EC-26-210

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM July 20, 2026

TO: Klarissa J. Peña, President, City Council

FROM: Timothy M. Keller, Mayor

SUBJECT: Approval of the Development Agreement for the Uptown Connect Affordable Housing Project with Family Housing Development Corporation to Utilize Workforce Housing Trust Funds & State Capital Outlay Funding Towards the New Construction of a Multi-Family Rental Housing Project.

This request for approval is for the proposed Uptown Connect Affordable Housing Project ($9,456,656.00), which includes $8,356,656 of local Workforce Housing Trust Funds and $1,100,000 of State Capital Outlay funds, towards the affordable housing condominium located at 2298 Indiana St. NE. The $9,456,656.00 was procured under RFP-2024-609—RG. This funding will provide the local contribution needed for the Low Income Housing Tax Credit allocation from Housing New Mexico and close the financing gap caused by increasing construction costs experienced by the project which has more than $79 million in total development costs.

This Project, known as the Uptown Connect Affordable Housing Condominium Unit, will be located in the North Building and consist of approximately 176 rental housing units and related improvements (the "Affordable Housing Condominium Unit"). Of the 176 rental housing units in the Affordable Housing Condominium Unit, 79 units will be reserved for households at or below 80% AMI, 39 units will be reserved for households at or below 50% AMI, and 58 units will be reserved for households at or below 30% AMI. Of the 176 units, 88 units will be studios, 44 will be one-bedroom, 28 will be two-bedroom, and 16 will be three-bedroom units.

The overall Uptown Connect Development Project is funded separate from this request, is intended to be a mixed-use project, and will include an additional 22 market rate rental housing units, approximately 17,000 square feet of commercial space, a transit plaza, and both underground and surface level parking spaces.

SUBJECT: Approval of the Development Agreement for the Uptown Connect Affordable Housing Project with Family Housing Development Corporation to Utilize Workforce Housing Trust Funds & State Capital Outlay Funding Towards the New Construction of a Multi-Family Rental Housing Project.

Approved:

Samantha Sengel 7/27/26

Samantha Sengel, EdD Date
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:
Lauren Keefe 7/22/2026 | 6:15 PM MDT
1A21D96D32C74EE...

Lauren Keefe Date
City Attorney

DS
PP

Recommended:

DocuSigned by:
Gilbert Ramirez 7/22/2026 | 1:47 PM MDT
F9705DFAA0D2484...

Gilbert Ramirez 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 Family Housing Development Corporation (FHDC) to provide gap financing towards the new construction of the Uptown Connect Affordable Housing Condominium Unit, located 2298 Indiana St. NE. The purpose of the project is to create 176 affordable rental housing units in the North Building, which will be incorporated into the overall Uptown Connect Development Project funded separately from this request. The larger mixed-use project will include an additional 22 market rate rental housing units, approximately 17,000 square feet of commercial space, a transit plaza, and both underground and surface level parking spaces. The development will be in conjunction with Palindrome Properties Group, LLC, an experienced LIHTC Developer.

2. **What will this piece of legislation do?**
   This legislation will provide $8,356,656 of local Workforce Housing Trust Funds and $1,100,000 of State Capital Outlay funds toward the $79 million project.

3. **Why is this project needed?**
   The funding will provide gap financing in the form of a local contribution from the City, which FHDC will leverage to obtain a 4% Low Income Housing Tax Credit Award from Housing New Mexico. Additionally, the Affordable Housing Condominium Unit is an integral component of the Uptown Connect Development Project which leverages $25 million dollars in federal funding from the U.S. Department of Transportation RAISE grant.

4. **How much will it cost and what is the funding source?**
   The Uptown Connect Affordable Housing Condominium Unit has an estimated project cost of $79,731,409, of which $8,356,656 is local General Obligation Bonds (Workforce Housing Trust Funds) and $1,100,000 is State Capital Outlay (I2698).

