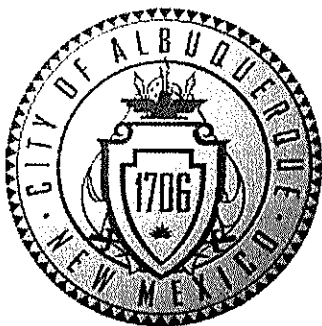


EC-21-468



CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

October 5, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor

A handwritten signature in black ink, appearing to be 'TK' or similar initials, written over the name Timothy M. Keller.

SUBJECT: Approval of the Calle Cuarta Development Agreement with YES Housing to Utilize Workforce Housing Trust Funds and Convey City-owned property towards the Development of a Mixed-used Affordable Rental Housing Project.

This is a request for approval of the proposed Development Agreement between the City of Albuquerque and YES Housing to provide gap financing towards the future development of Calle Cuarta, located at 3525 4th St NW. Calle Cuarta will consist of 61 affordable rental housing units. The Calle Cuarta development will also incorporate an additional 4 live/work units, 21 Townhomes, of which 3 homeownership units will be affordable to households at or below 65% AMI and 4 homeownership units will be affordable to households at or below 80% AMI (the "Residential Units"). The residential units intended for ownership will be constructed on subdivided land into separate parcels and separate structures from the apartment building (the "Retail Units"), to be financed separately and divided from this Project. Additionally, 5 ground-level retail spaces of the apartment building are also to be financed separately and divided from this Project, using a condo structure.


The proposed City contribution of \$3,500,000 of the City's Workforce Housing Trust Fund. The City-owned land, valued at \$1,100,000, will also be conveyed to the developer.

The project will seek a Low Income Housing Tax Credit Allocation from the New Mexico Mortgage Finance Authority in January 2022, which will leverage the City's local contribution provided for in this agreement.

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

Legislation Title: Approval of the Calle Cuarta Development Agreement with YES Housing to Utilize Workforce Housing Trust Funds and Convey City-owned property towards the Development of a Mixed-used Affordable Rental Housing Project.

Approved:



Sarita Nair Date
Chief Administrative Officer

10/26/21

Approved as to Legal Form:

DocuSigned by:

Esteban A. Aguilar, Jr. 10/17/2021 | 10:31 AM MDT
7961D89D046F4DB...

Esteban A. Aguilar, Jr. Date
City Attorney

DS
PP

Recommended:

DocuSigned by:

Carol M. Pierce 10/14/2021 | 5:58 PM MDT
72F4E194084641B...

Carol M. Pierce Date
Director

Cover Analysis

1. What is it?

This is a request for approval of the proposed Development Agreement between the City of Albuquerque and YES Housing to provide gap financing towards the future development of Calle Cuarta, located at 3525 4th St NW. Calle Cuarta will consist of 61 affordable rental housing units. The Calle Cuarta development will also incorporate an additional 4 live/work units, 21 Townhomes, of which 3 homeownership units will be affordable to households at or below 65% AMI and 4 homeownership units will be affordable to households at or below 80% AMI (the “Residential Units”). The residential units intended for ownership will be constructed on subdivided land into separate parcels and separate structures from the apartment building (the “Retail Units”), to be financed separately and divided from this Project. Additionally, 5 ground-level retail spaces of the apartment building are also to be financed separately and divided from this Project, using a condo structure.

2. What will this piece of legislation do?

This legislation will provide \$3,500,000 of Workforce Housing Trust Funds for the Calle Cuarta Development, a \$18 million project, and convey the City-owned Real Property valued at \$1,100,000 to the developer.

3. Why is this project needed?

The funding will provide gap financing in the form of a local contribution from the City, which YES Housing will leverage in hopes of obtaining a Low Income Housing Tax Credit Award from the New Mexico Mortgage Finance Authority.

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

The Calle Cuarta Development has estimated project cost of \$18,209,543 of which \$3,500,000 will be Workforce Housing Trust Funds through this request.

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

No. The grant funds are utilized in construction and secured through a City Mortgage, City Promissory Note, and City Restrictive Real Estate Covenants that ensures that there the project remains Affordable Housing for at least 90 years. It is necessary that any project revenue be utilized by the project for the long-term, as provided for in the Project’s Pro-Forma.

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

The funds proposed as part of this legislation account for nearly 20% of the project's total costs. Not approving the \$3,500,000 of Workforce Housing Trust Funds and the land conveyance in this request will likely leave the developer with insufficient funds to proceed with the project.

7. Is this service already provided by another entity?

No, the project was awarded through a competitive Request for Proposal (RFP-DFCS-CD-AHD-20-03-BROWN)) process addressing the need for affordable housing at the City-owned property located 3535 4th St. NW. YES Housing's bid scored the highest and was ultimately recommended for award.

DEVELOPMENT AGREEMENT

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

and

YES Housing, Inc., a New Mexico non-profit corporation,
901 Pennsylvania Street NE
Albuquerque, New Mexico 87110

_____, 2021

CALLE CUARTA

3525 4th Street NW/420 Fitzgerald Road NW
Albuquerque, NM 87107

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DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into upon the date of the last signature below, by and between the **City of Albuquerque**, New Mexico, a municipal corporation (the “City”), and **YES Housing, Inc.**, a New Mexico non-profit corporation, 901 Pennsylvania Street NW, Albuquerque, NM 87110 (the “Developer”). City and Developer are sometimes hereinafter referred to collectively as “the Parties” and individually as “a Party.”

RECITALS

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; and

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

WHEREAS, the Project (defined below) includes an affordable rental housing development project located at 3525 4th Street/420 Fitzgerald Road NW, within the North 4th Corridor Development Plan and targets this area as a Metropolitan Redevelopment Area (“MRA”) that is located within the corporate limits of the City; and

WHEREAS, the project is located in the North 4th Corridor Development Plan, an area appropriate for in-fill affordable housing; and

WHEREAS, the Developer responded to an Affordable Housing Development Project Request for Proposals, RFP-DFCS-CD-AHD-20-03-BROWN, for funding of the Affordable Housing project Calle Cuarta (the “Project”) and conveyance of City-owned real property; 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 (the “MFA”) which will fund a significant portion of the overall cost of the Project; and

WHEREAS, the purpose of the Project is to construct 61 affordable multi-family rental housing units that are at or below 80% AMI upon the Property as more particularly described herein; and

WHEREAS, the RFP-DFCS-CD-AHD-20-03-BROWN also included home ownership and economic development requirements for the overall mixed-use development to be in alignment with the recommendations from the *Brown Property Public Policy Report*, and those requirements were evaluated as part of the RFP; and

WHEREAS, the City will convey the Real Property to the Developer which will then subdivide and be responsible for meeting the specific use requirements for each component of the property; and

WHEREAS, while the home ownership and economic development/retail components will utilize the Real Property conveyed to the Developer, they will be financed as separate projects from the Calle Cuarta Apartments project provided herein; and

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

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

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

ARTICLE I

Definitions

Section 1.1 The Definitions in the 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 shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement, capitalized terms shall retain their customary meaning.

Section 1.3 The 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 a 61 unit affordable, multifamily, rental housing development in the MRA. Populations to be served will be households that are at or below 80% AMI.

Section 2.2. Project Term. The development of the Project and the provision of the Affordable Units (as defined below) by the Developer are to commence dependent upon the award of Low Income Housing Tax Credits by the Mortgage Finance Authority to the Developer, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement but, in any event, the obligation to provide the Affordable Housing Units required hereunder shall be continued for ninety-nine (99) years from the completion of the Project (“Affordability Period”) with a renewable ninety-nine (99) 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-nine (99) years Affordability Period will commence anew with a renewable ninety-nine (99) years of affordability requirements.

Section 2.3. Project Description. The Project named Calle Cuarta is located at 3525 4th Street NW and 420 Fitzgerald NW, as legally described in **Exhibit B**. The Project is a 61 unit, affordable development that shall consist of 10 (1 studio, 5 one-bedroom, 3 two-bedroom, and 1 three-bedroom) restricted units at 30% Area Median Income (AMI); 21 (3 studio, 8 one-bedroom, 7 two-bedroom, and 3 three-bedroom) restricted units at 50% of AMI; 23 (3 studio, 10 one-bedroom, 7 two-bedroom, and 3 three-bedroom) restricted units at 60% AMI; and 7 (1 studio, 3 one-bedroom, 2 two-bedroom and 1 three-bedroom) restricted units at 80% AMI (the “Affordable Units”). The Calle Cuarta development will also incorporate an additional 4 live/work units, 21 Townhomes, of which 3 homeownership units will be affordable to households at or below 65% AMI and 4 homeownership units will be affordable to households at or below 80% AMI (the “Residential Units”). The residential units intended for ownership will be constructed on subdivided land into separate parcels and separate structures from the apartment building (the “Retail Units”), to be financed separately and divided from this Project. Additionally, 5 ground-level retail spaces of the apartment building are also to be financed separately and divided from this Project, using a condo structure. Except for the Residential Units and the Retail Units, the Project shall remain an affordable rental housing project as provided herein. The Residential Units and the Retail Units shall not be subject to the Restrictive Real Estate Covenants and shall not be encumbered by the Mortgage, and the City agrees to sign such documents as are necessary to release the Residential Units and the Retail Units from the Restrictive Real Estate Covenants and the Mortgage at the time such Units are subdivided.

Section 2.4. Management of Property. Following the Tax Credit Award, the Developer and an equity fund (“Fund”) will form and own interests in a separate affiliated entity (the “Ownership Entity”) which will develop and own the Project, with the Developer serving as the managing member or general partner. Following the formation of such Ownership Entity, this Agreement shall be assigned by the Developer to such Ownership Entity. The Developer shall manage the property through a property management agreement with Monarch Properties, Inc., a professional

property management company, or other property management company as approved by the City in writing.

ARTICLE III

Funds Committed to the Project

Section 3.1 Description of City Loan and Conveyance of Real Property. To assist with the Project the City shall provide a grant to Developer in an amount not to exceed **Three Million, Five Hundred Thousand Dollars and No Cents (\$3,500,000.00)** of Workforce Housing Trust Funds (the “City Grant”). The City shall also convey to the Developer the City Owned Real Property and Conveyance of City-owned Real Property valued at \$1,100,000.00, subject to the terms and conditions contained herein. The City owned Real Property will be sold or leased to the Ownership Entity by the Developer. The City Grant will in turn be loaned by the Developer to the Ownership Entity (the “City Loan”), with such loan to be evidenced by a Promissory Note (the “City Note”) which will be secured by a Mortgage (the “City Mortgage”) encumbering the Project, in the attached forms substantially similar to **Exhibit D** and **Exhibit C**, respectively. The Developer shall sign at Closing of the City Loan a Collateral Assignment of the City Note and City Mortgage in the form attached as **Exhibit K**, and the Restrictive Real Estate Covenants running to the benefit of the City in the form attached as **Exhibit I**. The Developer and the Ownership Entity shall sign at Closing of the City Loan the Agreement to Assume Rights and Responsibilities in the form attached as **Exhibit L**. Developer shall not enter into any subordination agreements related to the City Note and/or the City Mortgage without the City’s written consent.

