



CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Richard J. Berry

INTER-OFFICE MEMORANDUM

February 3, 2017

TO: Isaac Benton, President, City Council

FROM: Richard J. Berry, Mayor 

SUBJECT: Resolution Appropriating Specific Miscellaneous Revenue from CIP Affordable Housing to Family and Community Services for Future Affordable Housing Purposes.

This resolution appropriates \$1,450,000 to the Department of Family and Community Services for the future funding of Affordable Housing developments. These funds were the result of previous Workforce Housing transactions and therefore must be appropriated back to the department before they can be committed to other Affordable Housing projects.

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

Cover Analysis

1. What is it? Resolution Appropriating Specific Miscellaneous Revenue from Affordable Housing to Family and Community Services for Future Affordable Housing Purposes.

2. What will this piece of legislation do? It will appropriate Workforce Housing Trust Funds to Family and Community Services that were received as repayment from previous Workforce Housing transactions.

3. Why is this project needed? This legislation will allow the funds to be used by Family and Community Services with the intent of furthering Affordable Housing opportunities.

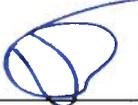
4. How much will it cost and what is the funding source? There is no cost to the City as these un-appropriated funds in question, are a result of previous Workforce Housing projects. The funding source is Affordable Housing under the City's Capital Implementation Program.

5. Is there a revenue source associated with this contract? If so, what level of income is projected? There is no revenue source associated with this resolution.

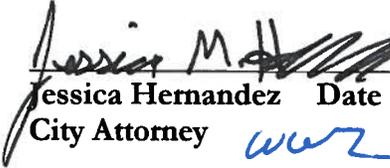
Legislation Title: Resolution Appropriating Specific Miscellaneous Revenue from CIP Affordable Housing to Family and Community Services for Future Affordable Housing Purposes.

Recommended:

Approved as to Legal Form:



Robert J. Perry 2/3/17
Chief Administrative Officer Date



Jessica Hernandez 2/3/17
City Attorney Date
uwz

Recommended:



Douglas H. Chaplin, Director 2/3/17
Dept. of Family & Community Services Date
uwz

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF ALBUQUERQUE AND BERNALILLO COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this 7th day of August, 2014, (the "Effective Date") by and between the Bernalillo County, New Mexico, a political subdivision of the State of New Mexico (the "County") and the City of Albuquerque, New Mexico, a municipal corporation (the "City") (the City and County are each a "Party" and together they are the "Parties").

RECITALS

WHEREAS, the City and the County have entered into numerous Joint Powers Agreements, Intergovernmental Agreements and Memoranda of Understanding to coordinate services; and

WHEREAS, the City and the County are desirous of developing affordable housing and promoting economic development opportunities for its residents; and

WHEREAS, land suitable for these purposes located 3525 4th Street NW containing approximately 4.3 acres, as more specifically described in Exhibit 1 attached hereto (the "Property") is presently available for sale; and

WHEREAS, by Resolution number R-13-266 the City has reserved \$1,200,000 in Workforce Housing Trust Funds for acquisition of the Property, for reasonable closing costs associated with the acquisition, and for the demolition of existing structures on the Property; and

WHEREAS, the County shall provide \$200,000 to the City for these same purposes; and

WHEREAS, the City shall purchase the Property for the purpose of developing mixed use and Workforce Housing on the Property; and

WHEREAS, the purpose of this Agreement is to facilitate the cooperation of the Parties and identify the specific financial obligations and other duties and responsibilities of each Party in the acquisition and development of the Property; and

NOW, THEREFORE in consideration of the promises and covenants contained herein, the Parties agree by mutual consent to the following:

AGREEMENT

ARTICLE I – INCORPORATION OF RECITALS

A. The Recitals are incorporated herein.

ARTICLE II – RESPONSIBILITIES

A. Both Parties

a. Shall be responsible for ensuring the Property is developed as a mixed use project consisting of Workforce Housing and economic development activities. Prior to any development or construction on any portion of the Property, representatives from, including but not limited to, the City Council Office, the City Family and Community Services Department, the City Legal Department, the County Commission, and the County Economic Development Office (the "Ad Hoc Workgroup") shall work together to develop a mutually acceptable plan for a mixed-use project that includes Workforce Housing and commercial, employment, and/or retail uses (the "Development Plan"). The Director of Family and Community Services will approve the composition of the Ad Hoc Workgroup. Requests for proposals for implementation of the Development Plan, shall be developed and approved by the Ad Hoc Workgroup and issued by the City Family and Community Services Department. The Ad Hoc Workgroup shall review the proposals and recommend a development team(s) for approval by the Director of Family and Community Services, who shall prepare and submit a development agreement to the City Council for approval.

B. City

- a. Shall exercise all due diligence to ensure that the Property has no unreasonable encumbrances upon it at the time of closing.
- b. Shall, acting through the City's Department of Family and Community Services acquire the Property, through fee simple purchase, demolish any existing structures and secure the Property.
- c. Shall issue the Request for Proposals ("RFP") as approved by the Ad Hoc Workgroup.
- d. Shall comply with the requirements of the City's Workforce Housing Opportunity Act (§19-9-1 et. Seq. ROA 1974 as amended), for the development of the Property.
- e. Shall comply with the requirements of the North Fourth Street Rank III Corridor Plan and any other applicable plans or policies in the development of the Property.
- f. Shall facilitate in collaboration with the developer of the Property input and participation of the businesses and neighborhoods adjacent to and surrounding the Property in the formulation of any plan, designs and development.

C. County

ARTICLE III - TERM OF THIS AGREEMENT

This Agreement shall commence on the Effective Date and shall expire upon the selection and approval of the development team(s) for the Property by the City.

ARTICLE IV – PROJECT FUNDING

- A. The maximum fiscal obligation of the City under this Agreement is one million two hundred thousand dollars (\$1,200,000.00) of the Workforce Housing Trust Funds reserved for acquisition of the property, for reasonable closing costs associated with the acquisition, and for the demolition of existing structures on the Property.
- B. The maximum fiscal obligation of the County under this Agreement is two hundred thousand dollars (\$200,000.00).
- C. It is understood and agreed that should any portion of the funds made available hereunder by the City for the purpose designated herein remain unexpended after all conditions of this Agreement have been satisfied, such funds are immediately unreserved and may be used by the City for any other purpose authorized by law.
- D. The City shall maintain accurate and detailed records which memorialize all the expenditures incurred for the acquisition and closing on the Property, and for the demolition of existing structures. A true and correct accounting shall be rendered of all costs and expenses and all accounts, vouchers, records, and data related to the same. These records shall be subject to inspection by the County at reasonable times during normal business hours. The County shall, at its own expense, have the right to audit all documents and billings at any reasonable time upon request.

ARTICLE V – TERMINATION

Prior to the closing on the acquisition of the Property, this Agreement may be terminated by either Party without cause upon written notice delivered to the other Party by at least thirty (30) days prior to the intended date of termination. By such termination, neither Party may nullify obligations already incurred for the performance or failure to perform to the date of termination.

ARTICLE VI - THIRD PARTY BENEFICIARIES

None of the provisions contained within this Agreement are intended to create in the public or any member thereof a third Party beneficiary or to authorize anyone not a Party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claims(s) whatsoever, pursuant to the provisions of this Agreement.

ARTICLE VII – AMENDMENT

This Agreement shall not be altered, changed, or amended except in writing as executed by the City’s Chief Administrative Officer and the Bernalillo County Manager.

ARTICLE VIII – APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the City and the County for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice being given by the City to the County or the County to the City. The decision as to whether sufficient appropriations are available shall be final and shall be accepted by both Parties.