5. **Is there a revenue source associated with this contract? If so, what level of income is projected?**
   No. The funds are utilized during construction and secured through a City Mortgage, City Promissory Note, and City Restrictive Real Estate Covenants that ensures that the project remains Affordable Housing in perpetuity (99 years + 99 years). It is necessary that any project revenue be utilized by the project for the long-term, as provided for in the Project's Pro-Forma.

6. **What will happen if the project is not approved?**
   The funds proposed as part of this legislation account for approximately 13.7% of the project's total costs. Not approving the $9,456,656 of Workforce Housing

Trust Funds and State Capital Outlay Funds in this request will likely leave the developer with insufficient funds to proceed with the project, preventing 176 new affordable housing units from being built.

7. Is this service already provided by another entity?

No. The new construction of Affordable Rental Housing units was awarded through a competitive procurement process (RFP-2024-609--RG). FHDC's proposal scored the highest and was ultimately recommended for award. The Uptown Connect Affordable Housing Condominium Unit is a component of the Uptown Connect Development Project.

FISCAL IMPACT ANALYSIS

TITLE: **Approval of the Development Agreement for the Uptown Connect Affordable Housing Project with Family Housing Development Corporation to Utilize Workforce Housing Trust Funds & State Capital Outlay Funding Towards the New Construction of a Multi-Family Rental Housing Project.**

R: O:
FUND: 305
Project/Activity: Various see comment

[X] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.

[ ] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years 2027	2028	2029	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses	-	-	-	-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	$ -	$ -	$ -	$ -
[ ] Estimated revenues not affected				
[ ] Estimated revenue impact				
Revenue from program	0	-	-	0
Amount of Grant				
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	$ -	$ -	$ -	$ -

These estimates do not include any adjustment for inflation.
* Range if not easily quantifiable.

Number of Positions created: 0

COMMENTS: Funding is currently appropriated for this project from three separate sources: State Capital Outlay 24-I2698 City/County Affordale Housing Agreement 305/PCHHH/30_AFFD_HOUSING/7379020 in the amount of $1,100,000; '21 General Obligation Bond Affordale Housing 305/PCFCS/29_AFF_HOUSING/7270010 $878,677; and '23 General Obligation Bond Affordale Housing 305/PCFCS/29_AFF_HOUSING/7407010 $7,477,979.

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

PREPARED BY:
DocuSigned by: Joey Rowe 7/22/2026 | 1:27 PM MDT
FISCAL ANALYST

APPROVED:
DocuSigned by: Gilbert Ramirez 7/22/2026 | 1:47 PM MDT
DIRECTOR

REVIEWED BY:
Signed by: CHRISTINE CHING 7/22/2026 | 2:21 PM MDT
EXECUTIVE BUDGET ANALYST

Signed by: Donna Sandoval 7/22/2026 | 2:23 PM MDT
BUDGET OFFICER

Signed by: Christine Boerner 7/22/2026 | 2:31 PM MDT
CITY ECONOMIST

WORKFORCE HOUSING TRUST FUND DEVELOPMENT AGREEMENT

By and between the
City of Albuquerque, New Mexico,
Department of Health, Housing and Homelessness,
a municipal corporation,

and

Family Housing Development Corporation, a New Mexico non-profit corporation,
8220 Louisiana Blvd. NE, Suite B
Albuquerque, New Mexico 87113

UPTOWN CONNECT

2298 Indiana Street NE
(America's Parkway NE & Uptown Boulevard NE)
Albuquerque, NM 87110

Tract E-2A1 of Jeannedale Addition, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 9, 1998, in Plat Book 98C, Page 303.

