(THIS SPACE INTENTIONALLY LEFT BLANK)

**Exhibit G**

**DEVELOPMENT SCHEDULE FROM ATTACHMENT A (on following page):**

**1. Development Schedule**

**(DEVELOPMENT SCHEDULE TO BE INSERTED ON THE FOLLOWING PAGES)**

## Exhibit H

City of Albuquerque  
 Department of Health, Housing & Homelessness  
 Financial Status Report and Request for Reimbursement

1. Entity 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
Construction (Hard Costs)					
Architectural & Engineering Fees					
Contractual Services & Specialty Consultants					
Permit Fees					
Utility Tap Fees					
Loan Broker Fees					
Developer Fees					
Equipment Lease & Maintenance					
Insurance					
Security Equipment & Fencing					
Other Costs*					
<b>Totals</b>					

10. Certification: I hereby certify that the funds for which reimbursement is being herein requested have been or will be utilized for the Affordable Housing Development Project described in the Agreement executed between the City of Albuquerque and the above named entity 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.

\*Other Costs must be submitted with written justification and explanation as to why they are applicable under the signed agreement and necessary for project completion. Costs other than those explicitly defined by the agreement are subject to approval before reimbursement.

10. Signature of Authorized Official	b. Title
11. 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**

**Route 66 Multi Family ABQ LLC  
Serenade at Park Central  
RESTRICTIVE REAL ESTATE COVENANTS**

Made in Albuquerque, New Mexico

Date \_\_\_\_\_

These Restrictive Real Estate Covenants are made by **Route 66 Multi Family ABQ LLC**, a Texas limited liability company, whose address is 355 Bunker Hill Rd., Houston, TX 77024 (“Owner”) in favor 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 modified or released by the City, as more fully described herein.

1. Recitals:

A. The Owner is the owner 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:

PARCELS B-1 AND C-1-A TIJERAS PLACE ADDITION BEING COMPRISED OF PARCELS 8, C-1, C-2, D & E; LOTS 13 AND 14, BLOCK 25, TIJERAS PLACE ADDITION; PORTIONS OF VACATED ORTIZ DRIVE NE, ZIA ROAD NE; AND TRACTS IDENTIFIED AS "3-6-EL-2" & '3-7-EL-1 ", BEING PORTIONS OF LOTS 11 & 12, BLOCK 19, TIJERAS PLACE ADDITION

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 Real Property in order to implement the Project. The Real Property shall be used only for the Project. The Owner for the Project named **Serenade at Park Central**, located at 300 San Mateo Boulevard NE, as legally described in **Exhibit B**. The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project will also include an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total 41 affordable rental units proposed, approximately 21 are studio units and 20 are one-bedroom units, all disbursed throughout the 10 floors of the building, and assigned on a “floating” basis per the signed development agreement.

The Project shall remain an affordable rental housing project as more fully defined elsewhere in the Development Agreement adopted by reference and incorporated herein as though set forth in this Restrictive Covenant.

2. Definitions

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

“Annual Income” means the anticipated total income from all sources, as defined in 24 CFR 5.609, to be received by the Family Head and spouse and each additional member of the household during a twelvemonth period.

“City’s Low Income” families means households earning Family Income of 80% or less of the City’s median income for the area, as determined by the U.S. Department of Housing and Urban Development.

“City’s Very Low-Income” families means households earning Family Income of 50% or less of Median Family Income.

“Family” means one or more individuals residing in a household.

“Family Income” means the gross annual income earned or received through all sources by a Family.

“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 the Agreement and designated as floating HOME assisted units.

“Housing Quality Standards” means the standards set forth in 24 CFR Part 887 to maintain decent, safe and sanitary living environment.

“HUD” means the U. S. Department of Housing and Urban Development.

“Program Income” means that portion of income generated from the Project subject to the requirements of the Affordable Housing Ordinance, in addition to all applicable requirements of the City’s *Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque*.

“Project” means the residential apartment development to be constructed upon the Real Property, including related on-site and off-site improvements, equipment and related rights therein. The “Project” does not include the Retail Unit.

“Special Needs” households means homeless people 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.

“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.

“Workforce Housing” means rental and/or for-sale housing that is affordable in accordance with the City of Albuquerque Workforce Housing Opportunity Act (Sections 14-9-1 et seq. ROA 1994).

### 3. Restrictive Real Estate Covenants

A. Use of Property. The Real Property shall be used as and only for the Project. The Project named **Serenade at Park Central**, located at 300 San Mateo Boulevard NE, as legally described in **Exhibit B**. The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project will also include an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total 41 affordable rental units proposed, approximately 21 are studio units and 20 are one-bedroom units, all disbursed throughout the 10 floors of the building in the northeast quadrant of the 12.4-acre site, on its own 3.37-acre site, comprised of two legal parcels.

The Project shall remain an affordable rental housing project as more fully defined elsewhere in the Development Agreement adopted by reference and incorporated herein as though set forth in this Restrictive Covenant.

The Restrictive Real Estate Covenants shall terminate upon foreclosure of the City’s Mortgage, and/or any mortgage upon the Property in a senior position to the City’s Mortgage, or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

B. Income Qualifications. The Owner shall determine the annual income of a household occupying or seeking to occupy the Affordable Units, in accordance with 24 CFR Part 5.609. The Project is intended to serve households at or below 80% AMI, as described herein and in accordance with the HUD-published Area Median Income for the City of Albuquerque.

(1) The Owner shall determine whether the annual income of household(s) occupying or seeking to occupy the Affordable Units, exceeds the applicable income limit prior to admission of the household(s) to occupancy.

(2) The Owner shall annually re-examine and document the income of households residing in the Affordable Units to ensure compliance with Sections B of these covenants.

C. Rent Determination. 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 80% AMI for the areas, as determined by HUD, with adjustment for number of bedrooms in the unit. The rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(1) Any rent increases of the Affordable Units other than those related to increases in the imputed income limits 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.

(2) Affordable 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 B above, until the noncompliance is corrected.