ARTICLE IX – RELEASE

Final payment of all amounts due under this Agreement shall release the County and its officers and employees from all liabilities, claims and obligations whatsoever arising from this Agreement. Final selection of a development team(s) shall release the City its officers and employees from all liabilities, claims and obligations whatsoever arising from this Agreement. Each Party shall not be bound to any obligation not expressly assumed herein, without express written authority from the other Party, and then only within the strict limits of that written authority.

ARTICLE X – APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico. The venue shall be Bernalillo County, New Mexico. Neither Party is responsible for liability incurred as a result of the other Party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1, et seq., NMSA 1978, as amended

ARTICLE XI – LIABILITY

Each Party will be solely responsible for liability arising from personal injury or damage to persons or property proximately caused by its employees, agents, and contractors acting within the scope of this Agreement. The liability of the Parties shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act §41-4-1 et seq. NMSA 1978 as amended. No provision of this Agreement establishes any waiver of immunity for alleged tortious conduct of any employee of any Party arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, §41-4-1, et seq.

ARTICLE XII - EFFECTIVE DATE

The Effective Date of this Agreement shall be the date of the last signature of the Parties.

IN WITNESS WHEREOF, the Parties have executed this agreement to become effective as of the Effective Date.

[SIGNATURES FOLLOW ON PAGE 5]

[REMAINDER OF PAGE INTENTIONALLY BLANK]

CITY OF ALBUQUERQUE

BERNALILLO COUNTY

KK

B

Robert J. Perry
Chief Administrative Officer

Date: 7/30/14

llm

R. Zdenek

Tom Zdenek
County Manager

Date: 8/7/14

Approved as to form:

David Tourek

David Tourek
City Attorney

Date: 7/28/14

Approved as to form:

Randy Autio

Randy Autio
County Attorney

Date: 8/5/14

**Exhibit 1
Legal Description**

**Tracts numbered 90B2 & 90C MRGCD Map 33, and Lots 1, 2, & 3 Block 1 of REPLAT OF
FITZGERALD ADDITION, Bernalillo County, New Mexico.**

The City was paid \$200,000 on May 14, check #9126382. Please let me know if you require anything further.

Respectfully,

Heidi Warren
County Manager Assistant
Bernalillo County
(505) 468-7164

From: Daniel J. Beaman
Sent: Wednesday, August 05, 2015 12:20 PM
To: Heidi Warren
Cc: Mayling Armijo; Marcos A. Gonzales; Amanda I. Colburn
Subject: FW: 3525 4th Street

Hi Heidi,

As indicated in Amanda's e-mail/screenshot below, Check number 9126382, in the amount of \$200k was paid to the City of Albuquerque on May 14, 2015.

Thanks,

Daniel J. Beaman
Special Projects Coordinator
Bernalillo County
(505) 468-7818

From: Amanda I. Colburn
Sent: Wednesday, August 05, 2015 12:08 PM
To: Daniel J. Beaman
Subject: RE: 3525 4th Street

Hi Dan,

Below is a screenshot showing the payment for the IGA. The check number is also listed.

Let me know if you need anything else.

Vendor Line Item Display

Vendor Line Item Display

Vendor: 200472
Company Code: 8881
Date: CITY OF ALBUQUERQUE
City: ALBUQUERQUE

Paym Date	Contract	Doc. Date	Reference	Amount in doc. curr.	Curr.	Text
05/12/2015	05/20/2015	05/01/2015	9126382	15,910.42	USD	
05/11/2015	05/11/2015	05/11/2015		200,000.00	USD	
05/11/2015	05/11/2015	05/12/2015		200,000.00	USD	



City of Albuquerque
Accounting Division
 P.O. Box 1985 | Albuquerque, NM 87103-0017

ALBUQUERQUE/BERNALILLO COUNTY
 COMMUNITY
 ONE CIVIC PLAZA NW
 10TH FL RM 10045
 Albuquerque NM 87102

Due Date: 05/13/2015
 Payment Terms: **Net 90**
 Customer Number: COA004000041
 PO:
 Invoice Date: 02/12/2015
 Invoice Number: FCS0000001111
 From Date:
 To Date:
 Amount Due: \$200,000.00

050 COA004000041 FCS0000001111 200000000

Return this stub with remittance

Comments:

Item	Date	Description	Unit of Measure	Quantity	Amount Owed
1	02/12/2015	Contracts Fixed Amount		1	200,000.00
					\$200,000.00

Payment is due 30 days from the invoice date or the date specified under the terms of an alternate agreement. Failure to pay may result in penalties, 15% annual interest and applicable collection actions and/or fees.

Questions concerning this invoice should be directed to the Billing Specialist at 505-768-3437 or send a written inquiry.

Make checks payable to: City of Albuquerque

Make payments at:
 City of Albuquerque Treasury Division
 Plaza Del Sol
 600 2nd St. NW
 Albuquerque, NM 87102

Or mail payments to:
 City Of Albuquerque Accounting Division
 P.O. Box 17
 Albuquerque NM 87103-0017



City of Albuquerque Treasurers
J-24 Deposit

Date: 5/5/2015 Office: MAIN
 Station IDWS000004 Cashier: TRSNAB
 Batch: 5264 Trans: 3
 Fund: 305 Activity ID7521010
 Account: 469099 Project ID29_AFF_HOU
 Dept ID: Bus.Unit: PCFCS
 Alloc Amt: \$1,250,000
 Trans Amt: \$1,250,000
 Check Tendered: \$1,250,000.00

TREASURY DIVISION DAILY DEPOSIT

Transmittals for:
PROJECTS
 Only

CASH COUNT	AMOUNT	ACCOUNT	FUND	BUSINESS	PROJECT ID	ACTIVITY ID	AMOUNT
		NUMBER	NUMBER	UNIT			
X 100'S =							\$
X 50'S =							\$
X 20'S =							\$
X 10'S =							\$
X 5'S =							\$
X 1'S =							\$
TOTAL CURRENCY**	\$						\$
TOTAL COINS**	\$						\$
TOTAL CHECKS**	\$ 1,250,000.00	469099	305	PCFCS	29_AFF_HOUSING	7521010	\$ 1,250,000.00
							\$
TOTAL AMOUNT**	\$					TOTAL DEPOSIT	\$ 1,250,000.00

DEPARTMENT NAME: FAMILY & COMMUNITY SERVICES

PREPARED BY: Monica Chavez

PHONE: 768-2856

BUSINESS DATE: 5/5/2015

DEPOSIT DATE: 5/5/2015

DUAL VERIFICATION OF DEPOSIT:

Monica Chavez

EMPLOYEE SIGNATURE

AND BY:

Richard H. Rodarte

EMPLOYEE SIGNATURE

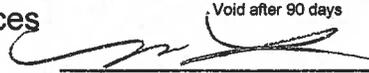
Stewart Title of Albuquerque, LLC
6759 Academy Road NE, Albuquerque, NM 87109
(505) 828-1700 File: 01147-18675

Bank of Albuquerque
Albuquerque, NM 87102

Date **70031998**
4/23/2015

Pay One Million Two Hundred Fifty Thousand Dollars and No Cents \$1,250,000.00

TO THE ORDER OF City of Albuquerque
Department of Family and Community Services

Void after 90 days

Dana Chescheil

Buyer: Casitas de Colores, LLC, a New Mexico limited liability company
Seller:

⑈ 70031998 ⑈ ⑆ 107006606 ⑆ 8094752660 ⑈

70031998
4/23/2015

File: 01147-18675
Buyer: Casitas de Colores, LLC, a New Mexico limited liability company
Seller:
Escrow Officer: Gail Torino

Property Address: 215 LeadSW, Albuquerque, NM 87102

Description of charges:
(104-1) Payoff Workforce Housing Trust Funds - \$1,250,000.00

stewart title®

Stewart Title of Albuquerque, LLC
6759 Academy Road NE
Albuquerque, NM 87109
(505) 828-1700 Phone
(505) 821-6065 Fax

April 23, 2015

City of Albuquerque,
Attn: Monica Chavez
400 Marquette NW
Old City Hall, 5th Floor, Room 504

Re: Loan No.:
 Borrower: Casitas de Colores, LLC
 Property: 215 Lead SW, Albuquerque, NM 87102
 File No.: 01147-18675

To Whom It May Concern:

Enclosed is our check in the amount of \$1,250,000.00, which represents payment in full of the above captioned loan. Also enclosed is a copy of the payoff statement.