TABLE OF CONTENTS

Exhibits

WORKFORCE HOUSING TRUST FUND DEVELOPMENT AGREEMENT

THIS WORKFORCE HOUSING TRUST FUND DEVELOPMENT AGREEMENT (this "Development Agreement" or "Agreement") is entered into upon the final date of signature below, by and between the **City of Albuquerque**, New Mexico, a municipal corporation (the "City"), and **Family Housing Development Corporation,** a New Mexico non-profit corporation, 8220 Louisiana Blvd. NE, Suite B, Albuquerque, New Mexico 87113 (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, the housing funds provided hereunder shall be in compliance with the requirements of the Workforce Housing Opportunity Act; 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, in 2024, the State in legislative appropriation I2698, designated $1,100,000 of State funds towards the acquisition of land, and the planning, design, construction and renovation of affordable housing pursuant to the Albuquerque Workforce Housing Opportunity Act; and

WHEREAS, the Developer responded to an Affordable Housing Development Project Request for Proposals, RFP-2024-609--RG, which allocated the State legislative appropriation funding of $1,100,000 and an additional amount of $8,356,656 of Workforce Housing Trust Funds for the Affordable Housing Component of the Development Project; and

WHEREAS, the Development Project proposed by Developer (defined below) will be located at the Uptown Boulevard NE and America's Parkway NE at the current Uptown Transit Center site, which is located within the corporate limits of the City, and will contain affordable housing, market-rate housing, commercial space, parking and transit facilities as further described herein; and

WHEREAS, the Developer intends to apply to Bernalillo County (the "County") for an allocation of tax exempt and/or taxable private activity bonds to finance the acquisition of the land and development of the Affordable Housing Component of the Development Project; and

WHEREAS, the Developer intends to apply to the New Mexico Mortgage Finance Authority (the "MFA") for an award of low-income housing tax credits ("LIHTC") (the "Tax Credit Allocation") to finance a portion of the overall cost of the planned affordable housing; and

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

WHEREAS, Developer and Palindrome Properties Group, LLC ("Palindrome"), are parties to that certain Letter of Understanding dated as of July 17, 2024; 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 Incorporated Definitions. The Definitions in the *Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque, and the Social Services Contracts Procurement Rules*, 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 Included Definitions. Capitalized terms shall have the meaning assigned to them in this Agreement, including **Exhibit B**, attached hereto. If not otherwise defined in this Agreement, capitalized terms shall retain their customary meaning.

ARTICLE II
Development Project Purpose and Description

Section 2.1. Purpose of Development Project. The purpose of the Development Project is to develop a mixed use, mixed-income, multifamily, rental housing development in Albuquerque's Uptown district, which will include non-residential, parking, and transit components, as described more fully herein.

Section 2.2. Affordability Period. The obligation of the Developer to develop the Affordable Housing Component of the Development Project and provide the Affordable Units (as defined below) will commence upon the closing of the tax-exempt bond and other debt financing, and the low income housing tax credit equity financing for the Affordable Housing Component of the Development Project. The obligation to rent the Affordable Housing Units as Affordable Housing required hereunder shall commence upon the Completion of Construction of the Affordable Housing Component and shall end two consecutive ninety-nine (99) year periods thereafter as particularly described in the Restrictive Real Estate Covenants (defined below) to be recorded at closing, the ("Affordability Period"). This Agreement shall terminate upon foreclosure or deed in lieu of foreclosure. If the Developer can provide sufficient credible evidence that the improvements constituting the Affordable Housing Condominium Unit are functionally obsolete or have reached the end of their 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 Affordable Housing Condominium Unit'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 Affordable Housing Component, credit will be given for the number of years the Affordability Period has been met. If additional City funds are infused, the two consecutive ninety-nine (99) year periods of the Affordability Period will commence anew.

Section 2.3. Development Project Description. The Development Project is anticipated to be named **Uptown Connect**, and will be located at 2298 Indiana St. NE, which is the southeast corner of America's Parkway NE and Uptown Boulevard NE, as legally described in **Exhibit C**. The Development Project is intended to be a mixed-use project comprised of approximately 198 units of rental housing, approximately 17,000 square feet of commercial space, a transit plaza, and approximately 100 parking spaces. The Development Project will contain three buildings: a five-story "North Building," a five-story "Plaza Building," and a one-story "Dog Stop Building." The outdoor transit plaza will contain an outdoor transit plaza, including bus transfer station, drive aisles, bus shelters, other associated infrastructure improvements, and the RAISE Improvements.