(3) In the event a tenant's income exceeds **80%** AMI following initial occupancy, the tenant may be required pay 30% of tenant's adjusted income as rent, or the market rate for the neighborhood. Nonetheless, the unit assigned to the tenant whose income has exceeded the affordable threshold will no longer count towards the total number of affordable units required by the Project Agreement.

(4) The Owner shall ensure that each household occupying the affordable units will have an executed lease with the Owner in compliance with 24 CFR Part 92.253.

(5) In the event a unit(s) has funding from both low-income housing tax credits and the City's General Fund, the low-income housing tax credit rules shall apply. In the event of any conflict between the terms of Section 3.B and/or 3.C and the terms of the Section 42 of the Internal Revenue Code (the "Code"), the terms of the Code shall control.

(6) 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.

4. The Owner shall ensure 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. The 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 a default of this Agreement.

5. 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 within (90) days of achieving 100%

occupancy and from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until the terms of this Agreement have been met.

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 the City shall be allowed to inspect the Real Property and the Project, upon (72) hour notice to Owner, for the duration of this Agreement.

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 shall be considered Program Income and must comply with the Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque. For purposes of complying with the Administrative Requirements, the Owner may utilize Program Income for the Project, including for Project maintenance, in addition to the City funding.

(d) The Owner shall report annually within 120 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 Agreement.

9. Term. The Owner's obligations designated herein are to commence upon the execution of these 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 Agreement but, in any event, the Affordability requirement shall be continued for twenty (30) years from the completion of the Project ("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. If no additional City funds are infused in the project, credit will be given for the number of years the Affordability Period has been met. If additional City funds are infused, the initial twenty (30) year Affordability Period will commence anew.

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

11. City General Funds Repayment Obligation. The City has contributed the sum of **\$2,000,000.00** in City General Funds towards the development of the Project on the Real Property. The City General Funds received must be repaid, without interest, to the City by the Developer in the event of a violation of the Affordability Period obligations pursuant to these Restrictive Real Estate Covenants, by the Owner (the "General Funds Repayment Obligation") during the first twenty (30) years of the term of these Restrictive Real Estate Covenants. The General Funds Repayment Obligation is the sole obligation of the Owner, its successors and assigns. In the event of violation of these Restrictive Real Estate Covenants the City shall give written notice to the Owner and all holders of financial encumbrances against the Real Property, and these parties shall have thirty (30) days to cure the violation (or if the violation cannot reasonably be cured within thirty (30) days, then to commence to cure the violation and diligently pursue to cure the violation) before the City General Funds Repayment Obligation shall become due. The addresses for the Owner and the Investor are as follows:

Owner: ROUTE 66 MULTI FAMILY ABQ LLC  
355 Bunker Hill Rd.  
Houston, TX 77024

Investor: Silverstone Equity Partners LLC  
8850 Huffmeister Rd #200  
Houston, TX 77095

12. Binding Effect. Upon execution of these Restrictive Real Estate Covenants by the Owner, the terms, conditions and covenants under these Restrictive Real Estate Covenants shall be binding and inure to the benefit of the parties and their representatives, successors and assigns.

13. Construction and Severability. If any part of these Restrictive Real Estate Covenants is 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 \_\_\_\_\_, 2025

ROUTE 66 MULTI FAMILY ABQ LLC a Texas limited liability company

By: \_\_\_\_\_  
Sandeep Patel, Managing Partner

STATE OF NEW MEXICO )  
 ) SS  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on \_\_\_ day of \_\_\_\_\_, 2025, by Sandeep Patel, Managing Partner of ROUTE 66 MULTI FAMILY ABQ LLC, a Texas limited liability company.

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

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

**Exhibit J**

**SUBORDINATION OF MORTGAGE**

This Subordination of Mortgage (“Subordination”), dated \_\_\_\_\_, 2025, is granted by the CITY OF ALBUQUERQUE (“City”), a New Mexico municipal corporation, City-County Building, One Civic Plaza, Albuquerque, New Mexico, in favor of \_\_\_\_\_, a \_\_\_\_\_ corporation (“Bank”) whose address is \_\_\_\_\_, with the agreement of Silverstone Equity Partners LLC , a Texas limited liability company, 8850 Huffmeister Rd #200, Houston, TX 77095, and Route 66 Multi Family ABQ LLC (the “Borrower”), whose address is 355 Bunker Hill Rd., Houston, TX 77024. The City, Bank, Developer and Borrower agree:

As of the date hereof, the Developer has transferred the real property more fully described in **Exhibit A** attached hereto (the “Property”) to the Borrower, which is an affiliated entity. In turn, Borrower granted to Developer on \_\_\_\_\_, 2025, that certain Mortgage, Assignment of

Rents and Security Agreement recorded in the real property records of Bernalillo County, as Doc# \_\_\_\_\_ on \_\_\_\_\_, 2025 (the "City Mortgage").

The City Mortgage is a lien on the real property described therein ("Property"), on which Borrower as a related entity of Developer is required to rehabilitate and operate low income affordable housing apartments on the Property ("Project") under the terms of a development agreement ("Development Agreement") between City and the Developer dated \_\_\_\_\_, 2025.

Pursuant to the Development Agreement, Developer assigned the City Mortgage to the City by Collateral Assignment of Promissory Note, Mortgage, Assignment of Rents and Security Agreement recorded in the real property records of Bernalillo County, as Doc# \_\_\_\_\_ on \_\_\_\_\_, 2025 (the "Collateral Assignment").

The Bank has agreed to make a loan ("Bank Loan") to the Borrower in the amount of \$ \_\_\_\_\_ pursuant to that certain construction loan agreement ("Loan Agreement") dated \_\_\_\_\_ between the Borrower and the Bank, which Bank Loan will be secured by a mortgage ("Bank Mortgage") on the Property.