If for any reason this check is not the correct amount, please apply this amount to the unpaid principal balance and call us immediately.

~Please sign and recorded the attached release of mortgage.

If you should have any questions, please contact the undersigned immediately.

Sincerely,



Michele Leyba for

Gail Torino
Escrow Officer

Enclosure

305
PCFCS
29- AFF Housing
527500
7521010

Michele Leyba

From: Sisneros, Tammy J. <tjsisneros@cabq.gov>
Sent: Thursday, April 23, 2015 10:34 AM
To: Gail Torino; Theresa Bell; Giron II, Richard
Cc: Michele Leyba
Subject: RE: Work force housing pay back

Hi, Gail!

Our physical address is 400 Marquette NW, Old City Hall, 5th Floor, Room 504. Will it be delivered today? If so you can make it to Rick's attention, if it will be delivered tomorrow please put it to Monica Chavez's attention.

Thank you!

TJ

*Tammy Jo Sisneros
Program Specialist II
Community Development Division
505-768-2837
505-768-3204 fax
tjsisneros@cabq.gov*

Have a great day!



From: Gail Torino [<mailto:gail.torino@stewart.com>]
Sent: Thursday, April 23, 2015 8:46 AM
To: Theresa Bell; Giron II, Richard; Sisneros, Tammy J.
Cc: Michele Leyba
Subject: RE: Work force housing pay back

Richard: We are funding this today. Can you please tell me where to have the payoff check hand-delivered and to whose attention. In the alternative, please provide me with wiring instructions.

DEVELOPMENT AGREEMENT

By and between the
City of Albuquerque, Albuquerque, New Mexico,
Department of Family & Community Services,
a municipal corporation,

and

Casitas de Colores, LLC, a
New Mexico limited liability company
5021 Indian School Road, N.E., Suite #300
Albuquerque, New Mexico 87110

Feb. 13th, 2012

CASITAS DE COLORES PHASE I

Lots numbered One through Twenty-one (21), inclusive, and Tracts "A","B" and "C" in Block lettered "B"; Lots numbered One (1) through Twenty-one (21), inclusive, and Tracts "A", "B" and "C" in Block lettered "E"; and Lots numbered One (1) through Eight (8), inclusive, and Tract "E" in Block lettered "F" of the Plat for Silver Townhomes, being a Replat of Lots 1 thru 24, Block 30, New Mexico Town Company's Original Townsite, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Amended Plat filed January 28, 2010, in Plat Book 2010C, Page 12, as Document No. 2010007859

After recording return to:

TABLE OF CONTENTS

<u>Sections</u>	<u>Page # No.</u>
Development Agreement	3
Recitals	3
Article I Definitions	5
Article II Project Purpose and Description	5
Article III Funds Committed to the Project	6
Article IV Commencement and Completion of the Project	7
Article V Real Property Acquisition Alvarado Master Development Agreement	9
Article VI Usage and Documentation of City Funds	10
Article VII Warranties and Obligations	11
Article VIII Reports Required	17
Article IX Fees, Taxes, Insurance and Other Amounts Payable	18
Article X Damage, Destruction and Condemnation	22
Article XI Special Covenants	22
Article XII Events of Default Defined	24
Article XIII Miscellaneous	26
<u>Exhibits</u>	
Exhibit A Definitions	33
Exhibit B Legal Description	38
Exhibit C YesH Mortgage and Security Agreement	39
Exhibit D YesHPromissory Note	51
Exhibit E Collateral Assignment	56
Exhibit F City Mortgage and Security Agreement	64
Exhibit G City Promissory Note	71
Exhibit H Project Budget	75
Exhibit I-1 Schedule of Loans and Loan Payback Schedule	78
Exhibit I-2 Other Loans	79
Exhibit I-3 Tax Credits	81
Exhibit J Development Schedule	85
Exhibit K Request for City Loan Disbursement	89
Exhibit L Restrictive Real Estate Covenants	92

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2012, by and between the **City of Albuquerque**, Albuquerque, New Mexico, a municipal corporation, (hereinafter "City") and **Casitas de Colores, LLC**, a New Mexico limited liability company, (hereinafter "Developer"). City and Developer are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party."

RECITALS

WHEREAS, the City, under the Federal National Affordable Housing Act of 1990/HOME Investment Partnerships Program (the "Act"), and under its powers as a home rule city, is authorized to acquire, construct, improve, rehabilitate and conserve residential facilities intended for use as a place of residence for the intended occupants;

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

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 Workforce Housing Opportunity Act (Sections 14-9-1 et seq. ROA 1994) mandating the expansion of housing production to meet the affordable housing needs of working families; and

WHEREAS, a portion of the housing funds provided hereunder are pursuant to the Workforce Housing Act, the proceeds of which were derived from a taxable bond sale conducted in _____, 20____, and sold to the State Treasurer.

WHEREAS, the enactment of R-06-42 on September 6, 2006, established a City policy to support and enhance the development of Workforce Housing; and

WHEREAS, the Project (defined below) includes a mixed income, affordable rental project located between Second, Third, Silver and Lead Streets, SW, within the Alvarado Transportation Center Metropolitan Redevelopment Area ("MRA") which is located within the corporate limits of the City; and

WHEREAS, the project is located in the Downtown 2010 Sector Development Plan (2000) – Revised 2011, an area appropriate for in-fill affordable housing; and

WHEREAS, the Developer is applying for a Low-Income Housing Tax Credit ("LIHTC") allocation (the "Tax Credit Award") from the New Mexico Mortgage Finance Authority (hereinafter "MFA") which will fund a significant portion of the overall cost of the Project; and

WHEREAS, a New Mexico limited liability company to be formed will be Yes Casitas de Colores, LLC ("YesLLC"), a single member limited liability company whose sole member will be Yes Housing, Inc., a New Mexico 501(c)(3) non-profit corporation ("YesH"); and

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

WHEREAS, YesLLC will be a member of the Developer and will co-manage the Project as a co-manager of the Developer;

WHEREAS, the City and the Historic District Improvement Company, a New Mexico limited liability company ("HDIC") are the parties to the Master Development Agreement for the Alvarado Transportation Center dated November 29, 1999, approved by the Albuquerque City Council (the "Governing Body") as Enactment No 114-1999 on October 18, 1999, amended by the Governing Body by Enactment No. 175-2001 on November 19, 2001, amended by Second Amendment to Master Development Agreement for the Alvarado Transportation Center dated May 22, 2002, amended by Third Amendment to Master Development Agreement for the Alvarado Transportation Center dated February 4, 2004, amended by the Governing Body Enactment No. R-2006-074, amended by Amendment to Master Development Agreement for the Alvarado Transportation Center (the "2006 Amendment") which 2006 Amendment was approved by the City's Governing Body on December 18, 2006, amended by Fifth Amendment to Master Development Agreement for the Alvarado Transportation Center dated November 2007, amended by Sixth Amendment to Master Development Agreement For the Alvarado Transportation Center dated May 20, 2008, amended by the Seventh Amendment to Master Development Agreement for the Alvarado Transportation Center dated May 20, 2008, amended by Eighth Amendment to Master Development Agreement for the Alvarado Transportation Center dated November 18, 2008, amended by Ninth Amendment to Master Development Agreement for the Alvarado Transportation Center dated April 14, 2009, amended by Tenth Amendment to Master Development Agreement and First Amendment to Tri-Party Agreement dated November 1, 2011 (the "Tenth Amendment"), and amended by Eleventh Amendment to Master Development Agreement to for the Alvarado Transportation District and Second Amendment to Tri-Party Agreement dated December 1, 2011 (the "Eleventh Amendment") (the "Alvarado Master Development Agreement");

WHEREAS, pursuant to the Alvarado Master Development Agreement the City, HDIC and Alvarado-SG, LLC, a New Mexico limited liability company ("ASG") entered into that certain Tri-Party Agreement (Elements For Sale) Townhomes dated February 13, 2008, as amended by the Tenth Amendment and Eleventh Amendment which further regulates the acquisition by the Developer from the City of the Project property and the development of the Project.