Section 3.2. Project Budget. The proposed Project Budget are all attached as **Exhibit E**. If Pre-Development, Land Acquisition or Land Donation are part of this project but were funded separately, the Schedules shown in **Exhibit E** shall be completed for those activities and shall be incorporated into the Project Budget shown in **Exhibit E**. The proposed Project Budget shall be subject to change or amendment from time to time, subject to prior written approval of the Authorized City Representative. The Authorized City Representative shall not unreasonably withhold such approval if (a) the combined amount of all sources of funds available remains sufficient to pay all anticipated costs of the Project, (b) the proposed amendment to the Project Budget does not adversely affect Developer's ability to complete the Project pursuant to this Agreement, (c) Developer promptly provides written notice of any such proposed amendment to the City, and (d) the proposed amendment does not reflect a material change to the Plans, Specifications and Elevations.

Section 3.3. Schedule of Grants. Attached hereto as **Exhibit F** and incorporated herein as though set forth in full in this paragraph is the schedule of 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 F** 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 E** and incorporated herein as though set forth in full in this paragraph.

Section 3.6. Non-Receipt of Low Income Housing Tax Credits. Should the Developer not receive an award of Low Income Housing Tax Credit (LIHTC) financing from the New Mexico Mortgage Finance Authority by June 20, 2022, the Federal or City funds may be undesignated and available for other affordable housing projects, as determined by the City. The Developer shall immediately notify the City of such failure, and in any event within ten (10) business days of Developer's notification by lender or sponsor of the Tax Credit financing of the failure of that financing, and, no later than five (5) business days thereafter. Failure to comply with this provision is a material Event of Default. A failure by the Developer to receive an award of Low Income Housing Tax Credit financing by June 20, 2022 shall not prevent the Developer from reapplying for a future LIHTC round or an award of other Federal or City funds for the Project after June 20, 2022. However, the Developer must submit a written request to the City for an extension of the Term of the agreement, along with justification for the request based on the intent to apply for future a LIHTC award or to secure alternate financing. Final approval of such a request is at the discretion of the City.

ARTICLE IV

Commencement and Completion of the Project

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

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

B. Developer shall construct the Project with all reasonable dispatch and according to the Development Schedule attached as **Exhibit G**. An updated Development Schedule shall be provided within sixty (60) days after execution of the Agreement and shall be provided as part of the subsequent quarterly reports.

C. Developer shall have sole responsibility for 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, 2025** (“Completion Date”). Failure to complete the construction by the Completion Date is a material Event of Default of this Agreement.

B. The completion date shall be evidenced to the City by (i) permanent Certificate(s) of Occupancy issued by the City; (ii) if applicable, a certificate of completion and acceptance by the City accepting public infrastructure required to be constructed; 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. At all times during the construction phase, the City may conduct inspections of the project during normal business hours after giving reasonable notice to Developer. Notwithstanding the above, within five (5) days after substantial completion of the building, Developer shall arrange for a Project walk through with the Developer’s Authorized Representative, City’s Authorized Representative, Construction Contractor and Independent Architect/Engineer to prepare the Project punch list on a unit by unit basis as well as common areas. Developer shall cause each item on the punch list to be remedied no later than thirty (30) days after issuance or prior to rental of the apartment unit to the original renter, whichever occurs first.

Section 4.3 Developer to Pursue Remedies Against Contractor and Subcontractors and their Sureties. In the event of default of any contractor or subcontractor under any contract made in connection with the Project, Developer shall promptly proceed either separately or in conjunction with others to exhaust any remedies against the contractor or subcontractor so in default and against each surety for the performance of such contractor or subcontractor. Developer may prosecute or defend any action or proceeding or take other action involving such contractor or subcontractor or surety or other guarantor or indemnitor which Developer deems reasonably necessary.

ARTICLE V

Real Property Acquisition

Section 5.1. Conditions Precedent to Disbursements of City Loan or City Grants Authorized Under this Agreement. The Developer currently has an option to purchase the Real Property. At the closing of the City Grant, once the Real Property has been conveyed to the Developer, the Developer shall immediately record the Restrictive Real Estate Covenants in Section 5.5, prior to transferring title to the Real Property to the Ownership Entity.

To the extent that any or all of the actions in this Section were performed in conjunction with the earlier agreement between parties regarding this property and the information is not stale; the

reports do not need to be duplicated. Depending on the nature of the report, if the report is stale, it shall be updated at Developer's expense before the loan of additional monies.

- A. Phase 1 Environmental survey.
- B. ALTA/ASCM Survey ALTA survey of the Real Property at the expense of Developer.
- C. Developer shall assist the City in complying with all applicable Environmental Review and historic preservation requirements of the U. S. Department of Housing and Urban Development and the State Historic Preservation Office of New Mexico, prior to expending any City HOME funding stipulated under this Agreement.
- D. Geotechnical Investigation Report. The Developer shall or shall cause to be submitted to the City a Geotechnical Investigation Report in a form acceptable to the City.
- E. Evidence of all other sources of financing dedicated to the Project.
- F. Title Insurance Commitment and Title Insurance Policy.
- G. Schedule of Material Events and Activities. Developer shall provide to the City a projected schedule of material events and activities from the date of acquisition of the Real Property through the stabilized occupancy of the Project to eligible families.

Section 5.2 Project Plans. 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. 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 and the City shall have no obligation to make the Workforce Housing Loan, subject to the Developer's right to request an extension of Term for such Loan pursuant to Section 3.6

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.

Section 5.5. Restrictive Real Estate Covenants. At closing, Developer and Ownership Entity shall execute and deliver Restrictive Real Estate Covenants to the City. To ensure the City's goals in regards to this Project, the City shall require the Restrictive Real Estate Covenants to be recorded and to run with the land, binding upon the Developer and Ownership Entity, its successors and assigns. The Restrictive Real Estate Covenants shall be recorded prior to any other document other than any deed which conveys ownership of the Real Property to the Developer. The Residential Units and Retail Units will be released from the terms of the Restrictive Real Estate Covenants and the Mortgage upon completion of the Project.

Section 5.6. Subordination, No Effect on Restrictive Covenants. Upon the City's approval of the Developer's financing arrangements, the City will subordinate the City Mortgage to one or more mortgages for borrowed funds necessary to develop the Project. However, the Restrictive Covenants will not be subordinated and will continue to run with the land for the term of the Affordability Period. The City shall execute documents as may be necessary to effectuate such subordination as provided in Section 6.4 of this Agreement.

ARTICLE VI

Usage and Documentation of City Funds

Section 6.1. Use of Loan Proceeds, Repayment, Discharge. The City Grant shall be an amount not greater than **THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$3,500,000.00)**, and Conveyance of City-owned Real Property valued at \$1,100,000.00 which includes all City funds allocated for this Project, and shall be used for the development and construction of the Project.

Section 6.2. Disbursement of City Grant Proceeds Authorized under this Agreement. The City Grant, secured by a Collateral Assignment of the Mortgage, authorized under this Agreement in the amount of **Three Million, Five Hundred Thousand Dollars and No Cents (\$3,500,000.00)**, shall be disbursed to the Developer and loaned to the Ownership Entity to pay actual costs incurred by the Ownership Entity for purposes authorized under this Agreement and per the projected project budget attached hereto and incorporated herein as **Exhibit E** and for no other purpose.

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

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

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

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

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

Section 6.4. Subordination and Release. The City Mortgage shall be subject and subordinate to any mortgage or bond securing the Construction Loan(s) and the initial Permanent Loan(s), and the New Mexico Mortgage Finance Authority Land Use Restriction Agreement, and City shall execute documents as may be necessary to effectuate such subordination in the form agreed to between the City and such lenders.

ARTICLE VII

Warranties and Obligations

Section 7.1. Warranties and Obligations by the City. The City makes the following warranties as the basis for the undertakings on its part contained herein.

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

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

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

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 non-profit corporation duly organized and validly existing as such under the laws of the State of New Mexico with authority to perform the transactions set forth herein, 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 Incorporation or Bylaws or conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or any instrument to which Developer is now a party or by which it is bound or constitutes or will constitute a default under any of the foregoing or will result in the creation or imposition of any prohibited lien, charge or encumbrance 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 and the Retail and Residential Units.

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

F. During the Affordability Period, 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 Project, with all improvements and fixtures intact, normal wear and tear excepted, is returned to the City.

9. Shall adhere to rent formula as set forth in the Restrictive Real Estate Covenants (Deed Restrictions) attached to this Agreement as **Exhibit I**. Any rent increases of the Affordable Units other than those related to increases in the imputed income limits must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established Utility Allowance, revised as it may be from time to time. In the event of any conflict between the terms of this Section 7.2.F.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 §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 until the expiration of the tenants' lease term; 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 7.2.F.10 and the terms of Section 42 of the Code, the terms of the Code 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 annual leases, unless otherwise mutually agreed between tenant and owner and permissible under the federal, state and local laws regarding the funding for this Project, with tenants in the affordable units in compliance with 24 CFR §92.253.

G. The Developer shall establish a maintenance reserve fund for the Project in an amount not less than Three Hundred Dollars and No Cents (\$300.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until all the terms of this Agreement are met and the Affordability Period has expired. From time to time, the City may adjust the maintenance reserve amount to reflect current maintenance costs and will notify Developer in writing of any increase or decrease at least annually. However, the City may not increase the maintenance reserve amount by more than three percent (3%) per annum.

H. The Developer shall assure that the property manager for the facility participates in the Albuquerque Police Department's Crime Free Multi-Housing Program or such similar program as may be in existence at that time and obtains program certification within one year of execution of this Agreement and remains so certified thereafter. Failure to obtain the certifications, or revocation of the certification of the facility or the facility manager, shall constitute default of this Agreement.

I. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project nor any portion thereof shall ever be used as a hotel, motel dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

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

K. Developer shall not, during the term of this Agreement, amend or change its By-Laws or Articles of Incorporation or the governing documents of the Ownership Entity in any manner if such amendment or change would result in a conflict with the terms of this Agreement. Developer shall have the right to admit the Fund as a partner of the Ownership Entity, 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, gender identity, sexual preference, sexual orientation, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status.

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

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

e. The Developer will in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration of employment without regard to race, color, religion, gender, gender identity, sexual preference, sexual orientation, age, national origin or ancestry, or physical or mental handicap or disability.

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

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

N. The Developer shall comply with all applicable 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 §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 §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 §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 tenants of the Affordable Units as defined in 24 CFR Part 5. Income verification and family size documentation must be secured prior to rental of the Affordable Units.

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 ten (10) days after the end of the reporting quarter and shall be in accordance with City of Albuquerque reporting instructions.

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

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

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

R. The Developer, or its agents, shall provide a range of representative supportive services to the occupants of the Project. These supportive services shall include, but are not limited to, health education, health screenings, computer training, job training, job search assistance, mental health services and case management.

S. 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. Any exception or waiver to these requirements must be approved in writing by the Director of the Department of Family and Community Services.

ARTICLE VIII

Monitoring/Reports Required

Section 8.1. The Developer shall report, in writing, at least quarterly during the construction and lease-up phases of the Project. The quarterly report shall include the process of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed and a certified rent roll showing household size, ethnicity, race, whether the occupant is female head of household.

Section 8.2. 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 8.3. The Developer shall report annually within 120 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 8.4. At any time during normal business hours and as often as the City, its designee, or the appropriate funding entity may deem necessary, there shall be made available to the City or the appropriate funding entity for examination, all of the Developer's records with respect to all matters covered by this Agreement. The Developer shall permit the City or the appropriate funding entity to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

Section 8.5. The Developer shall comply with all applicable monitoring provisions of the City's housing regulations including but not limited to the Workforce Housing Regulations as determined by the City.

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

B. **OWNER'S PROTECTIVE PUBLIC LIABILITY INSURANCE.** Developer shall procure, or cause or be procured, and maintain, during the life of construction, an owner's protective public liability insurance policy with liability limits in an amount not less than \$2,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.