Bank requires as a condition for the Bank Loan, that the Bank Mortgage be in a first lien position which Bank Mortgage secures the Partnership's repayment of those certain four promissory notes each dated December \_\_\_, 2025 in the aggregate principal amount of \$ \_\_\_\_\_ .00 (collectively, the "Bank Note"), and that the lien of the City Mortgage be subordinated to the lien of the Bank Mortgage.

THEREFORE, IN CONSIDERATION OF THE FOREGOING AND IN ORDER TO INDUCE BANK to make the Bank Loan and other good and valuable consideration, the City, Borrower and Bank agree as follows:

City as assignee under the Collateral Assignment hereby subordinates the lien of the City Mortgage, which shall hereafter be junior and inferior in priority to the Bank Mortgage; subject to the provisions below and further provided that Bank shall not change the interest rate or maturity date of the Bank Note without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or denied.

The maximum lien amount of the Bank Mortgage shall not, without City's prior written consent, exceed the amounts of:

- a. the Bank Note in the aggregate principal amount of \$ \_\_\_\_\_ .00;
- b. amounts advanced by Bank under the Bank Mortgage, its Loan Agreement or otherwise to complete construction of the Project, including cost overruns in any amount;
- c. amounts advanced by Bank under the Bank Mortgage, its Loan Agreement or otherwise to protect or preserve the Project, for taxes, insurance, or receivership costs: and
- d. interest on all such amounts together with costs, expenses and attorneys' fees of all such actions and any further actions to foreclose the Bank Mortgage or collect the Bank Note.

City shall not accelerate the obligations securing the City Mortgage or foreclose the City Mortgage without first providing not less than 30 days prior written notice to Bank of such intended



This Instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2025  
by Samantha Sengel, Chief Administrative Officer of the City of Albuquerque.

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

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

**DEVELOPER:**

**SILVERSTONE EQUITY PARTNERS LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Sandeep Patel, Managing Partner

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

This instrument was acknowledged before me on \_\_\_\_\_, 2025, by Sandeep Patel, Managing Partner of SILVERSTONE EQUITY PARTNERS LLC, a Texas limited liability company.

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

My commission expires: \_\_\_\_\_        **SEAL**



## Exhibit K

### COLLATERAL ASSIGNMENT OF PROMISSORY NOTE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS COLLATERAL ASSIGNMENT OF PROMISSORY NOTE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this “Assignment”), dated \_\_\_\_\_, 2025, is made by Silverstone Equity Partners LLC, (“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 Route 66 Multi Family ABQ LLC, a Texas 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 Serenade at Park Central (the “Project”).
2. Pursuant to the Development Agreement dated \_\_\_\_\_, 2025, (the “Development Agreement”), Assignee granted \$2,000,000.00 of funds to Assignor (the “Funds 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 \$2,000,000.00 to evidence the Loan, payable to Assignor (the “Note”).
4. The Note is secured by the Mortgage, Assignment of Rents, and Security Agreement of even date herewith for the benefit of Assignor, recorded in the real property records of the County of Bernalillo, New Mexico (the “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 \_\_\_\_\_, 2025 (the “Real Estate 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 Note and

the Mortgage, including without limitation, all monies now owing or that may hereafter become due or owing with respect to the Note and the full benefit of all the powers, covenants and provisos contained in the Note and the Mortgage.

Assignor represents and warrants that, as of the date hereof, there have been no amendments or modifications, either oral or written, to the Note or the Mortgage, and that none of the Property has been released from the lien of the Mortgage. Assignor further represents and warrants that (i) there has been no prior assignment of Assignor's rights under the Note or the Mortgage, and Assignor will make no other assignment thereof; (ii) Assignor has good right to assign its rights under the Note and the Mortgage, and to grant the rights herein granted; and (iii) neither the Note nor the 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 Note, and to remit any proceeds collected thereafter on the Note and the Mortgage to Assignee.

This is a collateral assignment securing any obligation to repay the Funds Grant under the Development Agreement or the Real Estate 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 Note or the Mortgage (including an event of default arising from Owner's failure to comply with the Real Estate 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 there is an uncured default of the Loan as provided in the Note and the Mortgage.

Assignor agrees that Assignee may enforce Assignor's rights with respect to the Note and the 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 Note or the Mortgage, and in particular, in the event of any failure to comply with the Real Estate 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.

SILVERSTONE EQUITY PARTNERS LLC, a Texas limited liability company

\_\_\_\_\_  
By: Sandeep Patel,  
Its: Managing Partner

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

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Sandeep Patel Managing Partner of SILVERSTONE EQUITY PARTNERS LLC, a Texas limited liability company.

\_\_\_\_\_  
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.

Route 66 Multi Family ABQ LLC , a Texas limited liability company



## Exhibit L

### 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), Route 66 Multi Family ABQ LLC, a Texas limited liability company (hereinafter Developer or Assignee), and SILVERSTONE EQUITY PARTNERS LLC, a Texas limited liability company, or (hereinafter Assignor), on the \_\_\_\_ day of \_\_\_\_\_, 2025. City, Assignee, 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 **Serenade at Park Central**, located at 300 San Mateo Boulevard NE, as legally described in **Exhibit B**. The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project will also include an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total 41 affordable rental units proposed, approximately 21 are studio units and 20 are one-bedroom units, all disbursed throughout the 10 floors of the building, and assigned on a “floating” basis per the signed development agreement.

The Project shall remain an affordable rental housing project 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 is financing the project with private investment, which will fund a significant portion of the overall cost of the Project; and

WHEREAS, the City entered into that certain Development Agreement dated \_\_\_\_\_, 2025, with the Assignor under which the City agreed to advance no more than TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) 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:









Tim Keller, Mayor

07/17/2025

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**To:** Albuquerque Development Commission

**From:** China Osborn, Redevelopment Project Manager

**Subject:** Housing Conversion RFP #01-2025 – ADC Case #2025-13 (Park Central)

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**Executive Summary.** On December 19, 2024, the Albuquerque Development Commission (ADC) reviewed the eligible projects for RFP #01-2025 (“RFP”) for up to \$4 million in gap funding for a housing conversion project, as recommended by Metropolitan Redevelopment Agency (“MRA”) staff and the RFP Advisory Committee.