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

ARTICLE I

Definitions

Section 1.1 The Definitions in the City's Workforce Housing Program Rules and Regulations, if any, 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 Capitalized terms not otherwise defined in this Agreement shall have the meaning assigned to such terms in the Alvarado Master Development Agreement.

Section 1.3 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**.

ARTICLE II

Project Purpose and Description

Section 2.1. Purpose of Project. The purpose of the Project is to develop an affordable, mixed income, rental housing development in the MRA. Populations to be served will range from the very low income to market rate tenants.

Section 2.2. Project Term. The development of the Project and the provision of the Affordable Housing Units (as defined below) by the Developer are to commence upon the execution of this Development Agreement 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 obligation to provide the Affordable Housing Units required hereunder shall be continued for ninety (90) years from the completion of the Project ("Affordability Period") with a renewable ninety (90) years after the first Affordability Period. 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 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 ninety (90) years Affordability Period will commence anew with a renewable ninety (90) years of affordability requirements.

Section 2.3. Project Description. The Project named Casitas de Colores Phase I is located generally between Second, Third, Silver and Lead Streets, SW, as legally described in **Exhibit B**. The Project shall consist of seventy-one (71) units, of which forty-nine (49) units shall be affordable mixed-income and service-enhanced housing, serving primarily residents of the Pocket of Poverty ("**POP**"). Specifically, the affordable units (the "Affordable Housing Units") will consist of fifteen (15) units designated for residents at or below 30% of the median income; seventeen (17) units designated for residents at or below 40% of the median income and seventeen (17) units designated for residents at or below 50% of the median income. Twenty-

one (21) units shall be leased at market rates and one (1) shall be a manager's unit. The Project shall include all predevelopment activities required to fully develop of the Project. The Project shall remain an affordable rental housing project as provided herein. At least eight (8) units shall be designated as HOME assisted units. Initial gross rents (rent plus tenant paid utility cost for a maximum of six (6) shall comply with High HOME rents and shall not exceed the following: two (2) 1 bedroom units (approximately 577 square feet) shall not exceed \$642.000 per month; two (2) 2 bedroom units (approximately 823 square feet) shall not exceed \$811.00 per month; and two (2) 3 bedroom units (approximately 1,021 square feet) shall not exceed \$997.00 per month. Initial gross rents (rent plus tenant paid utility costs) for the remaining two (2) HOME assisted units shall comply with the Low HOME rents and shall not exceed \$571.00 per month for a 2 bedroom unit (approximately 823 square feet).

Section 2.4. Management of Property. The Developer has been organized as a New Mexico limited liability company and will serve as owner of the Project. The Co-Managing Members of the Developer, Casitas de Colores I Manager, LLC, a New Mexico limited liability company ("CDCM") and YesLLC, will own an approximate .01% membership interest in the Developer and an equity fund to be determined, as its investor member (the "Fund") will own a 99.99% membership interest in the Developer. The Fund will serve as the investor member of the Developer. The Developer has selected Capstone Real Estate Services, Inc. as the initial management agent for the Project.

ARTICLE III Funds Committed to the Project

Section 3.1 Description of City Loan and Conveyance of Real Property. Pursuant to the Alvarado Master Development Agreement and the Tri-Party Agreement, (jointly, the "CDC City Agreements") the City approved the Developer as the developer of the Project and transferred, or will transfer, to the Developer the Real Property currently valued at \$1,400,000.00 and located generally between Second, Third, Silver and Lead Streets, SW, Albuquerque, New Mexico, for the purpose of constructing the Project.

The City will assist the financing of the Project as follows:

A.) \$2,750,000.00 in Workforce Housing Trust Funds allocated as follows: (i) a Workforce Housing Grant in the amount of \$1,500,000.00 (the "Workforce Housing Grant") which shall be, granted to YesH and loaned by YesH to the Developer; and a (ii) Workforce Housing Construction loan to the Developer in the amount of \$1,250,000.00 (the "Workforce Housing Loan"). The Workforce Housing Grant loaned to the Developer, shall be evidenced by a note from the Developer to YesH in the form as attached as **Exhibit D** (the "YesH Note"), secured by a mortgage from the Developer to YesH in the form attached as **Exhibit C** (the "YesH Mortgage") and the Developer shall encumber the Project with the Restrictive Real Estate Covenants running to the benefit of the City in the form as attached as **Exhibit L**. The Workforce Housing Grant shall be subject to repayment, without interest, to the City by YesH in the event of (i) a violation of the Restrictive Real Estate Covenants or (ii) any default in any financial obligation of the Owner or its successors related to the Project, whether such obligations are secured or unsecured, by the then owner of the Project (the "Workforce Housing

Grant Repayment Obligation”). The Workforce Housing Grant Repayment Obligation shall be contained in the Restrictive Real Estate Covenants, and shall be secured by a collateral assignment of the YesH Note and the YesH Mortgage to the City in the form as attached as **Exhibits C and D**, shall be nonrecourse to YesH, and shall run with the Real Property. The Workforce Housing Grant Repayment Obligation shall be subordinate to the construction loans and the initial permanent loan secured by the Property and the refinancing of these loans; and the Workforce Housing Loan of \$1,250,000.00 shall be repaid to the City upon the funding of the Project’s permanent financing as shown in Exhibit I-2. The Workforce Housing Loan shall be evidenced by a note from the Developer in the form as attached as **Exhibit G** (the “City Note”) and secured by a mortgage in the form as attached as **Exhibit F** (the “City Mortgage”).

B.) \$1,500,000.00 in the form of a Home Investment Trust Fund Grant (the “**Home Grant**”), to YesH and to be loaned to the Developer, which loan shall be evidenced by the YesH Note and the YesH Mortgage .

The Developer agrees to sign at Closing the City Mortgage, in the form attached as **Exhibit C** and the City Note, in the form attached as **Exhibit D**, both of which evidence and secure the Developer’s obligation to repay the Home Loan. The City Mortgage shall be subordinate to all other Project financing.

Section 3.2. Project Budget. The Project Budget is attached in **Exhibit H**

Section 3.3. Schedule of Loans. Attached hereto as **Exhibit I-1** and incorporated herein as though set forth in full in this paragraph is the schedule of loans and grants from the City to be paid or forgiven and the terms thereof.

Section 3.4. Other Loans/Subsidies. Other loans and subsidies, if applicable, are listed on the attached **Exhibit I-2** and incorporated herein as though set forth in full in this paragraph. Without the prior knowledge and written approval of the City, the Developer shall not encumber either the Project or the Developer as a whole with obligations which could impede the success of the Project.

Section 3.5. Tax Credits. Tax Credits, if applicable, are listed on the attached **Exhibit I-3** and incorporated herein as though set forth in full in this paragraph.

Section 3.6. Metropolitan Redevelopment Bonds. Pursuant to the New Mexico Metropolitan Redevelopment Act (NMSA 1978 Comp. §§3-60A-1 *et seq.*) Metropolitan Redevelopment Bonds (the “MR Bonds”) may be issued for the Project which will entail conveyance by the Developer to the City of legal title to the Project and leasing the Project back to the Developer by the City for a seven (7) year period, resulting in the Project being off of the property tax roles for this seven (7) year period.