The North Building will contain the Affordable Housing Condominium Unit, the North Office Condominium Unit, the North Retail Condominium Unit, and certain common elements of the Condominium, as described in Section 2.5. The Plaza Building will contain the Plaza Market Hall Condominium Unit, the Plaza Residential Condominium Unit and certain common elements, as described in Section 2.5. The Dog Stop Building will contain the Dog Stop Retail Condominium Unit, as described in Section 2.5.

Section 2.4. Ownership and Management of Property. No later than the closing of the debt and equity financing for the Affordable Housing Component of the Development Project, the Developer will form a limited partnership (the "Ownership Entity") comprised of the Developer, which will serve as the managing general partner, an affiliate of Palindrome, which will serve as the administrative general partner, a LIHTC investor, which will serve as the limited partner, and an affiliate of Palindrome, which will serve as a special limited partner. The Ownership Entity will acquire the Real Property and develop the Development Project. Following the formation of such Ownership Entity, this Agreement shall be assigned by the Developer to the Ownership Entity. Upon completion of the Development Project, the Ownership Entity will form a condominium regime substantially as described below. The Affordable Housing Condominium Unit will be managed through a property management agreement with PacifiCap Management Inc., which is a professional property management company and an affiliate of Palindrome Properties Group, or other property management company as approved by the Investor Limited Partner of the Ownership Entity and by the City in writing.

Section 2.5 Establishment of Condominium Regime. Following Completion of Construction, the Ownership Entity shall form a condominium regime on the Real Property by recording a Condominium Declaration and a Condominium Plat in the County records. The Condominium

Declaration and Condominium Plat are anticipated to establish the following condominium units and common elements:

A. Affordable Housing Condominium Unit. A condominium unit in the North Building consisting of approximately 176 rental housing units and related improvements located on levels 2 through 5 of the North Building(the "Affordable Housing Condominium Unit"). Of the 176 rental housing units in the Affordable Housing Condominium Unit, 79 units will be reserved for households at or below 80% AMI, 39 units will be reserved for households at or below 50% AMI, and 58 units will be reserved for households at or below 30% AMI. Of the 176 units, 88 units will be studios, 44 will be one-bedroom, 28 will be two-bedroom, and 16 will be three-bedroom units.

B. North Office Condominium Unit. A condominium unit in the North Building consisting of approximately 8,100 square feet of commercial space and related improvements located on level 1 of the North Building(the "North Office Condominium Unit").

C. North Retail Condominium Unit. A condominium unit in the North Building consisting of approximately 3,500 square feet of commercial space and related improvements located on level 1 of the North Building (the "North Retail Condominium Unit").

D. Plaza Residential Condominium Unit. A condominium unit in the Plaza Building consisting of approximately 22 market rate rental housing units and related improvements locatd on levels 2 through 4 of the Plaza Building (the "Market Housing Condominium Unit").

E. Plaza Market Hall Condominium Unit. A condominium unit in the Plaza Building consisting of approximately 4,900 square feet of commercial space and related improvements located on level 1 of the Plaza Building(the "Plaza Market Hall Condominium Unit").

F. Dog Stop Retail Condominium Unit. A condominium unit in the Dog Stop Building consisting of approximately 3,600 square feet of commercial space and related improvements on level 1 of the Dog Stop Building (the "Dog Stop Retail Condominium Unit").

G. Common Elements. The common elements of the condominium are anticipated to include approximately 88 underground parking spaces and 20 surface level parking spaces, certain elevators and stairs, walkways, plazas, and other facilities. The common elements will also include certain limited common elements for the use of certain condominium units, including certain elevators, stairs, lobbies, and amenity spaces (such as a pool, a barbeque area, bicycle amenities and a play area).

H. Public Areas. Any areas dedicated to the City with the City's consent, including roadways, walkways and other rights-of-way will not be part of the condominium.