After hearing information on the two eligible proposals presented during the meeting, the ADC recommended awarding \$2 million in gap financing to each eligible project, one being the “Park Central” project for the conversion of an existing vacant 10-story office building at 300 San Mateo Blvd NE into mixed-income multi-family rental housing. (See Notice of Decision in Attachment A)

Over the course of 6 months, MRA and the department of Health, Housing, and Homelessness (“HHH”), collectively the “City,” have been negotiating the terms of the Development Agreement with Silverstone Equity Partners, LLC (“Developer”) and present said agreement to the Albuquerque Development Commission for their recommendation to City Council. The agreed-upon Project is for the conversion of the existing 10-story office building into a multi-family mixed-income apartment building, consisting of a proposed 110 total rental units, of which 41 are proposed to be Affordable units and 69 market-rate units.

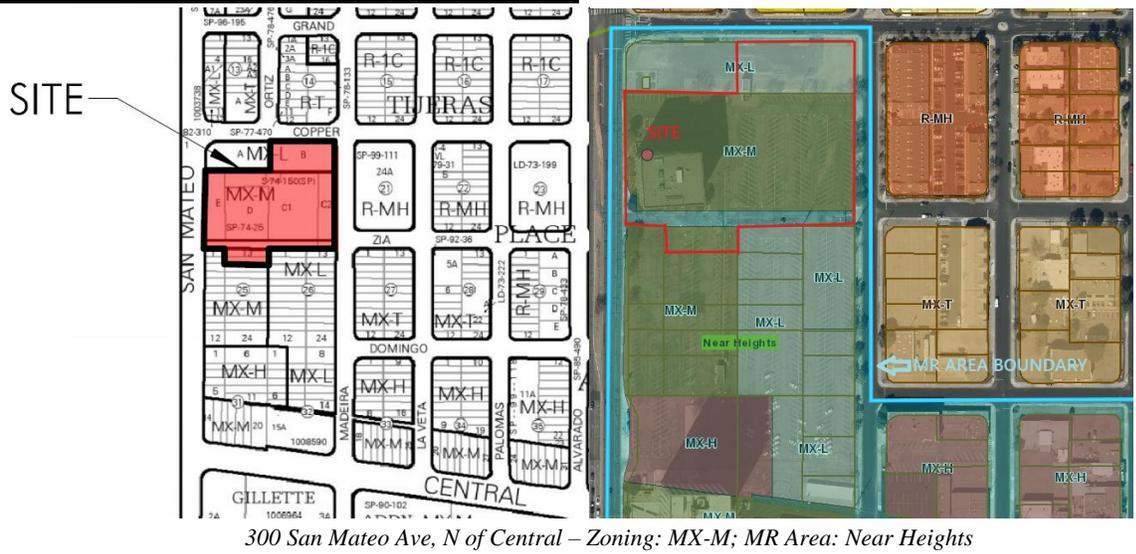
**Background.**

The original Park Central housing conversion project proposal submitted in response to RFP #01-2025 was heard by the ADC on December 19, 2024. The proposal was to redevelop the a vacant 10-story office tower, located at 300 San Mateo Blvd NE, in the Near Heights Metropolitan Redevelopment Area (“MR Area”), into a multi-family residence with between 101 and 155 total units, including between 66 and 77 affordable units at 80% AMI or below. At the ADC hearing, the project was determined to meet all the required Review and

Evaluation Criteria of the RFP (see full staff report: <https://onbase.cabq.gov/publicaccess/?CQID=136>). Therefore, \$2 million in gap financing was awarded to the Park Central housing conversion project to be developed by Silverstone Equity Partners LLC (the “Developer”). The ADC directed MRA staff to proceed with the development agreement negotiations with HHH and the Developer of the project and to return to the ADC to present the negotiated development agreement within 6 months of the approval. Based on the actual award amount of \$2,000,000 instead of the total \$4,000,000 possible, the City and Developer negotiated reasonable modifications to the number of Affordable units proposed.

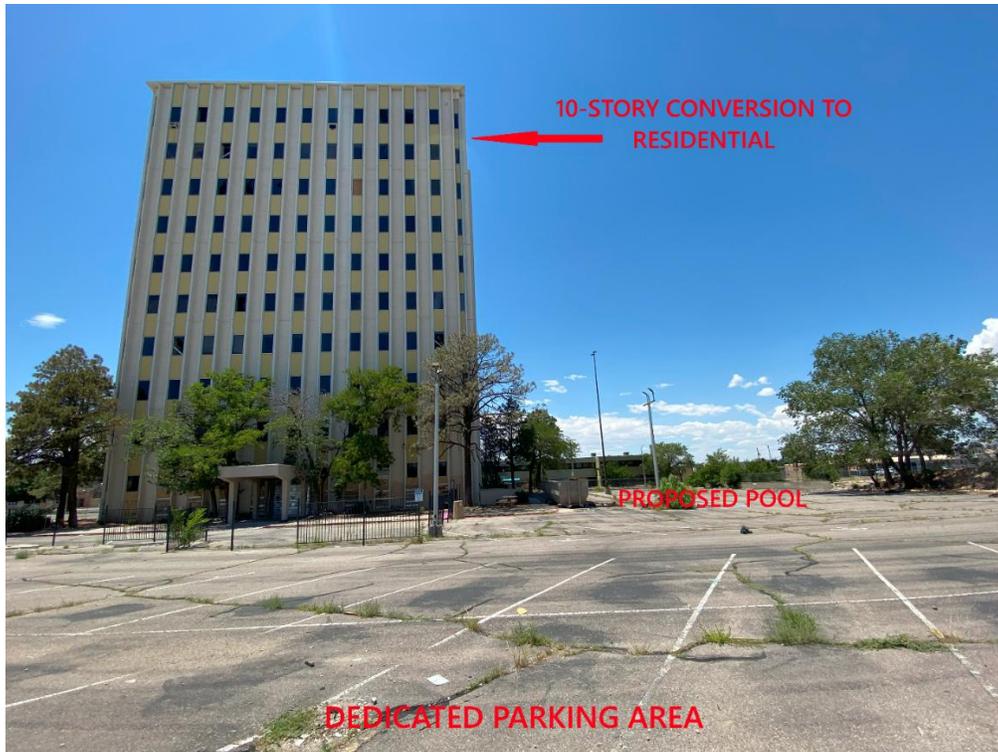
The City and the Developer have completed the Development Agreement negotiations and return to the ADC with the negotiated agreement for the Project as described further below.