C. **WORKER'S COMPENSATION INSURANCE.** Developer shall comply with the provisions of the Worker's Compensation Act, the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law. Developer shall procure and, maintain, during the life of the Project complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Developer elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of

performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

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

E. **INCREASED LIMITS:** The City may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply.

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

Section 9.5. **Performance, Payment and Other Bonds.** Developer or Contractor shall furnish or cause to be furnished, performance and payment bonds, or other security such as an irrevocable letter of credit, acceptable to the City, as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts at least equal to the amount of the City Note and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S. Treasury Department. The performance bond shall also include coverage for any guaranty period provided by the contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedied as may be available against such surety. Developer shall cause the City to be named a joint obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the City as an alternative to the performance, payment bonds specified above. Any such letter must be drawn against a New Mexico institution whose deposits are federally insured and shall be payable exclusively to the City on demand.

Section 9.6. Application of Net Proceeds of Insurance. The Net Proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the Net Proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 9.7. Additional Provisions Respecting Insurance. All insurance required to be taken out by Developer pursuant to this Agreement shall be taken out and maintained in generally recognized responsible insurance companies authorized to do business in the state of New Mexico selected by Developer. All applicable policies evidencing such insurance shall name both the City and Developer as named insured and the City shall be named as loss payee as to the City's mortgages under the builder's risk and property insurance required by this Agreement. An original or duplicate copy of the insurance policies providing the coverage required by Section 6 hereof shall be deposited with the City. Prior to expiration or exchange of such policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced or is no longer required by this Agreement. All policies required hereunder shall provide that the City shall be given thirty (30) days prior written notice of cancellation, non-renewal or material alteration of coverage. Provisions that the insurance company shall "endeavor to give the City notice" shall not be allowed

Section 9.8. Advances by City. If Developer shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating condition shall permit or shall fail to keep the buildings in good repair and good operating condition, the City may, but shall be under no obligation to, obtain the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements and all amounts so advanced therefore by the City shall become an additional obligation of Developer to the City which amounts, together with any interest thereon at the statutory judgment interest rate thereof, Developer agrees to pay on demand. Any such amounts advanced by the City shall be secured by the City Mortgage and shall be paid upon demand by the City.

ARTICLE X

Damage, Destruction and Condemnation

Section 10.1. Damage, Destruction, and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or any person, firm or corporation, acting under governmental authority, Developer shall have the right to use the net proceeds of insurance or from any award made in such eminent domain proceedings to be applied to the restoration of the buildings and other improvements located on the Real Property to substantially the same conditions as existed prior to the casualty causing the damage or destruction or the exercise of eminent domain; provided that

such proceeds are sufficient to rebuild the Project or if such proceeds are insufficient, then Developer shall fund any deficiency.

Section 10.2. Partial Damage, Destruction, and Condemnation Subject to the terms of the Mortgages encumbering the Project, 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 Partnership 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 or termination of this Agreement.

Section.11.5. Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein including the financing referenced in **Exhibit F** or in the City Mortgage, Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof 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 I** 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 or general partner of the Ownership Entity pursuant to the terms of the Operating Agreement or Partnership Agreement of the Ownership Entity, provided that any required substitute managing member or general partner is reasonably acceptable to the City; (B) an admission of an investor into the Ownership Entity, or a transfer of an investor member's or partner's interest in the Ownership Entity; (C) the execution and delivery of a purchase option and right of first refusal agreement (the "Option"), as described in the Operating Agreement or Partnership Agreement of the Ownership Entity; (D) the exercise of the Option by the Project sponsor identified therein; (E) the execution and recording of the condominium documents; and (F) the transfer of the Residential Units and Retail Units following completion of construction.

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

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 Partnership 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, and the substitute managing member 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 non-profit corporation, shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity.

D. The occurrence of an "Event of Default" under the City Mortgage, City Note or Restrictive Real Estate Covenants.

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, City Note or the Restrictive Real Estate Covenants and the City employs attorneys, in house or outside, or incurs other expenses for the enforcement of performance or observance or any obligations or agreement on the part of Developer herein contained in this Agreement, the City Mortgage, the City Note or the Restrictive Real Estate Covenants, Developer agrees that it shall on demand therefore pay to the City the reasonable 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 the City Mortgage; and (2) sue for compensatory damages suffered by the City due to the Default as well as, if appropriate, punitive damages.

ARTICLE XIII

Miscellaneous

Section 13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City: Authorized City Representative
 Director, Department of Family and Community Services

City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

If to Developer: YES Housing, Inc.
901 Pennsylvania St., NE
Albuquerque, New Mexico 87110
Telephone: 505-254-1373

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 and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico and the laws, rules and regulations of the City of Albuquerque, as applicable.

Section 13.8. Recording. This Agreement as well as the City Mortgage, 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, by the Department of Family & Community Services.

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

Section 13.20. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of the owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Developer the general representative or agent of City for any purpose whatsoever.

Section 13.21. Appropriations. Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

Section 13.22. Force Majeure. Except as expressly provided in this Agreement, neither City, nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of 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 13.23. Conflict of Interest: No member, officer, or employee of the Contractor, or any other persons who exercises any functions or responsibilities with respect to the programs of the Contractor during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. The Contractor shall incorporate, or cause to be incorporated in all such subsequent agreements or sub-agreements, a provision prohibiting such interest pursuant to the purposes of this Section.

Section 13.24. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either of both said courts. The provisions of this section shall survive the termination of this Agreement.

Section 13.25. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project

Section 13.26. Savings. City and Developer acknowledge and agree that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Developer further acknowledge that the Agreement is the result of negotiations between them and this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

Section 13.27. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the closing but which are to be performed after the closing as provided in this Agreement shall survive the closing of this transaction.

Section 13.28. Approval Required. This Agreement shall not become effective or binding until approved by the highest approval authority required by the City under this Agreement. The effective date of this Agreement shall be upon the last date of signature.

Section 13.29. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement and those contained in **Exhibit I**, Restrictive Real Estate Covenants, attached hereto.

Section 13.30. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

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

CITY OF ALBUQUERQUE

Approved By:

Sarita Nair, Chief Administrative Officer
City of Albuquerque

Date: _____

YES HOUSING, INC.

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

By: _____
MICHELLE DEN BLEYKER, Senior
Vice President of Development

02-186501-009
State Taxation and Revenue Department

Taxpayer Identification Number

85-0388252
Federal Taxpayer Identification Number

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 \$3,500,000.00 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 D** attached hereto, executed by the Partnership/ Ownership Entity in favor of the Developer to secure repayment of the Developer Loan in the event of a default, and which has been collaterally assigned by the Developer to the City to secure repayment of the City Loan made from the Workforce Housing Trust Funds in the event of a default under this Development Agreement.
14. “City Note” means the promissory note, substantially in the form attached hereto as **Exhibit C**, which evidences the obligation of the Partnership / Ownership Entity to repay the Developer Loan, and which has been collaterally assigned by the Developer to the City to secure repayment of the City Loan made from the Workforce Housing Trust Funds in the event of a default under this Development Agreement.
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 rehabilitation of the Project as that date shall be certified pursuant to Section 4.2 hereof.
17. “Rehabilitation 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 rehabilitation of the Project, and maintaining and/or managing the Project after completion of rehabilitation .
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 rehabilitation 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 IX hereof;
 - ii) utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions that shall not materially interfere with or impair Developer’s use of the Project (or if no operations are being conducted therein, the operations for which the Project was designed);
 - iii) mechanic’s liens, security interests or other encumbrances to the extent permitted by Article VIII hereof;
 - iv) liens resulting from governmental regulations on the use and occupancy of the Project;

v) liens subordinate to the lien given to the City under and subject to the terms of this Agreement and to which the City has consented;

vi) liens arising by reason of deposits with or the giving of any form of security to or required by any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license by Developer or to enable Developer to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with worker's compensation or other insurance or to share in the privileges or benefits required for entities participating in such arrangements;

vii) any judgment lien against Developer so long as the finality of such judgment is being contested and execution thereof is stayed by appropriate proceedings promptly initiated and diligently conducted; and viii) such minor defects, irregularities, encumbrances, easements, rights-of-way, reservations, patents, and clouds on title as normally exist with respect to properties similar in character to the Project and as so not in the aggregate materially impair the Real Property affected thereby for the purpose for which it is acquired or is held by Developer.

31. "Person" means any natural person, firm association, trust, partnership, corporation or public body.

32. "Plans, Specifications and Elevations" means the plans, specifications and elevations for the Project as they shall be revised by Developer pursuant to Section 5.1 hereof.

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

34. "Project" means the residential apartment development to be constructed upon the Real Property, including an underground garage for the use of the apartment residents, related on-site and off-site improvements, equipment and related rights therein.

35. "Real Property" or "Property" means the real estate that consists of the property located at 3525 4th Street NW and 420 Fitzgerald NW, Albuquerque, Bernalillo County, New Mexico 87107, 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 therefor, less such real estate and interests in real estate taken by the exercise of the power of eminent domain as provided herein.

36. "Restrictive Real Estate Covenants" means those real estate covenants imposed on the Real Property in the form attached as **Exhibit I** to insure the City's goals in regards to the Project.

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. “Subordination Agreement” means the agreement whereby the City agrees to subordinate the lien of the City Mortgage to all other Project financing, in substantially the form attached as **Exhibit J**.

39. “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.

40. “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

3525 4th Street NW and 420 Fitzgerald Road NW:

A tract of land in the City of Albuquerque, New Mexico and more particularly described as follows;

PARCEL 1:

Lots numbered One (1) Two (2) and Three (3) in "BLOCK 1' of FITZGERALD ADDITION, a Subdivision located in Bernalillo County, New Mexico as the same are shown and designated on the replat of said addition filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 26, 1939, in Map Book C, Folio 187.

PARCEL 2:

A certain tract of land comprising Tract 90-B-2 on Middle Rio Grande Conservancy District Property Map No. 33 which lies East of the easterly line of 7th Street N.W., more particularly described as follows:

BEGINNING at the northwest corner of the tract herein described, a point on the easterly right-of-way line of 7th Street N.W. which is the southwest corner of Lot 11, BLOCK 1, FITZGERALD ADDITION, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 26, 1939, in Map Book C, Folio 187; Thence

S 81 deg. 10' E, 708.32 feet along the southerly boundary of FITZGERALD ADDITION to the northeast corner of the tract herein described; Thence S 08 deg. 58' W, 139.27 feet to the southeast corner of the tract herein described; Thence

N 81 deg. 02' W, 711.64 feet to the southwest corner of the tract herein described, a point of the easterly right-of-way line of 7th Street N.W.;

Thence

N 10 deg. 20' E, 137.91 feet along said right-of-way line to the point and place of BEGINNING.

PARCEL 3:

A certain tract of land comprising Tract 90-C on Middle Rio Grande Conservancy District Property Map No 33 which lies West of the westerly line of 4th Street, N.W., more particularly described as follows: BEGINNING at the northeast corner of the tract herein described, a point on the westerly right-of-way line of 4th Street N.W. which is the southeast corner of Lot 1, Block

1, FITZGERALD ADDITION, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 26, 1939, in Map Book C, Folio 187; Thence,

N 81 deg. 10' W, 456.16 feet along the southerly boundary of FITZGERALD ADDITION to the northwest corner of the tract herein described; Thence, S 08 deg. 58" W, 139.41 feet to the southwest corner of the tract herein described; Thence,

S 81 deg. 02 E, 458.20 feet to the southeast corner of the tract herein described, a point of the westerly right of way line of 4th Street N.W.; Thence,

N 08 deg. 57' F, 140.20 feet along said right-of-way line to the point and place of BEGINNING.