Section 2.6 Transfer of Condominium Units. Following Completion of Construction, the Ownership Entity shall have the right, but not obligation, to transfer one or more of the condominium units to one or more single purpose entities affiliated with the Ownership Entity, each of whom will own and manage its condominium unit pursuant to and in accordance with the Condominium Declaration.

Section 2.7 Government Lease. Following Completion of Construction, the Ownership Entity anticipates that it will enter into a sale-leaseback transaction with Bernalillo County for the purpose of obtaining a property tax exemption on the Affordable Housing Condominium Unit.

Section 2.8 Restrictions Limited to Affordable Housing Unit. For purposes of this Agreement, the affordability and rental requirements, the covenants relating to the development, financing, construction, rental, and operation of the affordable housing contemplated herein, and the covenants relating to the financing provided herein, shall apply only to the Affordable Housing Condominium Unit.

ARTICLE III
Funds Committed to the Affordable Housing Component of the Development Project

Section 3.1 Description of City Loan. To assist with the financing of construction of the Affordable Housing Component, the City shall provide a grant to Developer in an amount not to exceed **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)**, which includes $1,100,000 of State legislative appropriation, and $8,356,656 of Workforce Housing Trust Funds (the "City Grant"). The City Grant will in turn be loaned by the Developer to the Ownership Entity (the "City Loan"), with such loan to be evidenced by a Promissory Note (the "City Note"), which will be secured by a Mortgage (the "City Mortgage") encumbering the Affordable Housing Condominium Unit in the attached forms substantially similar to **Exhibit E** and **Exhibit D**, respectively. The Developer shall sign at Closing of the City Loan a Collateral Assignment of the City Note and City Mortgage substantially in the form attached as **Exhibit L**, and the Restrictive Real Estate Covenants running to the benefit of the City substantially in the form attached as **Exhibit J**. The Developer and the Ownership Entity shall sign at Closing of the City Loan the Agreement to Assume Rights and Responsibilities substantially in the form attached as **Exhibit M**. Developer shall not enter into any subordination agreements related to the City Note and/or the City Mortgage without the City's written consent; provided, however, that the City Loan, the City Note, and the City Mortgage shall in all events be and remain subordinate in right of payment and lien priority to any loans or other financings from institutional or governmental lenders (each a "Senior Lender" and collectively, the "Senior Lenders") in connection with the construction financing, permanent financing, New Mexico Mortgage Finance Authority Land Use Restriction Agreement, bond regulatory agreement, other regulatory agreements, and/or other prime financing for the Development Project, including the Affordable Housing Component, whether now existing or hereafter incurred (collectively, the "Senior Financing"). The City acknowledges and agrees that such Senior Financing may be secured by liens on the Development Project, including the Affordable Housing Condominium Unit, and upon request by Developer or a Senior Lender, the City shall execute, deliver, and record the Subordination Agreement substantially in form attached hereto as **Exhibit K**, or in such other form and substance reasonably acceptable to such Senior Lender requesting the same, and the City. Notwithstanding anything herein to the contrary, the City and Developer acknowledge and agree that the City Loan is intended to be secured solely by, and the City Mortgage and the Restrictive Real Estate Covenants recorded in connection therewith (collectively, the "City Instruments") are intended to encumber solely, the Affordable Housing Condominium Unit. The parties further acknowledge that, at the time the City Mortgage and/or Restrictive Real Estate Covenants are recorded, the condominium regime for the Development

Project, as evidenced by the recording of the Declaration and Condominium Plat, may not yet be established and, as a result, such City Instruments may encumber the entirety of the Development Project. In such event, the City covenants and agrees that, immediately upon the establishment of the condominium regime and the creation of the Affordable Housing Condominium Unit, the City shall execute, deliver and cause to be recorded, such partial releases, amendments or other instruments as may be reasonably requested by Developer, Ownership Entity, or Senior Lenders, in form and substance reasonably satisfactory to the foregoing and the City, to evidence that the lien of the City Mortgage and the restrictions of the Restrictive Real Estate Covenants are limited solely to the Affordable Housing Condominium Unit, and to release from the City Instruments the remainder of the Development Project from the same, together with all associated common elements.