ARTICLE IV

Commencement and Completion of the Project

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

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

B. It shall construct the Project with all reasonable dispatch and according to the Development Schedule attached as **Exhibit J**. 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 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.

Section 4.2. Establishment of Completion Date.

A. The Developer shall complete the construction of the Project no later than December 31, 2014.

B. The completion date shall be evidenced to the City by a permanent Certificate(s) of Occupancy issued by the City; (ii) if applicable, a letter of acceptance by the City accepting public infrastructure required to be constructed; and (iii) release of liens by contractors, subcontractors and suppliers employed in the Project. 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. City may conduct inspections of the Project during normal business hours after giving reasonable notice to Developer. Notwithstanding the above, Developer shall arrange for a Project walk through within five (5) days after substantial completion of the Project with the Developer’s Authorized Representative, City’s Authorized Representative, Construction Contractor and Independent Architect/Engineer to prepare the Project Punch List. Developer shall cause each item on the Punch List to be remedied no later than 30 days after issuance of the Punch List.

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.

ARTICLE V
Real Property Acquisition
Alvarado Master Development Agreement

Section 5.1. Real Property Acquisition. The Real Property has been transferred by the City to Alvarado S.G., LLC (“ASG”) and will be conveyed to ASG to the Developer, pursuant to the terms of the CDC City Agreements. Pursuant to the CDC City Agreements, ASG and the City have agreed upon the following matters which relate to the Real Property prior to the conveyance of the Real Property to USG by the City.

A. A Phase 1 Environmental Report (the “**Phase 1**”) for the Real Property.

B. Survey. An ALTA/ASCM Survey (the “**Survey**”) of the Real Property [pursuant to the Master Development Agreement the survey is at the expense of the City] prior to Developer closing on the Real Property for approval by City. The description of the real estate contained in the survey shall conform to the legal description contained in the City Mortgage.

C. Title Commitment. A title insurance commitment for the Real Property, (the “**Title Commitment**”).

D. Geotechnical Investigation Report. A geotechnical investigation report (the “**Soils Report**”) for the Real Property.

Section 5.2 Project Plans. Pursuant to the CDC City Agreements, the Developer shall submit one complete set of the Plans, Specifications and Elevations for the Project to the City. The City shall review and approve, the proposed Plans, Specifications and Elevations prior to the commencement of any construction work pursuant hereto. In a case of material change, the Authorized Developer Representative shall certify to the City that such revised Plans, Specifications and Elevations (not to be confused with plans for building permits) will not materially affect the purpose of the Project as a ‘livable’ affordable housing project , provided that no such material change shall be made without the prior written consent of the City.

Section 5.3 Construction Financing. Pursuant to the CDC City Agreements, the Developer shall submit, or cause to be submitted to the City evidence of the Tax Credit Award and commitments to the Developer to provide the balance of all construction financing for this Project. In the event that the Developer does not receive the Tax Credit Award, this Agreement shall terminate, the City shall have no obligation to make the Workforce Housing Grant, the Home Grant or the Workforce Housing Loan.

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 24 CFR Part 92.351 and the Fair Housing Act.

ARTICLE VI
Usage and Documentation of City Funds

Section 6.1. Use of Loan Proceeds, Repayment, Discharge. The City Funds shall be an amount not greater than **FOUR MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$4,250,000.00)**, which includes all City funds allocated for this Project, except as otherwise provided in the CDC City Agreements, and shall be used for the development and construction of the Project. The City Funds shall be repayable to the City by YesH and the Developer in accordance with the terms and conditions of the YesH Note, City Note and this Agreement.

Section 6.2. Disbursement of City Loan Proceeds Authorized Under This Agreement. The City Funds authorized under this Agreement in the amount of **FOUR MILLION TWO-HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$4,250,000.00)**, which consists of: (a) the \$1,500,000.00 HOME Grant to be disbursed to YesH, and (b) \$1,500,000 Workforce Housing Grant to be disbursed to YesH, and (c) \$1,250,000.00 Workforce Housing Construction Loan to be disbursed to the Developer as provided in Article III. The Workforce Housing Grant, and the Home Grant shall be loaned to the Developer by YesH for development and construction of the Project as herein provided. The obligation of the Developer to repay the Workforce Housing Grant funds and the Home Grant to YesH shall be independent of any obligation (or absence thereof) on the part of YesH to repay such amounts to the City; provided, however, a Collateral Assignment of the YesH Note and the YesH Mortgage shall secure the Workforce Housing Grant and HOME Investment Trust Grant Repayment Obligation as provided in Section 3.1A and 3.1B.

A. In addition to any other requirements herein, the City Funds shall only be disbursed in the event Developer meets the criteria set forth herein.

B. Developer agrees to provide City with a Request for City Loan Disbursement, in a form acceptable to City and substantially similar to **Exhibit K**, not less than ten (10) days prior to distribution date. A comparable Request shall be submitted by Developer to YesH and by YesH to the City with respect to the loan of Workforce Housing Grant funds.

C. Developer will submit supporting invoices and documentation for costs actually incurred by Developer. Construction costs must be certified by the Architect/Engineer, in accordance with the contract entered into by and between the Developer and the Architect.

D. Plans and Specifications. Developer shall submit one complete set of the Plans and Specifications for the units to the City. The City shall review and approve the proposed Plans and Specifications prior to the commencement of any construction work pursuant hereto. In a case of material change, the Authorized Development Representative shall certify to the City that such revised Plans and Specifications will not materially affect the purpose of the development Project as set forth herein, provided that no such material change shall be made without the prior written consent of the City.

Section 6.3. Loan Documentation. Developer shall execute and deliver the City Note to the City in order to evidence the obligation to repay to the City the Workforce Housing Loan, and the City Note shall be secured by the City Mortgage encumbering the Real Property.

Section 6.4. Subordination and Release. The City Mortgage shall be subject and subordinate to any mortgage 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. The Restrictive Real Estate Covenants shall be subordinate to the Developer's construction and permanent financing.

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. Consistent with the CDC City Agreements, the Real Property has, or will be, conveyed to the Developer for the sole purpose of developing the Project. This Project, specifically, includes a mixed income, affordable rental project located on the Real Property within the MRA within the corporate limits of the City so that adequate residential housing is available within the City and promoting the public health, safety, welfare, convenience and prosperity thereby.

C. Adhere to initial rents for Home Assisted Units set forth in the Real Estate Covenants attached to this Agreement as **Exhibit L**. Any rent increases of the Home Assisted Units must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established Utility Allowance.

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. Developer is a New Mexico limited liability company duly organized and validly existing as such under the laws of the State of New Mexico with authority to perform the transactions set forth herein, has the power to enter into this Agreement and by proper action has duly authorized the execution and delivery of this Agreement.

B. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the compliance with the terms and conditions of this Agreement violate or will violate the terms of Developer's Articles of Organization or Operating

Agreement 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 of any nature whatsoever upon any of the Real Property or assets of Developer under the terms of any instrument or agreement.

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

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

E. The Restrictive Real Estate Covenants attached hereto as **Exhibit L** are binding on the Developer who shall comply therewith.

F. The Developer shall comply with the following provisions including, but not limited, to:

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

2. Regulations of the Uniform Administrative Requirements as described in 24 CFR Part 92.505.

3. Federal laws and regulations as described in 24 CFR Part 92, Subpart E.

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

5. Affirmative marketing plan submitted to City along with procedures in conformance with 24 CFR Part 92.351 and the Fair Housing Act

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

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

8. Maintain the Project as an affordable rental housing project as provided by the Workforce Housing Opportunity Act and ensure that in the event that the Project ceases to be an affordable rental housing project that the Real Property, with all improvements and fixtures intact, normal wear and tear excepted, is returned to the City. Title to the Real Property automatically and immediately reverts to the City in the event the property ceases to be used as an affordable housing project. Notwithstanding the foregoing, during the Low Income Housing

Tax Credit compliance period for the Project (which ends approximately fifteen years after the Project is placed in service), the Real Property shall not be returned or reverted to the City pursuant to this provision; and the City may pursue injunctive action to ensure that the Affordable Units are provided.