**MORTGAGE, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

(\$4,600,000.00 Loan)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Mortgage**”) is made as of _____, 2021, by CALLE CUARTA LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership, whose address is 901 Pennsylvania Street NE, Albuquerque, New Mexico 87110, as mortgagor (“**Borrower**”) and YES HOUSING, INC., a New Mexico nonprofit corporation, whose address is 901 Pennsylvania Street NE, Albuquerque, New Mexico 87110, as mortgagee (“**Lender**”).

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

1. TOGETHER WITH all of Borrower’s interest in any and all buildings and improvements now or hereafter erected on the Land, including but not limited to the fixtures, appurtenances, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements, but specifically excluding personalty of tenants in the buildings (the “**Improvements**”). The Land and Improvements are referred to collectively as the “**Property**”.
2. For purposes of this Mortgage, “fixtures” shall be deemed to include, to the fullest extent allowed by law, all equipment and machinery now or at any time hereafter located in, on, under or about the Property or appurtenant thereto, that is used in connection therewith and which is or becomes so related to the Property that an interest arises in it under real estate law. Such fixtures shall include, without limitation, all machinery, equipment (including without limitation pipes, furnaces, conveyors, drums, fire sprinklers and alarms systems, and air conditioning, heating, refrigerating, electronic monitoring, food storage, food processing, trash and garbage removal and maintenance equipment), office equipment, built-in tables, chairs, planters, desks, sofas, shelves, lockers, cabinets, safes, furnishings, appliances including without limitation iceboxes, refrigerators, dishwashers, stoves, ovens, microwave ovens, trash compactors, washers, dryers, fans, heaters, water heaters and incinerators), rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures.
3. TOGETHER WITH, all rents, issues, profits, royalties, deposits, receipts, revenues, income and all other benefits derived from the Property (collectively, the “**Rents**”), subject

to the right, power and authority hereinafter given to Borrower to collect and apply the Rents.

Borrower and Lender covenant and agree as follows:

1. **Note; Other Obligations Secured.** This Mortgage is given to secure to Lender: (1) the repayment of the indebtedness evidenced by Borrower's Promissory Note (the "**Note**") of even date herewith in the principal sum of \$4,600,000.00 (\$3,500,000.00 WHTF and \$1,100,000 City Land Conveyance), according to the terms of the Note payable to order of Lender, and extensions or renewals thereof; (2) the performance of each agreement and covenant of Borrower incorporated by reference or contained herein; and (3) payment of additional sums and interest thereon which may hereafter be loaned by Lender to Borrower, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage.
2. **Payment of Principal.** Borrower shall promptly pay when due the principal of the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.
3. **Prior Mortgages and Deeds of Trust Charges Liens.** Borrower shall perform all or Borrower's obligations under any prior mortgage and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Mortgage. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this Section 3 if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.
4. **Property Insurance.**
 - a. Borrower shall keep the Improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (1) the insurable value of the Property or (2) an amount sufficient to pay the sums secured by this Mortgage as well as any prior encumbrances on the Property. All of the foregoing shall be known as "**Property Insurance**".
 - b. The insurance carrier providing the Property Insurance shall be qualified to write Property Insurance in New Mexico and shall be chosen by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All Property Insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of

coverage. Property Insurance policies shall be furnished to Lender at or before closing, Lender shall have the right to hold the policies and renewals thereof.

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

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

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

7. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower written notice prior to any such

inspection specifying reasonable cause thereof related to Lender's interest in the Property.

8. Condemnation.

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

- 9. Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original

Borrower, nor Borrower's successors in interest, from the original terms of this Mortgage. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower nor Borrower's successors in interest.

10. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.
11. **Remedies Cumulative.** Each remedy provided in the Note and this Mortgage is distinct from and cumulative to all other rights or remedies under the Note and this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
12. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 20. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the sections in this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.
13. **Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be in writing and shall be given and be effective upon (1) delivery to Borrower and Borrower's Limited Partner, or (2) mailing such notice by first class U.S. mail, addressed to Borrower and Borrower's Limited Partner at Borrower's and Borrower's Limited Partner's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender, or (2) mailing such notice by first class U.S. mail, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in any manner designated herein. Borrower's Limited Partner's address is:

Calle Cuarta Limited Partnership LLLP
901 Pennsylvania Street NE
Albuquerque, New Mexico 87110

14. **Governing Law; Severability.** The Note and this Mortgage shall be governed by the law of New Mexico. In the event that any provision or clause of this Mortgage or the Note conflicts with the law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and Note are declared to be severable.

15. **Acceleration; Foreclosure; Other Remedies.** At any time upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, or upon any default in a prior lien upon the property, subject to any cure period provided therein, Lender, at Lender's option, may declare the indebtedness secured hereby to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceeding and may invoke any one or more other remedies permitted by applicable law or provided in this Mortgage or in the Note. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports. Notwithstanding any other provisions of this Mortgage or the Note to the contrary, Borrower may not, until the end of the Compliance Period (as such term is defined in Borrower's Partnership Agreement), exercise its rights under this Mortgage without the prior written consent of the Borrower's Limited Partner.
16. **Borrower's Right to Cure Default.** Whenever foreclosure is commenced for non-payment of any sums due hereunder, Borrower or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, reasonable attorney's fees and other fees all in the manner provided by law. Upon such payment, this Mortgage and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued. The Limited Partner shall have the right, but not the obligation, to cure defaults hereunder in the same manner as set out in the Note.
17. **Assignment of Rents; Appointment of Receiver; Lender In Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under Section 15 or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.
- a. Lender shall be entitled to a receiver for the Property after Acceleration under Section 15, and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice, notice being hereby expressly waived.
- b. Upon Acceleration under Section 15 or abandonment of the Property, Lender in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

18. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall cause the release of this Mortgage. Borrower shall pay all costs of recordation.
19. **Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the property under state or federal law presently existing or hereafter enacted.
20. **Transfer of the Property, Assumption.** The following events shall be referred to herein as a “**Transfer**”: (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, a general partnership interest or more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, or (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Mortgage, (ii) the creation of a purchase money security interest for household appliances, (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant, (iv) a transfer of limited partnership interests of Borrower, or (v) the removal or substitution of the general partner of Borrower in accordance to the Amended and Restated Agreement of Limited Partnership of the Borrower. At the election of Lender, in the event of each and every Transfer:
 - a. All sums secured by this Mortgage shall become immediately due and payable (an Acceleration).
 - b. If a Transfer occurs and should Lender not exercise Lender’s option pursuant to Section 20(a) to Accelerate, the transferee shall be deemed to have assumed all of the obligations of Borrower under this Mortgage including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with the transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to the transferee of undisbursed reserve funds on payment in full of said sums, without in any way altering or discharging the Borrower’s liability hereunder for the obligations hereby secured.
 - c. Should Lender not elect to Accelerate upon the occurrence of such transfer then, subject to Section 20(b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender’s right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of

the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

21. **Subordination.** Lender agrees that the lien of this Mortgage shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Property, provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Mortgage or upon a transfer of the Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.
22. **No Oral Agreements.** Pursuant to Section 58-6-5 NMSA 1978, a contract, promise or commitment to loan money or to grant, extend or renew credit, or any modification thereof, in an amount greater than Twenty-five Thousand Dollars and No/100 Dollars (\$25,000.00) not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party's authorized representatives.
23. **Maximum Amount of Indebtedness.** Notwithstanding any provision to the contrary in this Mortgage or the Note which permits any additional sums to be advanced on or after the date of this Mortgage, whether as additional loans or for any payments authorized by this Mortgage, the total indebtedness secured by this Mortgage shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note set forth in Section 1 of this Mortgage.
24. **Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Mortgage.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date first written above.

BORROWER:

CALLE CUARTA LIMITED PARTNERSHIP LLLP

By YES CALLE CUARTA LLC, General Partner

By YES HOUSING, INC., Manager

By _____
MICHELLE DEN BLEYKER, Senior Vice President of Development

LENDER:

YES HOUSING, INC.

By: _____
MICHELLE DEN BLEYKER, Senior Vice President of Development

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

On this _____ day of _____, 2021, before me personally appeared MICHELLE DEN BLEYKER, the Senior Vice President of Development of YES HOUSING, INC., the Manager of CALLE CUARTA LLC, the General Partner of CALLE CUARTA LIMITED PARTNERSHIP LLLP, and acknowledged that he executed the same as his free act and deed on behalf of the Borrower.

My Commission Expires: _____
Notary Public

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

On this _____ day of _____, 2021, before me personally appeared MICHELLE DEN BLEYKER, the Senior Vice President of Development of YES HOUSING, INC., and acknowledged that he executed the same as his free act and deed on behalf of the YES HOUSING, INC.

My Commission Expires: _____
Notary Public

PROMISSORY NOTE

\$4,600,000.00

FOR VALUE RECEIVED, the undersigned, YES CALLE CUARTA LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership ("Maker"), promises to pay to the order of YES HOUSING, INC., a New Mexico nonprofit corporation ("Holder"), the principal sum of FOUR MILLION SIX HUNDRED THOUSAND DOLLARS and No/100s (\$4,600,000.00), or so much thereof as may have been advanced to Maker by Holder, together with all charges as provided herein and accrued interest on the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On _____, 2021, Holder and the City of Albuquerque, New Mexico (the "City"), entered into a Development Agreement, (the "Development Agreement"), concerning the construction and development of an affordable housing community known as the Calle Cuarta Project in the City of Albuquerque, New Mexico (the "Project") and, pursuant to the Development Agreement, a Grant has been made to Holder by the City (the "Grant").

The loan represented by this Promissory Note ("Note") is being made with the Grant. In consideration for the loan evidenced hereby, Maker agrees that it will comply with the applicable obligations and use restrictions respecting the Project set forth in the Restrictive Real Estate Covenants, dated _____, 2021 (the "Restrictive Real Estate Covenants"). Maker agrees that it will reasonably cooperate with Holder in connection with Holder's audit and other reporting requirements to the City and the State of New Mexico in connection with the loan evidenced hereby.

The Note will accrue interest at the rate of one percent (1%) per annum.

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

On or before January 1, 2025, and on or before each January 1 thereafter, the Maker shall make a payment on this Note to the extent of Residual Receipts for the immediately preceding year. "Residual Receipts" shall mean Net Cash Flow of the Maker (as that term is defined in the Amended and Restated Agreement of Limited Partnership of the Maker dated as of _____, 2021) (the "Partnership Agreement") to the extent remaining to be distributed after the Partnership Services Fee (as that term is described in the Partnership

Agreement) in the priority set forth in Section 7.03 of the Partnership Agreement. If not sooner paid, the entire outstanding balance of the principal sum and all accrued and unpaid interest thereon will be immediately due and payable in full on the earlier of (i) December 31, 2046, (ii) upon Maker's default or breach of this Note, subject to the notice and cure provisions set forth herein, or (iii) in the event of a sale or refinancing of the Project.

All payments of principal and interest hereunder are payable in lawful money of the United States at Holder's office at: **901 Pennsylvania Street NE, Albuquerque, New Mexico 87110**, or at such other place as Holder may from time to time give notice in writing to Maker. All payments received hereunder will be applied first to accrued interest as of the date of payment and then to the outstanding principal balance of this Note.