Section 3.2. Affordable Housing Component Budget. The proposed Affordable Housing Component Budget forms are all attached as **Exhibit F**. If Pre-Development, Land Acquisition or Land Donation are part of this project but were funded separately, the Schedules shown in **Exhibit F** shall be completed for those activities and shall be incorporated into the Affordable Housing Component Budget shown in **Exhibit F**. The proposed Affordable Housing Component 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 Affordable Housing Component, (b) the proposed amendment to the Affordable Housing Component Budget does not materially adversely affect Developer's ability to complete the Affordable Housing Component as described in this Agreement, and (c) Developer promptly provides written notice of any such proposed amendment to the City.

Section 3.3. Schedule of Grants. Attached hereto as **Exhibit G** 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 G** and incorporated herein as though set forth in full in this paragraph. Without the prior knowledge and written approval of the City, such approval not to be unreasonably withheld, conditioned or delayed, the Developer shall not grant any lien or security interest or enter into any material financing or contractual obligation with respect to the Affordable Housing Component that would reasonably be expected to (i) impair Developer's ability to complete the Affordable Housing Component in accordance with this Agreement, or (ii) prevent Developer from performing its obligations under this Agreement.

Section 3.5. Tax Credits. Tax Credits, if applicable, are listed on the attached **Exhibit F** 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 allocation of 4% low income housing tax credit (LIHTC) financing from the MFA by December 31, 2027, the City funds may be undesignated and made 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 receipt of written notice from the bond issuer, MFA, or any financing partner. Failure to comply with this provision is a material Event of Default. A failure by the Developer to receive an allocation of low income housing tax credit financing by December 31, 2027 shall not prevent the Developer from reapplying for a future LIHTC round or an award of other Federal or City funds for the Affordable Housing Component after December 31, 2027. However, the Developer must submit a written request to the City for an extension of the term of this Agreement, along with justification for the request based on the intent to apply for a future 4% LIHTC allocation or to secure alternate financing. Final approval of such a request is at the discretion of the City.

Section 3.7 Non-receipt of Other Critical Financing. Should the Developer not receive any other planned award of financing, including County private activity bonds or anticipated RAISE grant funding, the City funds designated pursuant to this Development Agreement may be undesignated and made 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 receipt of written notice by lender or sponsor of the financing of the failure of that financing. Failure to comply with this provision is a material Event of Default. A failure by Developer to receive an award of critical financing by December 31, 2027, shall not prevent Developer from re-applying for further financing. However, the Developer must submit a written request to the City for an extension of the term of the Agreement, along with a justification for the request based on the intent to apply for further financing. Final approval of such request is at the discretion of the City.

ARTICLE IV
Commencement and Completion of the Affordable Housing Component of the Development Project

Section 4.1. Agreement to Construct and Complete the Affordable Housing Component of the Development Project. Developer agrees that:

A. Developer shall construct the Affordable Housing Component of the Development Project in accordance with the plans, specifications, and elevations for the Affordable Housing Component of the Development Project prepared by Developer, including any and all supplements, amendments and material additions or deletions thereon or therein, as they approved by the City pursuant to Section 5.2 (the "Plans, Specifications and Elevations").

B. Developer shall construct the Affordable Housing Component of the Development Project with all reasonable dispatch and according to the Development Schedule attached as **Exhibit H.** 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 Development Project and shall perform the responsibilities by itself or cause the performance through affiliates, agents, contractors, subcontractors or others selected by Developer 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 Development Project.

Section 4.2. Establishment of Completion Date.

A. The Developer shall complete the construction of the Affordable Housing Condominium Unit during the term of the Agreement, no later than December 31, 2030 ("Completion Date"), unless an extension is approved by the City. Failure to complete the construction by the Completion Date is a material Event of Default of this Agreement.