9. Shall adhere to rent formula as set forth in the Restrictive Real Estate Covenants (Deed Restrictions) attached to this Agreement as **Exhibit L**. 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 as it may be from time to time. In the event of any conflict between the terms of this Section 9 and the terms of Section 42 of the Internal Revenue Code (the "Code"), the terms of the Code shall control.

10. Maintain income verification of tenants and their family size residing in Affordable Units using 94 CFR Part 5.609 criteria. Income verification and family size documentation must be secured prior to occupancy of the affordable units, and thereafter verified and certified at least annually. Following occupancy, if an Affordable Unit's tenants' income exceeds 80% of the City's Median Income adjusted for family size, the tenant may remain in the unit; low-income housing tax credit rules shall apply to over-income tenants following occupancy. In the event of any conflict between the terms of this Section 10 and the terms of the Section 42 of the Code, the terms of the shall control.

11. 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.

12. 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 member or women) the maximum practicable opportunity to participate in the performance of this Agreement.

13. Execute leases for no less than six (6) months, preferably 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 Part 92.253.

G. The Developer shall establish a replacement reserve fund for the Project from funds other than City funds, in an amount not less than Three Hundred Dollars and No Cents (\$300.00) per unit per annum, which may be the same replacement reserves required by other Project lenders from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until the terms of this Agreement are met. The City may adjust the replacement reserve amount to reflect current replacement costs and will notify Developer in writing of any increase or decrease at least annually. Notwithstanding the foregoing, to the extent that the owner of the project capitalizes the replacement reserve from capital contributions or otherwise, the obligation to fund the replacement reserve fund shall be reduced or eliminated and no adjustments may be made.

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 like program as may be in existence at that time and obtains program certification within one year of execution of this Agreement and remain 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 material hereto, 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 Operating Agreement or Articles of Organization in any manner if such amendment or change would result in a conflict with the terms of this Agreement. Developer shall have the right to admit the Fund as a member, which admission will not conflict with the terms of this Agreement.

L. The Developer shall comply with the 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 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, 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, 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 provisions of the Act 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. Requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) and Section 104(d) of the Housing and Community Development Act of 1974.

3. Regulations of the Uniform Administrative Requirements as described in 24 CFR Part 92.505.

4. Federal laws and regulations as described in 24 CFR Part 92, Subpart E.

5. Federal laws and regulations as described in 24 CFR Part 92, Subpart F.

6. Federal laws and regulations as described in 24 CFR Part 92, Subpart H.

7. Federal laws and regulations as described in 24 CFR Part 893.6(b).

8. Local housing code requirements and allow the City to inspect the Properties.

9. Submit an affirmative marketing plan and procedures in conformance with 24 CFR Part 92.351 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.

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

11. Adhere to all applicable labor provisions outlined in 24 CFR 92.354.

12. The Developer shall secure income verification of the Original Homebuyers as defined in 24 CFR Part 5. Income verification and family size documentation must be secured prior to sale of the homes.

13. 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 fifteen (15) days after the end of the reporting quarter and shall be in accordance with City of Albuquerque reporting instructions.

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

H. At no time are the units in the Project to 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.

I. The provisions contained herein shall be binding on the successors and assigns of Developer.

J. At all times material hereto, 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 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.

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

M. Developer shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry or physical handicap.

N. Developer will conduct its operations in accordance with *the Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended.

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 progress of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed.

Section 8.2. The City, at its discretion, may require a reasonable Administrative Fee from the Developer for the purpose of monitoring the project in accordance with this Agreement.

Section 8.3. Following completion of construction and the lease-up of 65% of the units, for all non-HOME funded projects, income received for the rental of affordable units shall be reported quarterly. An income report detailing the uses of income received from the rental of affordable units for the reporting period will be provided by Developer within 30 days after the close of the quarter until the terms of this Agreement have been met. The City, at its sole discretion, may change the reporting frequency for non-HOME funded projects.

Section 8.4. The Developer shall report annually within 90 days of the close of the Developer'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, 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.

Section 8.5. 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. The cost of such examination shall be borne equally by the Developer and the examining entity.

Section 8.6. The Developer shall comply with all applicable monitoring provisions of the Workforce Housing Regulations as determined by the City of Albuquerque.

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 therein or thereon 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 \$1,000,000 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 \$1,000,000 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 entitle 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 or if such proceeds are insufficient, then Developer shall fund any deficiency.

Section 10.2. Partial Damage, Destruction, and Condemnation 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 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, 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, Developer may at any time grant easements, licenses, rights-of-way including the dedication of public roads, streets or highways, and other rights or privileges in the nature of easements with respect to any Real Property included in the Project, consistent with the purposes of the Project, free from the lien of the City Mortgage or Developer may release existing easements, licenses, rights-of-way and other rights or privileges with or without consideration subject to review and approval by the City. Developer shall furnish to the City a survey showing such easement, license or right-of-way, a copy of the instrument of grant and a certificate executed by a duly Authorized Developer Representative stating that such grant or release is not detrimental to the proper conduct of the business of Developer and that such grant or release shall not impair the effective use 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 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 City Note or any other cause whatsoever pertaining to the Project, subject to the limitations found in NMSA 1978 § 56-7-1. The City shall promptly, after receipt of notice of the existence of a claim in respect of which indemnity hereunder shall be sought or of the commencement of any action against the City in respect of which indemnity hereunder may be sought, notify Developer in writing of the existence of such claim or commencement of such action. This section shall not apply to the negligent act or failure to act of the City or of its officials, employees and agents.

This indemnification agreement shall survive the term of this Agreement.

Section.11.5 Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein including the financing referenced in **Exhibit I-1, I-2 and I-3** or in the City Mortgage, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof without the prior written consent of the City. Any conveyance of the Project during the term of this Agreement shall incorporate the covenants found in **Exhibit L** and agreements contained herein.

Section 11.6 Exceptions. Notwithstanding the foregoing, the following shall not constitute a sale 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 of Developer pursuant to the terms of the Operating Agreement of Developer, provided that any required substitute managing member is reasonably acceptable to the City; (B) an admission of an investor into the Developer, or a transfer of an investor member's interest in Developer; (C) the execution and delivery of a purchase option and right of first refusal agreement (the "Option"), as described in the Operating Agreement of Developer; and (D) the exercise of the Option by the project sponsor identified therein.

Any requisite consent of City 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 and the release of Developer from such obligations, shall not be unreasonably withheld.

Section 11.7 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 11.8 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 11.9 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" 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 of the receipt of notice of monies due any amount required to be paid pursuant to the City Note.

B. Failure by Developer to 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 fails to take corrective action or to cure the default within a reasonable time, the investor member of the Developer may remove and replace the managing member with a substitute managing member reasonably acceptable to the City who and shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions.

C. Developer agrees that as long as this Agreement is in effect, it shall maintain its existence as a New Mexico limited liability company, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity.

D. The occurrence of an "Event of Default" under the City Mortgage or City Note.

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 defaults under any of the provisions of this Agreement or the City Mortgage or City Note 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 or the City Note, Developer agrees that it shall on demand therefore pay to the City the reasonable 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 fifteen (15) days from the date of the mailing or delivery of the Notice.