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

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

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

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

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

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

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

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

Maker: YES Housing, Inc.
901 Pennsylvania Avenue NE
Albuquerque, New Mexico 87110

Limited Partner: YES Calle Cuarta Limited Partnership LLLP
901 Pennsylvania Street NE
Albuquerque, New Mexico 87110

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

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

Failure to accelerate the indebtedness evidenced hereby by reason of default in the payment of an installment of principal, interest, or principal and interest, or the acceptance of a past due installment of the same, will not be construed as a novation of this Note or as a waiver of the right of Holder to thereafter insist upon strict compliance with the terms of this Note without previous notice of such intention being given to Maker. This Note cannot be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

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

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

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

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

This Note is executed in Albuquerque, New Mexico on the _____ day of _____, 2021.

CALLE CUARTA LIMITED PARTNERSHIP
LLLP

By YES CALLE CUARTA LLC, General
Partner

By YES HOUSING, INC., Manager

By: _____
MICHELLE DEN BLEYKER,
Senior Vice President of
Development

Exhibit E

Development Costs

Enter data in green cells only

Project Name - Calle Cuarta : 60 Units

Cost	Amount	Cost Per Unit	Cost Per Square Feet	Comment
Acquisition Costs				
Land	\$451,798	\$7,522	\$9	
Existing Structures		need data	need data	
Closing Costs	\$5,000	\$83	\$0	
Site Work Costs (not included in construction contract)				
Demolition/Clearance		need data	need data	
Site Remediation		need data	need data	
Off-Site Costs (these are not HOME eligible)				
Improvements		need data	need data	
Construction Easements (HOME eligible portion)		need data	need data	
Construction Easements (non-HOME eligible portion)		need data	need data	
		need data	need data	
Construction / Rehabilitation Costs (construction)				
Site Work Included in Construction Contract	\$1,282,170	\$21,040	\$20	
Construction Easements (HOME eligible portion)		need data	need data	
Construction Easements (non-HOME eligible portion)		need data	need data	
New Construction	\$8,307,992	\$137,383	\$165	
Rehabilitation		need data	need data	
General Requirements	\$632,446	\$10,541	\$13	
Builder's Overhead	\$210,813	\$3,514	\$4	
Builder Profit	\$632,446	\$10,541	\$13	
Performance Bond Premium	\$118,600	\$1,977	\$2	
Construction Contingency	\$225,402	\$3,757	\$5	
Grass Receipts Fee	\$865,817	\$14,430	\$17	
Builder's Risk Insurance	\$75,800	\$1,263	\$2	
Architectural and Engineering Fees				
Architect Fee -- Design	\$626,453	\$10,408	\$13	
Architect Fee -- Construction Supervision	\$66,376	\$1,106	\$1	
Engineering Fees	\$70,000	\$1,167	\$1	
		need data	need data	
Other Owner Costs				
Project Consultant Fees		need data	need data	
Owner Attorney Fees (initial closing)	\$42,800	\$708	\$1	
Owner Attorney Fees (final closing)	\$7,800	\$125	\$0	
Construction Costs	\$50,000	\$833	\$1	
Other Owner Organizational Expenses				
Market Study	\$5,000	\$83	\$0	
Survey	\$25,000	\$417	\$0	
Appraisal Fees	\$7,000	\$117	\$0	
Environmental Studies	\$5,125	\$85	\$0	
Capital Needs Assessment	\$0	need data	need data	
LEED/HDBS Incentive	\$60,000	\$1,000	\$1	
Tax Fees and Impact Fees	\$225,000	\$3,750	\$5	
Building Permits and Fees	\$95,155	\$1,589	\$2	
Tax Credit Fees	\$73,330	\$1,222	\$1	
Accounting / Civil Construction / Audit	\$25,000	\$417	\$0	
Soft Cost Contingency	\$20,000	\$333	\$0	
Construction Management Fee	\$30,000	\$500	\$1	
		need data	need data	
Interim Financing Costs				
Construction Project Insurance	\$25,000	\$417	\$0	
Construction Project Taxes	\$30,000	\$500	\$1	
Construction Interest (see calculation below)	\$292,690	\$4,878	\$6	
Construction Loan Origination Fee	\$68,250	\$1,138	\$1	
Construction Loan Legal Fees	\$40,000	\$667	\$1	
Other Construction Loan Fees	\$60,000	\$1,000	\$1	plan and cost review, lender and BHA inspections
Real Costs of Interest	\$0	need data	need data	
Title and Recording Costs (for the construction loan)	\$80,000	\$1,333	\$2	
		need data	need data	
Permanent Financing Costs				
Credit Report	\$0	need data	need data	
Lender Origination / Escrow Fee	\$10,825	\$181	\$0	
Lender's Closing Fee	\$15,000	\$250	\$0	
Other Lender Fees	\$13,000	\$217	\$0	
Title and Recording Costs (for permanent financing)	\$30,000	\$500	\$1	
Payoff Tax and Insurance Expenses		need data	need data	
		need data	need data	
		need data	need data	
Developer's Fee	\$1,260,000	\$21,000	\$26	
Initial Project Reserves				
Initial Rent-Up Reserve (not HOME eligible)	\$50,000	\$833	\$1	
Initial Operating Reserve (HOME eligible portion)		need data	need data	
Initial Operating Reserve (non-HOME eligible portion)	\$705,596	\$11,760	\$15	
Initial Debt Service Reserve (not HOME eligible)		need data	need data	

Initial Replacement Reserve (not HOME eligible)		need data	need data	
		need data	need data	
		need data	need data	

Project Administration and Management Costs				
Marketing/Management		need data	need data	
Overhead Expenses		need data	need data	
Furniture, Fixtures & Equipment	\$120,000	\$2,500	\$3	includes security camera system for site
Tenant Relocation Costs	\$0	need data	need data	
		need data	need data	
Other Development Costs				
		need data	need data	
		need data	need data	
		need data	need data	
		need data	need data	
		need data	need data	

Total Development Costs	\$17,518,956
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Construction Interest Calculation	
Construction Loan Amount	\$7,000,000
Interest Rate	5.0%
Estimated First Draw Amount	\$400,000
Months of Construction	18.9
Months Loan Outstanding After Completion	9.0
Average Outstanding Balance	20%
Interest on first draw, during construction period	\$75,867
Interest on revolving funds, during construction	\$132,000
Construction interest after completion	\$213,333
Total Construction Interest	\$192,000

Notes:

- Construction Contingency is 6.8%
- General Requirements is 5.5% of construction costs
- Builder's Overhead is 1.8% of construction costs
- Builder Profit is 3.5% of construction costs

Developer's Fee is 7.5% of total development cost (excluding developer fee and profit reserves)

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

Costs that Are Not HOME-Eligible	Amount	Comment
Construction Equipment (non-HOME-eligible portion)	\$0	
Off-Site Costs (these are not HOME-eligible)	\$0	
Initial Rent-Up Reserve (not HOME-eligible)	\$50,000	
Initial Operating Reserve (non-HOME-eligible portion)	\$205,596	
Initial In-Service Reserve (not HOME-eligible)	\$0	
Initial Replacement Reserve (not HOME-eligible)	\$0	
Other HOME-Ineligible Cost 1	\$0	
Other HOME-Ineligible Cost 2	\$0	
Other HOME-Ineligible Cost 3	\$0	
Other HOME-Ineligible Cost 4	\$0	
Total Non-HOME-Eligible Costs	\$255,596	

When completing this tab, proceed to the Profit Reserve tab

Sources and Uses of Funds

Enter data in green cells only.

Project Name - Calle Cuarta : 60 Units

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

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

Sources of Funds	Amount	HOME?	Comment
First Mortgage Loan (proposed amount)	\$225,000	No	
Amortizing Second Mortgage Loan	\$900,000	Yes	
Land Contribution	\$451,298	No	
Berco UEC fees	\$127,874	No	
MFA HTF Loan	\$500,000	No	
CARQ WHTF Loan	\$3,500,000	No	
Deferred Developer Fee	\$445,437	No	
Developer Cash Investment	\$1,611,985	No	
Tax Credit Equity (proposed amount)	\$9,257,362	No	
Total Sources of Funds	\$17,518,956		

Total HOME Funding	\$900,000	
Developer Investment for Financial Analysis	\$2,057,422	(used in Operating Pro Forma for IRR, etc.)

Uses of Funds / Total Development Cost	Amount	Comment
Acquisition Costs	\$456,298	
Site Work Costs	\$0	
Construction / Rehabilitation Costs	\$13,076,688	
Architectural / Engineering Costs	\$772,839	
Other Owner Costs	\$781,410	
Construction Interest	\$392,000	
Other Interim Financing Costs	\$303,250	
Permanent Financing Costs	\$70,875	
Developer's Fee	\$1,260,000	
Initial Project Reserves	\$255,596	
Project Management Costs	\$150,000	
Other Development Costs	\$0	
Total Uses of Funds	\$17,518,956	

Subsidy layering gap (before HOME funding)	\$900,000	(Total Uses of Funds minus Total Sources of Funds other than HOME)
--	-----------	--

Rents and Income

Enter data in green cells only

Use this worksheet to enter (or to modify) the unit mix, the mix of Low and High HOME units, the mix of LHFC and CDHG and market rate units, and square ft. each unit type. Also use this worksheet to select the maximum rents that will be underwritten for each unit type, and to select utility allowances. Also use this v to enter any "other revenue" such as commercial revenue or tenant late fees. Information for number of units, Low HOME units, High HOME units, LHFC units, market rate units, square footage, underwritten rents, underwritten utility allowances, and underwritten other revenue will carry forward from this worksheet of the underwriting template.

Unit Type	Underwritten Rent Level	Number of Units	Square Footage per Unit	Gross Rent, per unit, per month	Monthly Utility Allowance	Net Rent After Utilities, per unit, per month
0 BR LHFC	100% of LHFC 30 AMI	1	556	\$362	\$62	\$300
0 BR LHFC	100% of LHFC 50 AMI	7	556	\$504	\$62	\$443
0 BR LHFC	100% of LHFC 60 AMI	3	556	\$723	\$62	\$661
0 BR LHFC	75% of LHFC 80 AMI	1	556	\$723	\$62	\$661
1 BR LHFC	100% of LHFC 30 AMI	4	696	\$388	\$70	\$318
1 BR LHFC	100% of LHFC 50 AMI	9	696	\$547	\$70	\$477
1 BR LHFC	100% of LHFC 60 AMI	1	810	\$647	\$70	\$577
1 BR LHFC	100% of LHFC 80 AMI	10	696	\$777	\$70	\$707
1 BR LHFC	75% of LHFC 80 AMI	2	696	\$777	\$70	\$707
1 BR LHFC	75% of LHFC 80 AMI	1	810	\$777	\$70	\$707
2 BR LHFC	100% of LHFC 30 AMI	2	970	\$566	\$93	\$473
2 BR LHFC	100% of LHFC 50 AMI	1	1085	\$660	\$93	\$567
2 BR LHFC	100% of LHFC 50 AMI	4	970	\$777	\$93	\$684
2 BR LHFC	100% of LHFC 50 AMI	2	1085	\$777	\$93	\$684
2 BR LHFC	100% of LHFC 60 AMI	6	970	\$932	\$93	\$839
2 BR LHFC	100% of LHFC 60 AMI	2	1085	\$932	\$93	\$839
2 BR LHFC	75% of LHFC 80 AMI	1	970	\$932	\$93	\$839
2 BR LHFC	75% of LHFC 80 AMI	1	1085	\$932	\$93	\$839
3 BR LHFC	100% of LHFC 30 AMI	1	1198	\$828	\$114	\$714
3 BR LHFC	100% of LHFC 50 AMI	3	1198	\$828	\$114	\$714
3 BR LHFC	100% of LHFC 60 AMI	3	1198	\$1,077	\$114	\$963
Total		60	50,418	NA		\$39,547
Annual Gross Potential Rent						\$474,364