**Final Project Description and Location.**



**Existing Site Conditions.**

The project site is in the northwest quadrant of a larger, approximately 10-acre development site with an additional office tower near Central Ave, also slated for redevelopment. The redevelopment of Serenade at Park Central will be the first phase of the development on the site. The entire site, including the two office towers, has been abandoned for several years, and the towers themselves have been subject to substantial vandalism, in spite of the Developer’s efforts to secure the site.



*Proposed Project Site – 300 San Mateo NE – looking west from east property line towards San Mateo Blvd.*



*Entire Project Site – looking south towards Central Ave.– Current and Future Development Phases*

The Project, named Serenade at Park Central, subject of this Development Agreement, is located on a 3.37-acre development site, comprised of two legal parcels, addressed as 300 San Mateo Boulevard NE, Albuquerque, NM 87108, north of Central Avenue. The Project is fully within the Near Heights Metropolitan Redevelopment Area (MR Area), is on a Major Transit Corridor and in an Area of Change as defined by the City of Albuquerque/Bernalillo County Comprehensive Plan.

The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project will also include an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total 41 affordable rental units proposed, approximately 21 are to be studio units and 20 are to be one-bedroom units, all disbursed throughout the 10 floors of the building. The make-up and location of the units designated as Affordable per this agreement may be assigned on a “floating” basis, meaning that specific unit numbers are not assigned as affordable, but rather the total number of Affordable units mandated by this Agreement is available throughout the building depending on the availability of units at any given time and the eligible applicant pool for the Affordable units.



*Rendering of Proposed Development – Serenade at Park Central (Subject to change.)*

## **Development Agreement.**

The City (MRA, HHH, and Legal staff) and the Developer have negotiated a mutually-agreeable Development Agreement (see Attachment B), with the following general characteristics:

### **1. Affordability.**

The original RFP #01-2025 required that at least 20% of the total proposed units be designated affordable at 80% of Area Median Income (AMI) or below per Housing and Urban Development (HUD) standards. Of the total 110 units proposed, 41 units are proposed to be designated Affordable at 80% AMI, exceeding this requirement with 37% of the units designated as Affordable. Because the units are assigned on a floating basis, if a tenant who rents an Affordable unit becomes ineligible because their income went up, the owner may designate a different unit in the building as Affordable, continuing to maintain the overall affordability requirement, so as not to displace the current tenant. The total number of agreed-upon affordable units will become a restrictive covenant on the property after final approval.

### **2. Project schedule & Distribution of Funds.**

A reasonable project timeline must be submitted and attached to the development agreement, with a projected schedule for disbursement of funds procured from the City. The Developer has committed to completing the project no later than September 30, 2027, and will submit a final project schedule within sixty (60) days of the signing of the development agreement. The developer has generally estimated project completion approximately 18 months from the start of construction in fall 2025.

Furthermore, the Developer has agreed that the total award of \$2,000,000 shall be disbursed based on the percentage of construction completion, as follows:

1. Thirty percent (30%) of funds will be disbursed on or after Construction Commencement;
2. An additional twenty-five percent (25%) of funds will be disbursed at fifty percent (50%) construction of the overall Project;
3. An additional twenty-five percent (25%) of funds will be disbursed at seventy-five (75%) of the overall Project;

4. An additional twenty percent (20%) of funds will be disbursed at Construction Completion, as demonstrated by a certificate of occupancy.

### **3. Financial plan.**

The total estimated project cost is approximately \$23,000,000, of which the Developer has requested and been awarded \$2,000,000 from the City through RFP #01-2025, representing less than 10% of the total project cost. The remainder of the funding is through private loans and investment and does not require additional local or state approvals. Therefore, upon or after the final approval of the development agreement, before any City funds are disbursed, the Developer shall submit evidence of the commitments to the Developer providing the balance of all construction financing for the Project, demonstrating project feasibility.

### **Recommendation.**

That the ADC recommends APPROVAL to City Council of the \$2,000,000 Gap Financing award for Silverstone Equity Partners, LLC, for the development of the Serenate at Park Central multi-family residential conversion project, located at 300 San Mateo Blvd. NE, consisting of approximately 110 mixed-income rental units, including 41 affordable income-restricted units at 80% AMI, and directs the Metropolitan Redevelopment Agency (MRA) and department of Health, Housing, and Homelessness (“HHH”) to execute the Development Agreement based on the draft agreement attached to the staff report, and subject to the following findings and conditions of approval.

### **Findings.**

1. As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, MRA issued a Request for Proposal #01-2025 on July 26, 2024, soliciting housing conversion redevelopment project proposals for any Metropolitan Redevelopment Area due on September 27, 2024, and on December 16, 2024 the Albuquerque Development Commission recommended the award of \$2,000,000 in Gap Financing to Silverstone Equity Partners, LLC (“Developer”) and directed the Metropolitan Redevelopment Agency (“MRA”) staff proceed with negotiating a mutually agreeable Development Agreement within 6 months.
2. A mutually-agreed Development Agreement was negotiated between the Developer, MRA, and the department of Health, Housing, and Homelessness (“HHH”) for the following: The Project, named Serenade at Park Central, is located in the northwest quadrant of a 3.37-acre site, comprised of two legal parcels, addressed as 300 San

Mateo Boulevard NE, Albuquerque, NM 87108. The Project is an approximately 110-unit, mixed-income, affordable and market-rate, multi-family, rental housing development in one ten-story building that will consist of 21 studio units and 89 one-bedroom units, all of which have one bathroom. The project includes an additional 1,000 square feet of tenant amenities on the ground floor and an outdoor swimming pool. Of the total units, approximately 41 are proposed affordable rental units and must be available to households at or below 80% of the Area Median Income (AMI). Approximately 21 affordable units are to be studio units and 20 are to be one-bedroom units, all disbursed throughout the 10 floors of the building. The make-up and location of the units designated as Affordable may be assigned on a “floating” basis, meaning that specific unit numbers are not assigned as affordable, but rather the total number of Affordable units mandated by the Development Agreement is available throughout the building depending on the availability of units at any given time and the eligible applicant pool for the Affordable units.