B. If the Default is not cured or arrangements satisfactory to the City made to cure the Default, the City may elect to (1) accelerate, impose interest and call due the City Note and City Mortgage; and (2) sue for compensatory and consequential 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 Family and Community Services
 City of Albuquerque
 Post Office Box 1293
 Albuquerque, NM 87103

If to Developer: Yes Casitas de Colores, LLC
 c/o Yes Housing, Inc.
 Attn: _____
 104 Roma Avenue, NW
 Albuquerque, New Mexico 87102
 Telephone: 505-254-1371
 Telefax:
 Email: _____

And Casitas de Colores, LLC
 c/o Romero Rose LLC
 Attn: Theresa A. Bell, Project Manager
 5021 Indian School Road, N.E., Suite #300
 Albuquerque, New Mexico 87110
 Telephone: 764-3094
 Telefax:
 Email: theresa@romero-rose.com

And Jonathan F. P. Rose
 c/o Jonathan Rose Companies
 33 Katonah Ave.
 Katonah, New York 10536
 Telephone: 914-232-1396
 Email: jonathan@rosecompanies.com

With a copy to: John A. Myers
Myers, Oliver & Price, P.C.
1401 Central Ave NW
Albuquerque, New Mexico 87104
Telephone: 505-247-9080
Telefax: 505-247-9109
Email: jmyers@moplaw.com

and _____(Fund)

Telephone:
Telefax:
Email:

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

Section 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 Director of the Family Services Department 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. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 13.8. Recording. This Agreement as well as the City Mortgage, the Note 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.

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. The Developer shall not delegate, assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights or responsibilities granted in this Agreement or the City Mortgage and the City Note without the prior written approval of the City. The City has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the services required in this Agreement being performed by any other person or entity other than the Developer.

Section 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. Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, 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 13.22. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 13.23. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 13.24. Savings. City, and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 13.25. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the closing but which are to be performed after the closing as provided in this Agreement shall survive the closing of this transaction.

Section 13.26. Approval Required. This Agreement shall not become effective or binding until approved by the City's Director of the Department of Family and Community Services. The effective date of this Agreement shall be the date of the Director's approval.

Section 13.27. Agreement Binding This Agreement and all parts contained herein shall be binding upon each party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement and those contained in **Exhibit J**, Restrictive Real Estate Covenants, attached hereto.

IN WITNESS WHEREOF the City and Developer have caused this Agreement to be executed in their respective names and all as of the date first written above.

CASITAS DE COLORES, a New Mexico limited liability company

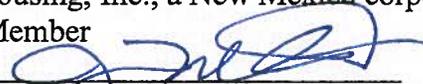


NM Taxation and Revenue Department
Taxpayer Identification Number

27-3886246
Federal Taxpayer Identification Number

By: YES CASITAS DE COLORES, LLC, a New Mexico limited liability company,
Member

By: Yes Housing, Inc., a New Mexico corporation
Sole Member

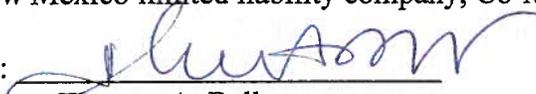
By: 
Its: Joseph R. Ortega, Executive Vice President

NM Taxation and Revenue Department
Taxpayer Identification Number

85-0388252
Federal Taxpayer Identification Number

By: CASITAS DE COLORES MANAGER I, LLC, a
New Mexico limited liability company, Co-Managing Member

By:


Theresa A. Bell

Member

03-235498-00-3

NM Taxation and Revenue Department

Taxpayer Identification Number

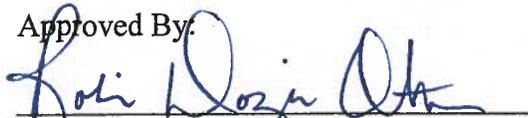
27-3886246

Federal Taxpayer Identification Number

Date: 1-24-12

CITY OF ALBUQUERQUE, a New Mexico municipal corporation:

Approved By:


Robin Dozier Otten

Director

Department of Family and Community Services

Date: 2/13/12

Approved by City Council

Date & EC # _____

Consent to Obligations

Capitalized terms in this Consent to Obligations shall have the meanings ascribed to them in the body of this Development Agreement. Yes Housing, Inc., a New Mexico 501(c)(3) non-profit corporation ("YesH") acknowledges its obligation to loan to the Developer for Project predevelopment and construction costs the Workforce Housing Grant and the Home Construction Grant. YesH agrees and acknowledges that this consent is given for the benefit of the City and may be enforced by the City.

YES HOUSING, INC., a New Mexico non-profit corporation

By: 
Its: 

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 purchaser's annual income.
5. "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.
6. "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.
7. "Authorized City Representative" for the purposes of this Agreement shall be the Director of the Department of Family and Community Services or his/her designee.
8. "Authorized Developer Representative" means the person designated to act on behalf of the Developer.
9. "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.
10. "City" means the Department of Family and Community Services, City of Albuquerque, New Mexico, which is acting on behalf of the City as manager of this Agreement and does not obligate other City Departments which have separate and distinct obligations in regard to planning, zoning, inspections, licensing, and permitting.
11. "City Loan" means that amount of the Workforce Housing Trust Fund Loan in the amount of \$1,250,000.00 authorized under this Agreement and provided through the City to construct the Project.

12. "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.

13. "City Mortgage" means the mortgage against the Real Property, in substantially the form set forth in Exhibit F attached hereto, executed by the Developer in favor of the City to secure repayment of the City Loan in the event of a default, in accordance with Section 5.2 below.

14. "City Note" means the promissory note, substantially in the form attached hereto as Exhibit G, which evidences the obligation to repay the City Loan, in accordance with Section 5.2.

15. "City's Very Low-Income" families means households earning Family Income of 50% or less of Area Median Family Income.

16. "Completion Date" means the date of completion of the construction of the Project as that date shall be certified pursuant to Section 4.2 hereof.

17. "Construction Period" means the period between the beginning of construction or installation of the Project and the Completion Date.

18. "Council" means the Council of the City or any successor governing body of the City.

19. "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.

20. "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 construction of the Project, and maintaining and/or managing the Project after completion of construction.

21. "Family" means one or more individuals residing in a household.

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

23. "General Fund" means those funds provided by Resolution 189, Enactment Number 51-1997 of the City Council of the City of Albuquerque to match funds provided through the HOME Investment Partnerships Program.

24. "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.

25. "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.

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

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 VIII 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.

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. "Prior Encumbrances" means:

- (i) a conventional institutional construction loan in the approximate sum of \$2,440,315.00;
- (ii) a conventional institutional permanent loan in the approximate sum of \$2,418,415.00;
- (iii) Mortgage Finance Authority Construction Loan in the amount of \$1,500,000.00
- (iv) MFA Primero Loan in the amount of \$1,000,000.00
- (v) Federal Home Loan Bank grant of \$300,000.00.

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

35. "Project" means the residential apartment development to be constructed upon the Real Property, including Buildings, related on-site and off-site improvements, equipment and related rights therein.

36. "Real Property" or "Property" means the real estate that consists of the property located between Second, Third, Silver and Lead Streets, SW, Albuquerque, Bernalillo County, New Mexico 87102, being 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 therefore, less such real estate and interests in real estate taken by the exercise of the power of eminent domain as provided herein.

37. "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.

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 to an individual whose annual household income does not exceed 80% of the area median income (AMI) and whose monthly housing payment does not exceed 30% of the imputed income limit applicable to such unit or 35% under special conditions to be defined in the Workforce Housing Plan. The AMI is published annually by the United States Department of Housing and Urban Development.