Rent Loss (Vacancy + Bad Debt + Concessions)

Rent Loss Rates (As % of GPR)	HOME Units	Market Rate Units	Other Affordable Units
Rent Loss Year 1 (Lease-Up)	20.0%		
Stabilized Rent Loss Rate (after Year 1)	7.0%		7.0%

Other Revenue

Laundry and Other	\$335	per month
		per month
		per month
		per month
		per month
		per month
Total Other Revenue	\$335	per month

Operating Expenses

Enter data in green cells
only

Project Name - Calle Cuarta : 60 Units

Expense	Annual Cost	Monthly Cost	Per Unit Per Year	Comment
Administrative / Management Expenses				
Management Fee	\$26,130	\$2,194	\$430	
Management Administrative Payroll Costs	\$38,480	\$3,207	\$641	
Renting / Advertising / Marketing Expenses	\$780	\$65	\$13	
Legal Fees	\$1,750	\$146	\$29	
Accounting / Audit Fees	\$11,500	\$958	\$192	
Telephone	\$5,100	\$425	\$85	
Office Supplies	\$7,500	\$625	\$125	
PI Monitoring Fee (if any)	\$2,700	\$225	\$45	MFA EITFC annualized fee
		\$0		
		\$0		
Operations and Maintenance Expenses				
Security	\$1,000	\$83	\$17	
Operations and Maintenance Payroll Costs	\$37,440	\$3,120	\$624	
Repairs Supplies	\$4,260	\$355	\$71	
Repairs Contracts	\$6,000	\$500	\$100	
Elevator (if any)	\$6,000	\$500	\$100	
Other Mechanical Equipment		\$0		
Interior Painting	\$1,200	\$100	\$20	
Exterior Painting	\$3,300	\$275	\$55	
Lawn and Landscaping	\$6,000	\$500	\$100	
Garbage Removal	\$20,000	\$1,667	\$333	
Snow Removal		\$0		
Resident Service Cost	\$7,500	\$625	\$125	
		\$0		
		\$0		
Utilities Paid by the Property				
Electricity	\$11,250	\$938	\$188	
Natural Gas, Oil, Other Fuel	\$3,600	\$300	\$60	
Sewer and Water	\$15,000	\$1,250	\$250	
		\$0		
Taxes / Insurance / Other Expenses				
Real Estate Taxes	\$40,000	\$3,333	\$667	
Payroll Taxes				
Other Taxes and Licenses	\$500	\$42	\$8	
Property Insurance	\$34,730	\$2,894	\$579	
Workers Compensation Insurance				
Health Insurance / Other Employee Benefits	\$22,776		\$380	
		\$0		
		\$0		
TOTAL OPERATING EXPENSES	\$314,696	\$26,225	\$5,245	
Reserve for Replacement Deprec:	\$18,000	\$1,500	\$300	
TOTAL EXPENSES PLUS RESERVE	\$332,696	\$27,725	\$5,545	
SUBTOTAL ADMINISTRATIVE EXPENSES	\$94,140	\$7,845	\$1,569	
SUBTOTAL O&M EXPENSES	\$92,700	\$7,725	\$1,545	
SUBTOTAL OWNER PAID UTILITIES	\$29,850	\$2,488	\$498	
SUBTOTAL TAXES / INSURANCE / OTHER	\$98,006	\$8,267	\$1,633	
TOTAL OPERATING EXPENSES	\$314,696	\$26,327	\$5,245	

I have completed this tab, prepared by the First Mortgage Company, Inc.

Sources and Uses by Month Project Name - Calle Cuarta : 60 Units

Enter data in green cells only

Months of Construction: 60
Months Const. Loan Outstanding After Completion: 60

Development Costs (Uses of Funds)	Total	Initial Closing / Post Draw	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Acquisition Costs								
Land	\$451,200	\$451,200	\$0	\$0	\$0	\$0	\$0	\$0
Erection Structures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Carina Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Site Work Costs (not included in construction contract)								
Demolition, Clearance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pipe Rehabilitation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Improvements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Construction / Rehabilitation Costs (construction contract)								
Site Work Included in Construction Contract	\$1,101,700	\$0	\$10,400	\$11,000	\$10,400	\$10,400	\$10,400	\$10,400
New Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rehabilitation	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
General Requirements	\$932,400	\$932,400	\$77,520	\$77,520	\$77,520	\$77,520	\$77,520	\$77,520
Builder's Overhead	\$210,000	\$0	\$17,500	\$17,500	\$17,500	\$17,500	\$17,500	\$17,500
Builder Profit	\$347,400	\$0	\$28,500	\$28,500	\$28,500	\$28,500	\$28,500	\$28,500
Performance Bond Premium	\$119,400	\$119,400	\$0	\$0	\$0	\$0	\$0	\$0
Construction Contingency	\$175,400	\$0	\$14,600	\$14,600	\$14,600	\$14,600	\$14,600	\$14,600
Carina Records Tax	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Builder's Risk Insurance	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Architectural and Engineering Fees								
Architect Fee - Design	\$150,000	\$150,000	\$0	\$0	\$0	\$0	\$0	\$0
Architect Fee - Construction Administration	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Engineering Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Owner Costs								
Project Consultant Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Owner Attorney Fees (Initial period)	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Owner Attorney Fees (Final period)	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Construction Costs	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Other Owner Operational Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Market Study	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Utilities	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Approval Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Environmental Studies	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Capital Needs Assessment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
LEED/ES Testing	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Fee Fees and Incent Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Building Permits and Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Law Credit Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Soft Cost Contingency	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Construction Management Fee	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interim Financing Costs (excludes interest)								
Construction Period Insurance	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Construction Period Taxes	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Construction Interest in Construction Period	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Construction Loan Origination Fee	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Construction Loan Loan Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Other Construction Loan Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Best Costs of Insurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Title and Recording Costs (for the construction loan)	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Permanent Financing Costs								
Credit Report	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Lender Commission / Financial Fee	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Lender's Counsel Fee	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Other Lender Fees	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Title and Recording Costs (for permanent financing)	\$10,000	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0
Establish Tax and Insurance Policies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer's Fee								
Developer's Fee	\$1,200,000	\$1,200,000	\$0	\$0	\$0	\$0	\$0	\$0
Initial Project Reserves								
Initial Start-Up Reserves (not NIMB eligible)	\$10,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Operating Reserves (not NIMB eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Debt Service Reserves (not NIMB eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Initial Replacement Reserves (not NIMB eligible)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Project Name - Calle Cuarta : 60 Units

Project Administration and Management Costs									
Project Management	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Furniture, Fixtures & Equipment	\$150,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Tenant Relocation Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Development Costs									
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Development Costs (TDC)	\$15,890,300	\$2,731,321	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918
TDC Excluding Construction Interest	\$15,890,300	\$2,731,321	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918	\$804,918
Sources of Funds	Total	Initial Closing / First Draw	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
First Mortgages Loan (proposed amount)	\$725,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Amortizing Second Mortgage Loan	\$700,000	\$700,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Land Contribution	\$432,288	\$432,288	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Permit, M&C fees	\$177,000	\$177,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FEA, NTF, Loan	\$700,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CAISO, WFHT Loan	\$1,800,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Deferred Developer Fee	\$445,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Developer Cash Investment	\$1,013,083	\$0	\$0	\$0	\$0	\$115,142	\$115,142	\$115,142	\$115,142
Tax Credit Buydown (proposed amount)	\$5,257,912	\$5,257,912	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Sources Before Construction Loan	\$17,515,950	\$6,471,921	\$400,900	\$0	\$387,041	\$387,041	\$387,041	\$387,041	\$387,041
Construction Loan Draw Needed (Before Interest)	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580
Construction Loan Redempt Balance	\$0	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580
Plus Third Draw	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580
Plus Interest (Total Interest at immediate term)	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580
Grants Ending Balance	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580	\$19,580
Construction interest estimate from Development Costs	\$19,580								
Cash	\$19,580								
Construction interest estimate from Detailed Sources	\$19,580								
Less Loan Fee Month	\$19,580								
Construction interest calculated above is 29.5% of the Construction interest estimate from Development Costs fee.									

Exhibit F
Grant Payment Schedule

Source of Fund	Amount	Forgiven
Workforce Housing Trust Funds (Construction)	\$3,500,000.00	End of Affordability Period
Workforce Housing Trust Funds (Land Conveyance)	\$1,100,000.00	End of Affordability Period

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Exhibit G

ATTACHMENT "A"

DEVELOPMENT SCHEDULE

Project Name:	Calle Cuarta	Date:	2/5/2021
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A. Site Acquisition		Date	Comments
B. Financing		12/15/2022	
1.	Construction Loan		
	Closing Date:	12/15/2022	
2.	Partnership Closing		
	Closing Date:	12/15/2022	
3.	Permanent Loan		
	Commitment Date:	6/15/2021	
	Closing Date:	12/15/2024	
4.	Other		
	Source of Funds:	MFA HOME/HTF/LIHTC	
	Firm Commitment/Award Date:	5/20/2022	
5.	Other		
	Source of Funds:		
	Firm Commitment/Award Date:		
C.	Environmental Review Completed		
D.	HUD Authority to Use Grant Funds Issued	-----	
E.	City Council funding appropriation approval	11/15/2021	
F.	Plans Submitted to the City	9/1/2022	
G.	Building Permits Issued	11/15/2022	
H.	Notice to Proceed Issued	12/15/2022	
I.	Start of Construction	12/15/2022	
J.	Completion of Construction	4/15/2024	
K.	Estimated Placed-in-Service Date	4/15/2024	
L.	Estimated Lease-Up Date	7/15/2024	

Exhibit H

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

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

9. Financial Expenditure Category	Approved Budget	Amount of this Request	Total Requests to Date	Balance Remaining	Matching Funds Expended to Date
Salaries and Wages					
Payroll Taxes & Employee Benefits					
Contractual Services					
Audit Costs					
Consumable Supplies					
Telephone					
Postage Shipped					
Occupancy: Rent					
Occupancy: Utilities					
Occupancy: Other					
Equipment Lease					
Equipment Maintenance					
Printing and Publication					
Travel: Local					
Travel: Out-of-Town					
Conferences, Meetings					
Assistance/Beneficiaries					
Membership Dues					
Equipment, Land, Buildings	3,500,000.00				
Insurance					
Indirect Costs					
Total					

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

agency which I represent and I further certify that the amount requested herein is true and just, that payment has not been received, and that (1) this Reimbursement Request represents expenditures incurred and eligible under applicable local, state and Federal regulations; (2) that said expenditures are supported by vendor's invoices and other documented liabilities in our records; and (3) funds received as a result of the Request will be expended within three (3) working days.