3. A mutually-agreed Development Agreement was negotiated between the Developer, MRA, and HHH that meets the goals and objectives of the City and the Near Heights Metropolitan Redevelopment Area Plan by increasing housing affordability and meeting the City’s housing goals.

**Condition of Approval.**

1. The Developer and the City shall effectuate the final Development Agreement no more than ninety (90) days from the date of final approval, unless otherwise determined by the City. The final Development Agreement shall be similar in form and substance to the draft Development Agreement approved herein and attached to this report (Attachment B). Any substantial changes shall return to the Albuquerque Development Commission for review and approval, and the City Council as required by the Metropolitan Redevelopment Agency Ordinance Section § 14-8-4 et seq. ROA 1994.

**Attachments:**

Attachment A – Notice of Award (December 19, 2024)

Attachment B – DRAFT Development Agreement



**METROPOLITAN REDEVELOPMENT AGENCY**

P.O. Box 1293  
Albuquerque, NM 87103  
(505) 810-7499  
mrainfo@cabq.gov

**OFFICIAL NOTICE OF DECISION  
ALBUQUERQUE DEVELOPMENT COMMISSION**

December 19, 2024

Silverstone Equity Partners LLC  
Attn: Sandeep Patel and Saad Khalid  
8850 Huffmeister Rd #200  
Houston, TX 77095

Lomas Tower Apartments LLP  
Attn: Rusty Snow  
401 Wilshire Blvd, Fl 11  
Santa Monica, CA 90401

RE: ADC Case #: 2024-16  
RFP #01-2024 (Housing Conversion)

On December 19, 2024, the Albuquerque Development Commission (ADC) APPROVED the RFP 01-2025 award of \$2 million in gap financing to the Park Central Apartments housing conversion project (Silverstone Equity Partners LLC) and \$2 million in gap financing to the Lomas Tower housing conversion project (Lincoln Avenue Communities, Fairview Housing Partners LTD, and Geltmore LLC) and directed that MRA staff proceed with negotiations with the respective developers for each project on the development agreements and return to the ADC to present the negotiated development agreements, based on the following findings and subject to one condition of approval.

**Findings:**

1. As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, MRA issued a Request for Proposal #01-2025 on July 26, 2024, soliciting housing conversion redevelopment project proposals for any Metropolitan Redevelopment Area due on September 27, 2024.

2. Legal notice was published in the Albuquerque Journal on September 14<sup>th</sup> and September 21<sup>st</sup> of 2024.
3. MRA initially received three (3) responsive proposals to RFP 01-2025 and sent the applications to the RFP Review Committee. The Advisory Committee requested additional clarifying information from all the applicants, to which they agreed. However, the El Don proposal was deemed ineligible to continue with the review process after not responding to the request for clarification and deciding to transfer ownership of the building to another investor.
4. The two (2) final responsive proposals to RFP 01-2025 are the Park Central Apartments, located at 300 San Mateo Blvd NE, for 155 mixed-income multi-family residences, including approximately 77 affordable units at 80% AMI or below, and the Lomas Tower project, located at 200 Lomas Blvd NW, in the Downtown 2025 Metropolitan Redevelopment Area for 100 multi-family residences, affordable at 70% AMI or below.
5. The Park Central Apartments and the Lomas Tower projects adequately meet the Threshold Criteria by being located in an eligible Metropolitan Redevelopment Area, creating at least 10 new affordable housing units of which a minimum of 20% of units are affordable to households at or below 80%, and demonstrating site control in the form of a deed, long-term lease, or an exclusive option to purchase/lease that expires no sooner than nine months after the due date of the RFP.
6. The Park Central Apartments and the Lomas Tower projects advance the goals of the Evaluation Criteria including alignment to the relevant Metropolitan Redevelopment Area Plan, increasing housing affordability, meeting the City housing goals, alignment with the Community Benefit Matrix, having adequate development team experience, presenting a reasonable project schedule and financial plan, and Incorporating Universal Design, where applicable.
7. The RFP Advisory Committee, after reviewing all eligible proposals recommended unanimously dividing the available funds between the Park Central Apartments and Lomas Tower projects, awarding \$2 million in gap financing to each project.

**Condition of Approval:**

1. No later than 6 months from the date of ADC approval, the applicant shall complete the negotiation of the terms of the development agreement with MRA and return to the ADC for approval of the final development agreement.

**APPEAL:**

If you wish to appeal this decision, you must do so within 15 days of the Notice of Decision. The date of the notice of decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-8-4-8 of the Metropolitan Redevelopment Agency Ordinance. The Metropolitan Redevelopment Agency Appeal Form can be found at: <https://www.cabq.gov/mra/request-for-proposals-rfp/notices-of-decision>

If there is no appeal, the decision of the ADC as accepted by the Metropolitan Redevelopment Agency is final.