B. The "Completion of Construction" shall be evidenced to the City by (i) temporary or permanent certificate(s) of occupancy issued by the City for all improvements comprising the Affordable Housing Component, provided that any temporary certificate(s) of occupancy shall be followed by permanent certificate(s) of occupancy within a commercially reasonable period or time; (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 Significant Contractors (as defined herein) employed in the construction of the Affordable Housing Component. Such documents shall be delivered to the City promptly but not later than thirty (30) days after the completion of the Affordable Housing Component, 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 Affordable Housing Component during normal business hours after giving reasonable notice to Developer, provided that such inspections shall not unreasonably interfere with or delay construction activities. Notwithstanding the above, within five (5) days prior to substantial completion and punch list walk through of the Affordable Housing Condominium Unit, Developer shall arrange for a walk through with the Developer's Authorized Representative, City's Authorized Representative, Construction Contractor and Independent Architect/Engineer to prepare the Affordable Housing Component 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 sixty (60) days after issuance, and in any event prior to occupancy of any affected unit by a tenant if the item materially affects tenant health or safety.

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

ARTICLE V
Conditions Precedent to Disbursement of City Funds

Section 5.1 Reports and Documentation. To the extent that any or all of the actions in this Section were performed in conjunction with an earlier agreement between the parties regarding the Real 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. The Developer shall provide the following:

A. Phase 1 Environmental survey.

B. ALTA/ASCM 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, if applicable.

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 Affordable Housing Component of the Development 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 Affordable Housing Component to eligible families.

Section 5.2 Development Project Plans. The Developer shall submit one complete set of the Plans, Specifications and Elevations for the Affordable Housing Component of the Development 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 Affordable Housing Component of the Development 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 Allocation and commitments to the Developer to provide the balance of all construction financing for the Affordable Housing Component of the Development Project. In the event that the Developer does not receive the Tax Credit Allocation in 2026, this Agreement may be terminated by the City, in the City's sole discretion, and the City shall have no obligation to make the City Grant, subject to the Developer's right to request an extension of the Term pursuant to Section 3.6 and Section 3.7.

Section 5.4 Affirmative Marketing Plan. Developer, at the expense of Developer, shall provide to the City an updated affirmative marketing plan for the dwelling units in the Affordable Housing Condominium Unit along with procedures in conformance with the Fair Housing Act.

Section 5.5 Restrictive Real Estate Covenants. At closing, Ownership Entity shall execute and deliver the Restrictive Real Estate Covenants to the City. To ensure the City's goals in regards to the Affordable Housing Component, the City shall require the Restrictive Real Estate Covenants to be recorded and to run with the land, binding upon the Ownership Entity, its successors and assigns. The Restrictive Real Estate Covenants shall be recorded in such order of priority as is agreed to by the City, MFA, other funders of the Development Project, and the Ownership Entity.

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 Development Project, including without limitation, any mortgages evidencing the Senior Financing. However, the Restrictive Real Estate Covenants will not be subordinated, except to any restrictive covenants required by MFA, 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 3.1 of this Agreement.

ARTICLE VI
Usage and Documentation of City Funds

Section 6.1 Composition of City Grant; Use of Grant Funds. The City Grant shall be an amount not greater than **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00),** which includes $1,100,000 of State legislative appropriation, and $8,356,656 of Workforce Housing Trust Funds, and which includes all City funds allocated for the Affordable Housing Component of the Development Project, and shall be used for the development and construction of the Affordable Housing Component of the Development 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 **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00),** 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 upon satisfaction of the conditions set forth at Section 5.1 of this Agreement.

B. Developer agrees to provide City with a Request for City Grant Disbursement, in a form acceptable to City and substantially similar to **Exhibit I**, 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. The City requires contractors to pay adequate wages on public works projects. If applicable, the Developer will ensure compliance with all NM State prevailing wage requirements, and/or will abide by Federal Davis-Bacon Wage Rates and maintain/provide all compliance documents as requested by the City.