Legal Description

Lots numbered One through Twenty-one (21), inclusive, and Tracts "A","B" and "C" in Block lettered "B"; Lots numbered One (1) through Twenty-one (21), inclusive, and Tracts "A", "B" and "C" in Block lettered "E"; and Lots numbered One (1) through Eight (8), inclusive, and Tract "E" in Block lettered "F" of the Plat for Silver Townhomes, being a Replat of Lots 1 thru 24, Block 30, New Mexico Town Company's Original Townsite, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Amended Plat filed January 28, 2010, in Plat Book 2010C, Page 12, as Document No. 2010007859

Casitas de Colores, LLC, a New Mexico limited liability company

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned **Casitas de Colores, LLC, a New Mexico limited liability company ("Maker")** promises to pay to the order of the CITY OF ALBUQUERQUE ("Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, and having an office at the City-County Building, One Civic Plaza, Albuquerque, New Mexico 87102, or its assigns, the principal sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$1,250,00.00), Workforce Housing Construction Loan, or so much thereof as shall have been advanced to Maker by Holder from time to time, together with all charges as provided herein and in the Mortgage, as hereinafter defined, and accrued interest on the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On February 13, 2012 the Maker and the Holder entered into a certain Development Agreement (the "Development Agreement") which provided for the above referenced loan and grants by the Holder to the Maker of an amount not to exceed the Principal Sum of this Note (the "Development Agreement"). All capitalized terms used in this Note have the meaning provided in the Development Agreement

Interest at the New Mexico statutory rate as it may be from time to time during the term of this Note, shall accrue, but shall not be payable on the principal balance, except as provided herein in the event of default.

The proceeds of the loan evidenced by this City Note may be assigned, with prior written City approval, to any successors, assignees or purchasers of the Project who agree in writing to assume all of the obligations of Maker, its successors and assigns under the Agreement, this City Note and the Mortgage and the Maker shall thereupon be released from all future liability hereunder.

The \$1,250,000.00 shall become immediately due and payable, to the extent and if permitted by federal bankruptcy law, upon: (i) the funding of the Maker's permanent loan, (ii) the dissolution or liquidation of the Maker prior to the permitted assignment of Maker's rights and assumption of its obligations hereunder; and (iii) subject to any applicable cure rights as described in Article XII of the Development Agreement, Maker's default in any warranty, obligation or other term, condition, of the Development Agreement or the Mortgage which secures this City Note, (iv) as otherwise provided in this City Note.

If at any time during the term of this City Note, any material portion of the improvements or equipment situated on the Project site shall be removed, demolished or materially altered without prior written consent of Holder, (except by as may occur under an event of casualty or condemnation), the entire principal balance of this City Note, plus accrued and unpaid interest thereon, shall become immediately due and payable; provided, however, that Maker shall have the right, without such consent to remove and dispose of, free from any lien of Holder, such

equipment as from time to time has become worn out or obsolete, provided that simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or other encumbrance not otherwise permitted herein or in the Mortgage. By such removal and replacement, Maker shall be deemed to have subjected such equipment to the lien of Holder.

All cash payments hereunder shall be payable in lawful money of the United States, which shall be legal tender for public and private debts at the time of payment, at the office of the City Treasurer, or at such other place as the Holder hereof may from time to time give notice in writing to the Maker.

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

The proceeds of this City Note shall be disbursed or applied by the Holder to or for the benefit of the Maker for the construction and development of the improvements on the Project site as provided in the Development Agreement, and for costs related thereto. Disbursements of principal hereon shall be made in accordance with the terms of the Agreement.

This City Note is secured by a Mortgage and Security Agreement of even date herewith, conveying a mortgage and security interest in the Project and the Real Property constituting the site therefore, which Mortgage is to be filed for record in the Office of the Clerk of Bernalillo County, New Mexico. All of the provisions of the Mortgage are incorporated herein by reference.

If (i) default be made in the payment when due of any installment of principal hereunder and the same shall not be paid in the manner provided in this City Note within five (5) business days after receipt of written notice at once or at any time thereafter during the continuance of such default, at the option of the Holder, thereof, become due and payable, and thereafter all of the unpaid principal shall bear interest at an annual interest rate of twelve percent (12%), the undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing remedies under this Note and the Mortgage to collect any sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

Subject to the terms and conditions of Section 12.1(B) of the Development Agreement, the following are a breach of the terms of the Note: (ii) default be made, and not timely cured, under the terms of any mortgage loan to which the Mortgage is subordinate; (iii) Maker shall dissolve or otherwise fail to maintain its status as a New Mexico limited liability company; (iv) Maker or the affiliated entity with ownership of the project financed with the proceeds hereof sells or conveys the Project to a third party who does not agree in writing to assume all of obligations of Maker, its successors and assigns under the Agreement, this City Note and the Mortgage; or (v) default be made in the performance of any of the other covenants contained in this City Note or in the Mortgage. After any applicable cure period, the whole unpaid principal balance hereof shall, upon ten (10) days written notice to the Maker, at once or at any time thereafter during the

continuance of such default, at the option of the Holder thereof, become due and payable, and thereafter all of the unpaid principal shall bear interest until paid at an annual interest rate of twelve percent (12%), and the undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and the Mortgage to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

The Maker waives presentment for payment, protest notice of protest and notice of dishonor. The 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, shall not be construed as a novation of this City Note or as a waiver of the right of the Holder to thereafter insist upon strict compliance with the terms of this City Note without previous notice of such intention being given to the Maker. This City Note shall not 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" shall 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 City Note shall be construed according to the laws of the State of New Mexico.

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

Subject to the qualification otherwise set forth herein, time is of the essence in the performance of this Note.

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.

This note is executed in counterparts and effective on the 18th day of ^{December} ~~November~~, 2012.

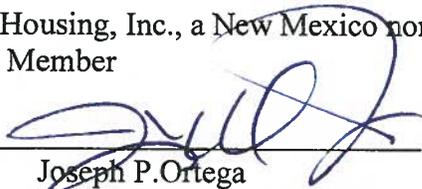
CASITAS DE COLORES, LLC, a New Mexico limited liability company

NM Taxation and Revenue Department Taxpayer Identification Number: 03-235498-00-3

Federal Taxpayer Identification Number: 27-3886246

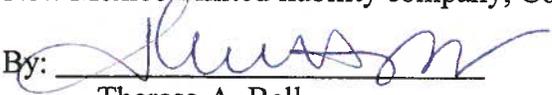
By: YES CASITAS, LLC, a New Mexico limited liability company,
Co-Managing Member
Federal Taxpayer Identification Number: 45-5548512

By: Yes Housing, Inc., a New Mexico nonprofit corporation
Sole Member

By: 
Joseph P. Ortega
Executive Vice President

NM Taxation and Revenue Department Taxpayer Identification Number: _____
Federal Taxpayer Identification Number: 85-0388252

By: CASITAS DE COLORES MANAGER, LLC, a
New Mexico limited liability company, Co-Managing Member

By: 
Theresa A. Bell
Manager

BY: _____
Jonathan F. P. Rose
Manager
NM Taxation and Revenue Department Taxpayer Identification Number: _____
Federal Taxpayer Identification Number: 27-3886478

This note is executed in counterparts and effective on the 18th day of ^{December} ~~November~~, 2012.

CASITAS DE COLORES, LLC, a New Mexico limited liability company
NM Taxation and Revenue Department Taxpayer Identification Number: 03-235498-00-3
Federal Taxpayer Identification Number: 27-3886246

By: **YES CASITAS, LLC, a New Mexico limited liability company,**
Co-Managing Member
Federal Taxpayer Identification Number: 45-5548512

By: **Yes Housing, Inc., a New Mexico nonprofit corporation**
Sole Member

By: _____
Joseph P. Ortega
Executive Vice President
NM Taxation and Revenue Department Taxpayer Identification Number: _____
Federal Taxpayer Identification Number: 85-0388252

By: **CASITAS DE COLORES MANAGER, LLC, a**
New Mexico limited liability company, Co-Managing Member

By: _____
Theresa A. Bell
Manager

BY:  _____
Jonathan F. P. Rose
Manager
NM Taxation and Revenue Department Taxpayer Identification Number: _____
Federal Taxpayer Identification Number: 27-3886478