1. Signature of Authorized Official	b. Title
2. Typed Name	d. Date

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

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Enter the name and mailing address of the agency submitting the report. 2. Enter the telephone number of the agency. 3. Enter the title of the City-funded project for which reimbursement is being requested. 4. Enter the contract number assigned to the project by the City. 5. For each contract. Requests for Reimbursement must be numbered sequentially, with the first request numbered "1" and so on for succeeding requests. Enter the number of this request. 6. Enter the name of a contact person at the agency from whom information about the request may be obtained. 7. Enter the starting date and ending date of the period for which reimbursement is being requested. 8. Enter the date that the request will be submitted to the City. 9. In the column headed "Approved Budget," enter the amounts for each line item in the most recent project budget approved by the City. | <p>In the column headed "Amount of this Request," enter the amount of the reimbursement requested for each line item in the approved budget. In the column headed "Total Requests to Date," enter the sum of this request and all previous reimbursements paid by the City for each line item in the approved budget. In the column headed "Other Funds Expended to Date," enter the amounts of matching funds or program income applied to the project expended for each line item, if such funds are required under the terms of the contract.</p> <ol style="list-style-type: none"> 10. An authorized official of the agency must certify that funds were used according to City requirements. <p>10a. The official must sign to certify the Financial Status Report.</p> <p>10b. Enter the typed title of the official signing the Financial Status Report.</p> <p>10c. Enter the typed name of the official.</p> <p>10d. Enter the date the official signed the Report.</p> |
|--|--|

Exhibit I

**YES Housing, Inc.
Calle Cuarta
RESTRICTIVE REAL ESTATE COVENANTS**

Made in Albuquerque, New Mexico

Date _____

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

1. Recitals:

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

PARCEL 1:

Lots numbered One (1) Two (2) and Three (3) in “BLOCK 1” of FITZGERALD ADDITION, a Subdivision located in Bernalillo County, New Mexico as the same are shown and designated on the replat of said addition filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 26, 1939, in Map Book C, Folio 187.

PARCEL 2:

A certain tract of land comprising Tract 90-B-2 on Middle Rio Grande Conservancy District Property Map No. 33 which lies East of the easterly line of 7th Street N.W., more particularly described as follows:

BEGINNING at the northwest corner of the tract herein described, a point on the easterly right-of-way line of 7th Street N.W. which is the southwest corner of Lot 11, BLOCK 1, FITZGERALD ADDITION, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 26, 1939, in Map Book C, Folio 187; Thence S 81 deg. 10’ E, 708.32 feet along the southerly boundary of FITZGERALD ADDITION to the northeast corner of the tract herein described; Thence S 08 deg. 58’ W, 139.27 feet to the southeast corner of the tract herein described; Thence

N 81 deg. 02’ W, 711.64 feet to the southwest corner of the tract herein described, a point of the easterly right-of-way line of 7th Street N.W.;
Thence

N 10 deg. 20' E, 137.91 feet along said right-of-way line to the point and place of BEGINNING.

PARCEL 3:

A certain tract of land comprising Tract 90-C on Middle Rio Grande Conservancy District Property Map No 33 which lies West of the westerly line of 4th Street, N.W., more particularly described as follows: BEGINNING at the northeast corner of the tract herein described, a point on the westerly right-of-way line of 4th Street N.W. which is the southeast corner of Lot 1, Block 1, FITZGERALD ADDITION, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 26, 1939, in Map Book C, Folio 187; Thence,

N 81 deg. 10' W, 456.16 feet along the southerly boundary of FITZGERALD ADDITION to the northwest corner of the tract herein described; Thence, S 08 deg. 58" W, 139.41 feet to the southwest corner of the tract herein described; Thence,

S 81 deg. 02 E, 458.20 feet to the southeast corner of the tract herein described, a point of the westerly right of way line of 4th Street N.W.; Thence,

N 08 deg. 57' F, 140.20 feet along said right-of-way line to the point and place of BEGINNING.

B. For consideration for the assistance given by the City for the benefit of the Owner, the Owner has agrees to restrictions on the use and rental of the Real Property in order to implement the Project. The Real Property shall be used only for the Project. The Owner for the Project name Calle Cuarta located at the intersection of 4th Avenue and Fitzgerald Street in Albuquerque, as described in **Exhibit B** of the Development Agreement, is the YES Housing, Inc., a New Mexico non-profit corporation, 901 Pennsylvania Street NE, Albuquerque, NM 87110. The Project named Calle Cuarta is located at 3525 4th Street NW and 420 Fitzgerald NW, as legally described in **Exhibit B**. The Project is a 61 unit, affordable development that shall consist of 10 (1 studios, 5 one-bedroom, 3 two-bedroom, and 1 three-bedroom) restricted units at 30% Area Median Income (AMI), 21 (3 studio, 8 one-bedroom, 7 two-bedroom, and 3 three-bedroom) restricted units at 50% of AMI, 23 (3 studio, 10 one-bedroom, 7 two-bedroom, and 3 three-bedroom) restricted units at 60% AMI, and 7 (1 studio, 3 one-bedroom, and 2 two-bedroom and 1 three-bedroom) restricted units at 80% AMI. The Calle Cuarta development will also incorporate an additional 4 live/work units, 21 Townhomes of which, 3 homeownership units will be affordable to households at or below 65% AMI and 4 homeownership units will be affordable to households at or below 80% AMI (the "Residential Units"). The residential units intended for ownership will be constructed on subdivided land into separate parcels and separate structures from the apartment building (the "Retail Units"), to be financed separately and divided from this Project. Additionally, 5 ground-level retail spaces of the apartment building are also to be financed separately and divided from this Project, using a condo structure. Except for the Residential Units and the Retail Units, the Project shall remain an affordable rental housing project as provided herein. The Residential Units and the Retail Units shall not be subject to the Restrictive Real Estate Covenants and shall not be encumbered by the Mortgage, and the City agrees to sign such documents as are necessary

to release the Residential Units and the Retail Units from the Restrictive Real Estate Covenants and the Mortgage at the time such Units are subdivided.

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

2. Definitions

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

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

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

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

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

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

“Home Assisted Unit” means that residential unit, which either directly, or indirectly, has received financial assistance for acquisition and/or construction from funds authorized in the Act. In rental projects where the funds provided through the Act are only a portion of the total Project cost, a prorated number of units shall be defined in the Agreement and designated as floating HOME assisted units.

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

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

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

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

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

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

“Workforce Housing” means rental and/or for-sale housing that is affordable 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.

3. Restrictive Real Estate Covenants

A. Use of Property. The Real Property shall be used as and only for the Project. The Project named Calle Cuarta is located at 3525 4th Street NW and 420 Fitzgerald NW, as legally described in **Exhibit B**. The Project is a 60 unit, affordable development that shall consist of 9 (1 studio, 4 one-bedroom, 3 two-bedroom, and 1 three-bedroom) restricted units at 30% AMI, 21 (2 studio, 10 one-bedroom, 6 two-bedroom, and 3 three-bedroom) restricted units at 50% of AMI, 24 (3 studio, 10 one-bedroom, 8 two-bedroom, and 3 three-bedroom) restricted units at 60% AMI, and 6 (1 studio, 3 one-bedroom, and 2 two-bedroom) restricted units at 80% AMI. The Calle Cuarta development will also incorporate an additional 4 live/work units, 8 Patio Homes and 11 Townhomes of which, 2 homeownership units will be affordable to households at or below 65% AMI and 4 homeownership units will be affordable to households at or below 80% AMI. The residential units intended for ownership will be constructed on subdivided land into separate parcels and separate structures from the apartment building, to be financed separately and divided from this Project. Additionally, 6 ground-level retail spaces of the apartment building are also to be financed separately and divided from this Project, using a condo structure. The Project shall remain an affordable rental housing project as more fully defined elsewhere in the Development Agreement adopted by reference and incorporated herein as though set forth in this Restrictive Covenant.

B. Income Qualifications. The Owner shall determine the annual income of a household occupying or seeking to occupy the Affordable Units, in accordance with 24 CFR Part 5.609. The income of the household shall not exceed sixty percent (60%) of the City’s Median Income for the Affordable Units.

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

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

C. Rent Determination. Rents charged occupants of the affordable units must be the lesser of the fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or a rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the areas, as determined by HUD, with adjustment for number of bedrooms in the unit. The rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(1) Any rent increases of the Affordable Units other than those related to increases in the imputed income limits must be approved in writing by the City prior to implementation. If utilities are not included in the rent, an allowance must be made using the City's established utility allowance.

(2) Affordable Units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants, if actions are being taken to ensure that a vacancy is filled in accordance with B above, until the noncompliance is corrected.

(3) In the event a tenant's income exceeds 60% of median income following initial occupancy, the tenant must pay 30% of tenant's adjusted income as rent, or the market rate for the neighborhood, whichever is less.

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

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

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

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

5. The Owner shall establish a maintenance reserve fund for the Project in an amount not less than Three Hundred Dollars (\$300.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until the terms of this Agreement have been met.

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

7. Property Standards Requirements. The Project will meet all Housing Quality Standards, or other physical property standards regulated by HUD and local building code requirements, and the City shall be allowed to inspect the Real Property and the Project for the duration of this Agreement.

8. Monitoring/Reporting Requirements

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

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

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

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

(e) At any time during normal business hours and as often as the City and/or the appropriate funding entity may deem necessary, there shall be made available to the City for

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

9. Term. The Owner's obligations designated herein are to commence upon the execution of these Restrictive Real Estate Covenants by the last party to sign ("Commencement Date"), and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement but, in any event, the provision of the Affordable 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 Owner can provide sufficient credible evidence that the building placed on the Project's land is functionally obsolete or has reached the end of its useful life and financing the redevelopment of the building as an affordable housing project is not economically feasible, the City's governing body may approve the demolition of the building. A new building shall be built upon the Project's land that shall at a minimum include the same affordability requirements as specified in the original agreement. If no additional City funds are infused in the project, credit will be given for the number of years the Affordability Period has been met. If additional City funds are infused, the initial ninety (90) years Affordability Period will commence anew with a renewable ninety (90) years of affordability requirements.

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

11. Workforce Housing Funds Repayment Obligation. The City has contributed the sum of \$3,500,000.00 Workforce Housing Trust Funds Grant towards the development of the Project on the Real Property. The Workforce Housing Funds must be repaid, without interest, to the City by the Developer in the event of a violation of the Affordable Unit obligations pursuant to these Restrictive Real Estate Covenants, by the Owner (the "Workforce Housing Funds Repayment Obligation") during the first ninety (90) years of the term of these Restrictive Real Estate Covenants. The Workforce Housing Funds Repayment Obligation is the sole obligation of the Owner, its successors and assigns. In the event of violation of these Restrictive Real Estate Covenants the City shall give written notice to the Owner, the Owner's Tax Credit Investor, (the "Investor") and all holders of financial encumbrances against the Real Property, and these parties shall have thirty (30) days to cure the violation (or if the violation cannot reasonably be cured within thirty (30) days, then to commence to cure the violation and diligently pursue to cure the violation) before the Workforce Housing Funds Repayment Obligation shall become due. The addresses for the Owner and the Investor are as follows:

Owner: YES Housing, Inc.
901 Pennsylvania Street NE
Albuquerque, New Mexico 87110

Telephone: 505-254-1373

Investor:

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

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

Signed on this _____ day of _____, 2021

YES HOUSING, INC.
a New Mexico nonprofit corporation

By: _____
MICHELLE DEN BLEYKER, Senior Vice
President of Development

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on ____ day of _____, 2021, by MICHELLE DEN BLEYKER, Senior Vice President of Development of YES Housing, Inc., a New Mexico nonprofit corporation.

Notary Public

My Commission Expires:

SUBORDINATION OF MORTGAGE

This Subordination of Mortgage ("Subordination"), dated _____, 2021, is granted by the CITY OF ALBUQUERQUE ("City"), a New Mexico municipal corporation, City-County Building, One Civic Plaza, Albuquerque, New Mexico, in favor of _____, a _____ corporation ("Bank") whose address is _____, with the agreement of YES HOUSING, INC., a New Mexico non-profit corporation (the "Developer") whose address 901 Pennsylvania Ave. NE, Albuquerque, New Mexico 87110, and YES CALLE CUARTA LIMITED PARTNERSHIP LLLP, a New Mexico Limited Partnership (the "Borrower"), whose address is _____. The City, Bank, Developer and Borrower agree:

As of the date hereof, the Developer has transferred the real property more fully described in **Exhibit A** attached hereto (the "Property") to the Borrower, which is an affiliated entity. In turn, Borrower granted to Developer on _____, 2021, that certain Mortgage, Assignment of Rents and Security Agreement recorded in the real property records of Bernalillo County, as Doc# _____ on _____, 2021 (the "City Mortgage").