Sincerely,

DocuSigned by:

Terry Brunner

Terry Brunner, Interim Director

Metropolitan Redevelopment Agency

- cc. Dr. Samantha Sengel, CAO
- cc. Devon King, Assistant City Attorney
- cc. 2222 Central, LLC (El Don)



Tim Keller, Mayor

12/19/2024

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**To:** Albuquerque Development Commission

**From:** China Osborn, Redevelopment Project Manager

**Subject:** Housing Conversion RFP #01-2025 – ADC Case #2024-16

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**Executive Summary.** On July 26, 2024, the Metropolitan Redevelopment Agency (“MRA”) issued RFP #01-2025 (“RFP”), offering up to \$4 million in gap funding for a project that would convert an existing non-residential building (e.g. hotel or office) to residential use, and with at least 20% of the units affordable to households at or below 80% AMI.

The RFP was open to any Metropolitan Redevelopment Area (MR Area) and required projects to meet the goals of the relevant MR Area Plan, as well as obtain the minimum required points in the Community Benefit Matrix (10 points). The RFP closed on September 27, 2024, at 5:00 PM, and three submittals were received.

During the review process, one of the submittals was deemed ineligible to continue with the process, as the ownership of the property was changing and would not meet the site control requirements of the RFP. Therefore, two proposals remained under consideration by the Advisory Committee, the “Park Central Apartments” project for the conversion of an existing vacant office building at Central Ave and San Mateo Blvd into approximately 155 housing units and the “Lomas Towers” project for the conversion of an existing partially vacant office building on Lomas Blvd between 2<sup>nd</sup> and 3<sup>rd</sup> Streets into 100 housing units. Given the merit of both projects and the fact that the Committee scored them similarly, the final recommendation of the Advisory Committee was to split the available funds evenly between the two projects.

**Background.** On or before the RFP deadline of September 27, 2024, staff received three responsive proposals, which were forwarded to the RFP Advisory Committee:

***Proposal 1: Park Central Apartments***

The project proposal was submitted by Silverstone Equity Partners LLC to redevelop the currently vacant Two Park Central Tower, located at 300 San Mateo Blvd NE, in the Near

Heights Metropolitan Redevelopment Area, into 101 mixed-income multi-family residences (later revised to 155 units). The proposal includes approximately 66 affordable units at 80% AMI or below (later revised to 77 units). The project application was deemed complete by MRA staff and the applicant submitted for 12 points in the Community Benefit Matrix.



*Figure 1: Rendering Park Central Apartments, courtesy of Equiterra Regenerative Design (final design subject to change)*

### ***Proposal 2: Lomas Tower***

The project proposal was submitted collectively by Lincoln Avenue Communities, Fairview Housing Partners LTD, and Geltmore LLC to redevelop the currently partially vacant Wells Fargo Tower, located at 200 Lomas Blvd NW, in the Downtown 2025 Metropolitan Redevelopment Area, into 100 multi-family residences affordable at 70% AMI or below. The project application was deemed complete by MRA staff and the applicant submitted for 21.5 points in the Community Benefit Matrix.



*Figure 2: Façade Option, courtesy of Dekker Architecture  
(final design subject to change)*

### ***Proposal 3: El Don***

The project proposal was submitted by 2222 Central LLC to redevelop the El Don Motel, located at 2222 Central Ave SW, in the Historic Central Metropolitan Redevelopment Area into 20 permanent housing residences affordable at 60% AMI. The project application was deemed complete by MRA staff and the applicant submitted for 20 points in the Community Benefit Matrix.



*Figure 3: El Don Motel, courtesy of Google Images*

**Review Process.** After its initial review of the proposals, the RFP Advisory Committee requested that the applicants submit additional information, including updated financial information and site control documents. The review committee also asked that the

applicants submit a narrative indicating how they would fill any financial gap if their project was awarded less than the original asking amount. All three respondents to the RFP initially agreed to submit the additional information to the Advisory Committee by the deadline of November 27<sup>th</sup> at 5:00 PM MT. Both the Park Central Apartments and Lomas Tower applicants submitted the additional information requested. The applicant for the El Don project, however, informed MRA staff via email on November 22, 2024 that they would be selling the project to another investor. Neither the previous applicant nor the new investor submitted the required information, including the required site control documents, thereby disqualifying the application from continuing with the RFP selection process. A letter to that effect has been sent to the applicant.

MRA staff forwarded the additional information from the remaining two project proposals to the Advisory Committee, which deliberated on the additional information on December 5, 2024. On December 9, 2024 the Advisory Committee forwarded its recommendation to MRA staff to split the award evenly between the two remaining applicants, finding both applications to be very close in scoring. Additionally, the recommendation to split the award was in response to uncertainties around both of these projects, including significant potential financing gaps, which make the chance of project completion unclear for each. The Advisory Committee also recommended that if one of the awardees fails to meet the timelines and milestones agreed to in the final development agreements, the City should reserve the right to reallocate the remaining funding to the other Housing Conversion project, pending City Council approval, or to distribute the remaining balance via another Housing RFP. If both projects fail to meet the timeline, funds shall revert back to MRA and HHH, respectively.

**Review Criteria:**

1. The Park Central Apartments and the Lomas Tower projects adequately meet the RFP Threshold Criteria as follows:
  1. **Located in an eligible Metropolitan Redevelopment Area.**  
Park Central Apartments: The project is located in the Near Heights Metropolitan Redevelopment Area.  
Lomas Tower: The project is located in the Downtown 2025 Metropolitan Redevelopment Area.
  2. **Creates at least 10 new affordable housing units, a minimum of 20% of units must be affordable to households at or below 80%.**  
Park Central Apartments: The project creates 155 new dwelling units of which 77 or 49.7% are proposed to be affordable at 80% AMI or below.

Lomas Tower: The project creates 100 new dwelling units of which 100% are proposed to be affordable at 70% AMI or below.

3. **Must demonstrate site control in the form of a deed, long-term lease, or an exclusive option to purchase/lease that expires no sooner than nine months after the due date of the RFP.**

Park Central Apartments: The applicant submitted a deed in the developer's name at the time of submittal.

Lomas Tower: The applicant submitted a purchase agreement that expires January 31, 2025. This agreement also outlines an option to purchase the adjoining parking lot, which is separately owned and has been leased to Wells Fargo.