The City Mortgage is a lien on the real property described therein ("Property"), on which Borrower as a related entity of Developer is required to rehabilitate and operate low income affordable housing apartments on the Property ("Project") under the terms of a development agreement ("Development Agreement") between City and the Developer dated _____, 2021.

Pursuant to the Development Agreement, Developer assigned the City Mortgage to the City by Collateral Assignment of Promissory Note, Mortgage, Assignment of Rents and Security Agreement recorded in the real property records of Bernalillo County, as Doc# _____ on _____, 2021 (the "Collateral Assignment").

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

Bank requires as a condition for the Bank Loan, that the Bank Mortgage be in a first lien position which Bank Mortgage secures the Partnership's repayment of those certain four promissory notes each dated December ___, 2021 in the aggregate principal amount of \$ _____.00 (collectively, the "Bank Note"), and that the lien of the City Mortgage be subordinated to the lien of the Bank Mortgage.

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

City as assignee under the Collateral Assignment hereby subordinates the lien of the City Mortgage, which shall hereafter be junior and inferior in priority to the Bank Mortgage; subject to the provisions of paragraph 8 below and further provided that Bank shall not change the interest rate or maturity date of the Bank Note without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or denied.

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

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

City shall not accelerate the obligations securing the City Mortgage or foreclose the City Mortgage without first providing not less than 30 days prior written notice to Bank of such intended actions, and allowing the Bank or other entity to cure any default or noncompliance upon which such intended action is based.

Without limiting the foregoing, Bank shall provide the City notice of any default by the Partnership at the same time as giving the Partnership any notice of default or demand to cure. The City shall be entitled to exercise the same rights to cure default including but not limited to curing monetary defaults as is permitted of the Partnership. If the City should exercise such cure rights, the City shall have the right to assert a junior lien against the Project for the sums referenced therein (and such junior liens shall be permitted encumbrances against the Property). Bank shall permit transfer of the Project and the Bank Loan to the City, whether by way of deed in lieu, foreclosure or other action, to accept the City as a substitute for the Partnership under the Bank Loan documents (subject to the approval of, if applicable, the United States Department of Housing and Urban Development) or to accept payment of the Bank Loan from the City, and Bank shall provide the City with all notices provided or required be given to the Partnership in the Bank Mortgage, Bank Note, and Loan Agreement. Bank agrees to execute such documents as the City may reasonably request to evidence Bank's agreements under this paragraph 10.

This Subordination shall be binding upon and inure to the heirs, executors, administrators, successors and assigns of the respective parties and may only be waived, discharged, modified, amended or terminated by mutual consent of the parties in a writing which specifically recites this Subordination and this paragraph 11.

This Subordination shall be governed by and construed in accordance with the laws of the State of New Mexico. Any action or proceeding arising from any controversy arising under or

affecting this Subordination shall be commenced in the Second Judicial District Court in Bernalillo County, or in a federal district court in New Mexico.

This Subordination may be executed in counterpart signature pages, all of which shall constitute the entire document.

In the event any provisions of this Subordination are held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless such invalidity or unenforceability destroys an essential purpose of this Subordination.

CITY:

CITY OF ALBUQUERQUE

APPROVED BY:

Sarita Nair

Chief Administrative Officer, City of Albuquerque

STATE OF NEW MEXICO)

)**.ss**

COUNTY OF BERNALILLO)

This Instrument was acknowledged before me on this ____ day of _____, 2021
by Sarita Nair, Chief Administrative Officer of the City of Albuquerque.

Notary Public

My commission expires: _____ SEAL

DEVELOPER:

YES HOUSING, INC.,

a New Mexico non-profit corporation

By: _____

MICHELLE DEN BLEYKER, Senior Vice President of Development

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

This instrument was acknowledged before me on _____, 2021, by MICHELLE DEN BLEYKER, Senior Vice President of Development of YES Housing, Inc., a New Mexico non-profit corporation.

Notary Public

My commission expires: _____ SEAL

BORROWER:
CALLE CUARTA LIMITED PARTNERSHIP LLLP,
a New Mexico limited liability limited partnership

By: _____,
a New Mexico limited liability company
Its: Managing General Partner

By: _____
Name:
Title:

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

This instrument was acknowledged before me on _____, 2021, by _____, the _____ of _____, the Managing General Partner of YES Calle Cuarta Limited Partnership LLLP, a New Mexico limited liability limited partnership.

Notary Public

My commission expires: _____ SEAL

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

THIS COLLATERAL ASSIGNMENT OF PROMISSORY NOTE AND MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this “Assignment”), dated _____, 2021, is made by YES HOUSING, INC. (“Assignor”), in favor of the CITY OF ALBUQUERQUE, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico (“Assignee”).

Recitals

1. Assignor is an affiliate of YES CALLE CUARTA LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership (“Owner”), and a sponsor of the development of the real property located in Albuquerque, New Mexico, more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”), into an affordable housing community known as the Calle Cuarta Project (the “Project”).
2. Pursuant to the Development Agreement dated February _____, 2021, (the “Development Agreement”), Assignee granted \$3,500,000.00 of funds and Conveyance of City-owned Real Property valued at \$1,100,000.00 to Assignor (the “Funds Grant”), and Assignor will loan, as of the date hereof, such funds to Owner for the construction and development of the Project (the “Loan”).
3. Owner executed the Promissory Note of even date herewith in the principal amount of \$3,500,000.00 to evidence the Loan, payable to Assignor (the “Note”).
4. The Note is secured by the Mortgage, Assignment of Rents, and Security Agreement of even date herewith for the benefit of Assignor, recorded in the real property records of the County of Bernalillo, New Mexico (the “Mortgage”), encumbering title to the Property.
5. Assignor now desires to assign its rights under the Note and the Mortgage to Assignee in order to secure Owner’s performance of its obligations under the Development Agreement and the Restrictive Real Estate Covenants, dated _____, 2021 (the “Real Estate Covenants”).

Assignment

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Assignor, subject to the limitation set forth below, hereby grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee all of Assignor’s rights in the Note and the Mortgage, including without limitation, all monies now owing or that may

hereafter become due or owing with respect to the Note and the full benefit of all the powers, covenants and provisos contained in the Note and the Mortgage.

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

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

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

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

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

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

EXECUTED as of the date first set forth above.

YES HOUSING, INC., a New Mexico nonprofit corporation

By: MICHELLE DEN BLEYKER,
Its: Senior Vice President of Development

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

This instrument was acknowledged before me on _____ day of _____, 2021, by MICHELLE DEN BLEYKER as Senior Vice President of Development of YES HOUSING, INC., a New Mexico nonprofit corporation.

Notary Public

My Commission Expires: _____

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

YES CALLE CUARTA LIMITED PARTNERSHIP LLLP,
a New Mexico limited liability limited partnership

By: CALLE CUARTA LLC, a New Mexico limited
liability company, General Partner
By Monarch Properties, Manager

By: _____
MICHELLE DEN BLEYKER. Senior Vice
President of Development

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

This instrument was acknowledged before me on the _____ day of _____,
2021, by MICHELLE DEN BLEYKER. Senior Vice President of Development of YES
HOUSING Inc., Manager of CALLE CUARTA LLC, General Partner of YES CALLE
CUARTA LIMITED PARTNERSHIP LLLP a New Mexico limited liability limited partnership.

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

Notary Public

My commission expires: _____

**AGREEMENT
TO ASSUME RIGHTS AND RESPONSIBILITIES**

THIS AGREEMENT is entered into by and between the CITY OF ALBUQUERQUE, Albuquerque, New Mexico, a municipal corporation, (hereinafter City), YES CALLE CUARTA LIMITED PARTNERSHIP LLLP, a New Mexico limited liability limited partnership (hereinafter Developer or Assignee), and YES HOUSING, INC., a New Mexico nonprofit corporation, or (hereinafter Assignor), on the ____ day of _____, 2021. City, Developer, and Assignor are sometimes hereinafter referred to collectively as the Parties and individually as a Party.

RECITALS:

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

WHEREAS, The Project named Calle Cuarta is located at 3525 4th Street NW and 420 Fitzgerald NW, as legally described in **Exhibit B**. The Project is a 60 unit, affordable development that shall consist of 9 (1 studio, 4 one-bedroom, 3 two-bedroom, and 1 three-bedroom) restricted units at 30% AMI, 21 (2 studio, 10 one-bedroom, 6 two-bedroom, and 3 three-bedroom) restricted units at 50% of AMI, 24 (3 studio, 10 one-bedroom, 8 two-bedroom, and 3 three-bedroom) restricted units at 60% AMI, and 6 (1 studio, 3 one-bedroom, and 2 two-bedroom) restricted units at 80% AMI. The Calle Cuarta development will also incorporate an additional 4 live/work units, 8 Patio Homes and 11 Townhomes, and 6 retail spaces– to be financed separately and divided from this Project using a condo structure. The Project shall remain an affordable rental housing project as more fully provided elsewhere in this Agreement.

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

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

WHEREAS, in order to obtain the benefits of LIHTCs and other tax benefits, the Project will be owned by YES CALLE CUARTA LIMITED PARTNERSHIP LLLP, whose sole general partner is CALLE CUARTA LLC. The sole member of CALLE CUARTA LLC is the Assignor; and

WHEREAS, the City entered into that certain Development Agreement dated _____, 2021, with the Assignor under which the City agreed to advance no more than Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00) and Conveyance of City-owned Real Property valued at \$1,100,000.00 to construct the Project;

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

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

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

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

2. Approval Required: This Agreement shall not become effective or binding until approved by the Director of the City's Department of Family and Community Services.

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

CITY:

CITY OF ALBUQUERQUE

By _____
SARITA NAIR,
Chief Administrative Officer, City of Albuquerque

DEVELOPER:

CALLE CUARTA LIMITED PARTNERSHIP LLLP
By CALLE CUARTA LLC, General Partner
By YES HOUSING, INC., Manager

By _____
MICHELLE DEN BLEYKER. SR Vice President of Development

ASSIGNOR:

YES HOUSING, INC.

By: _____
MICHELLE DEN BLEYKER. SR Vice President of Development

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

On this _____ day of _____, 2021, before me personally
appeared Sarita Nair, Chief Administrative Officer of the CITY OF ALBUQUERQUE, a New
Mexico municipal corporation, on behalf of the City.

My Commission Expires: _____
Notary Public

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

On this _____ day of _____, 2021, before me personally
appeared MICHELLE DEN BLEYKER. Senior Vice President of Development of YES
Housing, Inc., Manager of CALLE CUARTA LLC, the General Partner of YES CALLE
CUARTA LIMITED PARTNERSHIP LLLP, and acknowledged that he executed the same as
his free act and deed on behalf of the Developer.

My Commission Expires: _____
Notary Public

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

On this _____ day of _____, 2021, before me personally
appeared MICHELLE DEN BLEYKER. Senior Vice President of Development of YES
HOUSING, INC., and acknowledged that he executed the same as his free act and deed on
behalf of the YES HOUSING, INC..

My Commission Expires:

Notary Public