2. The Park Central Apartments and the Lomas Tower projects advance the goals of the Evaluation Criteria as follows:

1. **Alignment to relevant Metropolitan Redevelopment (MR) Area Plan.**

Park Central Apartments: The project's residential and mixed-use components align with the goals of the Near Height MR Area Plan, including a proposed neighborhood coffee shop and community green space, contributing to the area's transformation into a vibrant "destination" with an international theme. By providing affordable housing options and fostering economic opportunities, Park Central Apartments helps stabilize low-income neighborhoods and promotes inclusivity and diversity within the community.

Lomas Tower: The project adds residential and retail components that further the goals of the Downtown 2025 MR Area Plan, by contributing to the creation of urban housing and adding components of healthy, pedestrian-first neighborhoods.

2. **Increases housing affordability**

Park Central Apartments: The project will provide approximately 77 affordable units at 80% AMI or below, out of a total of 155 units.

Lomas Tower: The project will provide 100 units of affordable housing at 70% AMI or below.

3. **Meets City housing goals**

Park Central Apartments: The project addresses significant housing needs within the community, particularly in the context of the University of New Mexico (UNM) and the expanding UNM Hospital Complex. With a projected creation of 155 housing units, the project contributes to alleviating the acute

shortage of multifamily housing in the area, catering to the diverse needs of students, faculty, and medical professionals associated with UNM.

Lomas Tower: The project provides dense housing in the urban center, meeting the city's housing goals for downtown.

**4. Alignment with Community Benefit Matrix**

Park Central Apartments: The applicant scored the project at 12 points, two points above the minimum of 10 points in the Community Benefit Matrix.

Lomas Tower: The applicant scored the project at 21 points, 11 points above the minimum of 10 points in the Community Benefit Matrix.

**5. Development team experience.**

Park Central Apartments: The applicant submitted substantial development experience with over 640 new residential units and just under a total of 600,000 sf of construction in both residential and non-residential developments.

Lomas Tower: The applicant submitted substantial development experience with 201 residential units developed and over 500,000 sf of construction in both residential and non-residential developments.

**6. Project schedule.**

Park Central Apartments: The applicant submitted a project schedule, with project completion approximately 1 year from the start of construction.

Lomas Tower: The applicant submitted a project schedule, with project completion approximately 18 months from the start of construction.

**7. Financial plan.**

Park Central Apartments: The applicant submitted a financial plan and is estimating financial stabilization in 2028.

Lomas Tower: The applicant submitted a financial plan and is estimating financial stabilization in 2027.

**8. Incorporates Universal Design (Bonus).**

Park Central Apartments: At least 5% of the affordable units will be ADA accessible, providing accessibility features to accommodate individuals with Disabilities.

Lomas Tower: The proposal does not specify what percent, if any, of the units will incorporate universal design standards.

**Recommendation:**

That the ADC approve the RFP 01-2025 award of \$2 million in gap financing to the Park Central Apartments housing conversion project (Silverstone Equity Partners LLC) and \$2 million in gap financing to the Lomas Tower housing conversion project (Lincoln Avenue Communities, Fairview Housing Partners LTD, and Geltmore LLC) and directs that MRA

staff proceed with negotiations with the respective developers for each project on the development agreements and to return to the ADC to present the negotiated development agreements, subject to the following findings and one condition of approval.

**Findings:**

1. As provided in the New Mexico State Metropolitan Redevelopment Code and the Metropolitan Redevelopment Agency Ordinance for the City of Albuquerque, MRA issued a Request for Proposal #01-2025 on July 26, 2024, soliciting housing conversion redevelopment project proposals for any Metropolitan Redevelopment Area due on September 27, 2024.
2. Legal notice was published in the Albuquerque Journal on September 14<sup>th</sup> and September 21<sup>st</sup> of 2024.
3. MRA initially received three (3) responsive proposals to RFP 01-2025 and sent the applications to the RFP Review Committee. The Advisory Committee requested additional clarifying information from all the applicants, to which they agreed. However, the El Don proposal was deemed ineligible to continue with the review process after not responding to the request for clarification and deciding to transfer ownership of the building to another investor.
4. The two (2) final responsive proposals to RFP 01-2025 are the Park Central Apartments, located at 300 San Mateo Blvd NE, for 155 mixed-income multi-family residences, including approximately 77 affordable units at 80% AMI or below, and the Lomas Tower project, located at 200 Lomas Blvd NW, in the Downtown 2025 Metropolitan Redevelopment Area for 100 multi-family residences, affordable at 70% AMI or below.
5. The Park Central Apartments and the Lomas Tower projects adequately meet the Threshold Criteria, by being located in an eligible Metropolitan Redevelopment Area, creating at least 10 new affordable housing units of which a minimum of 20% of units are affordable to households at or below 80%, and demonstrating site control in the form of a deed, long-term lease, or an exclusive option to purchase/lease that expires no sooner than nine months after the due date of the RFP.
6. The Park Central Apartments and the Lomas Tower projects advance the goals of the Evaluation Criteria including alignment to the relevant Metropolitan Redevelopment Area Plan, increasing housing affordability, meeting the City

housing goals, alignment with the Community Benefit Matrix, having adequate development team experience, presenting a reasonable project schedule and financial plan, and Incorporating Universal Design, where applicable.

7. The RFP Advisory Committee, after reviewing all eligible proposals recommended unanimously dividing the available funds between the Park Central Apartments and Lomas Tower projects, awarding \$2 million in gap financing to each project.

**Condition of Approval:**

1. No later than 6 months from the date of ADC approval, the applicant shall complete the negotiation of the terms of the development agreement with MRA and return to the ADC for approval of the final development agreement.

**Attachments:**

- A. RFP 01-2025 (Housing Conversion)
- B. Park Central Apartments Project Proposal
- C. Park Central Apartments Supplemental Material
- D. Lomas Tower Project Proposal
- E. Lomas Tower Supplemental Material
- F. Advisory Committee recommendation letter