ARTICLE VII
Warranties and Obligations

Section 7.1. Warranties and Obligations by the City. 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.

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 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, to Developer's knowledge, threatened, legal or administrative proceedings against Developer or affecting the Development Project which, if determined adversely, would have a material adverse effect on Developer or the Development Project.

D. The Real Property shall be used towards the development of the Affordable Housing Component.

E. When executed, delivered and recorded, the Restrictive Real Estate Covenants will be binding on the Affordable Housing Component of the Development Project and the Developer, and the Developer and its successors and assigns in title shall comply therewith.

F. During the Affordability Period, the Developer and its successors and assigns in title shall comply with the following provisions including as applicable to the Affordable Housing Component:

1. Any applicable federal, state or local relocation requirements, including 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, the NM Relocation Act, and any local housing code requirements.

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

3. Affirmative marketing plan submitted to City along with procedures in compliance with the Fair Housing Act.

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

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

6. Maintain the Affordable Housing Component of the Development Project as an affordable rental housing project as provided by the Workforce Housing Opportunity Act and ensure that in the event that the Affordable Housing Component ceases to be an affordable rental housing project, the Developer will cause repayment of funds to City, in lieu of foreclosure, as provided elsewhere in this Agreement.

7. Shall adhere to rent formula as set forth in the Restrictive Real Estate Covenants (Deed Restrictions). 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 methodology set forth in Section 7.2.F.9. In the event of any conflict between the terms of this Section 7.2.F.7 and the terms of Section 42 of the Internal Revenue Code (the "Code"), the terms of the Code shall control.

8. Maintain income verification of tenants and their family size residing in Affordable Units pursuant to the requirements of the LIHTC Program. Income verification and family size documentation must be secured prior to occupancy of the Affordable Units, and thereafter verified and certified at least annually. If applicable, notwithstanding any other provisions of this Agreement to the contrary, in the event of a decrease or termination of the Project-Based Section 8 rental subsidy for the Affordable Housing Component, the City agrees that it will work in good faith with the Ownership Entity to address the Ownership Entity's request to seek alternative sources of funding, and/or modify the occupancy restrictions, and/or the rent and income limits otherwise required by this Agreement to the extent allowed under Section 42 of the Internal Revenue Code. Following occupancy, if an Affordable Unit's tenant's income exceeds the applicable percentage of AMI for that unit, the LIHTC Program rules shall apply. In the event of any conflict between the terms of this Section 7.2.F.8 and the terms of Section 42 of the Code, the terms of the Code shall control.

9. Adhere to initial rents for Affordable Units as published by the Mortgage Finance Authority annually. If utilities are not included in the rent, Developer and/or Ownership Entity shall have the right, at its sole cost and expense, to obtain and utilize an independent utility allowance study prepared by a qualified third-party for purposes of establishing the Utility Allowance for the Affordable Units. In the absence thereof, an allowance must be made using the City's established Utility Allowance.

10. Use its best efforts to actively encourage the participation of minority business enterprises as defined in §5-6-2 ROA, in subcontracts needed for the work under this Agreement, in furtherance of the policy reflected in §5-6-1 ROA.

11. Execute written leases with tenants of the Affordable Units for an initial term of not less than one (1) year, unless otherwise mutually agreed between tenant and owner and permissible under federal, state, and local laws applicable to the funding for the Affordable Housing Component, including Section 42 of the Code. Following the expiration of the initial lease term, and provided such arrangement remains in compliance with Section 42 of the Code, leases may continue on a month-to-month basis upon mutual agreement of the tenant and owner, which shall reflect the tenant's decision to continue occupancy on such terms and not be presumed solely by execution of a lease form or other standard documentation.

G. The Developer shall establish a replacement reserve fund for the Affordable Housing Condominium Unit in an amount not less than Three Hundred Dollars and No Cents ($300.00) per Affordable Unit per annum, within (90) days after commencement of amortization of the tax-exempt bond loan until the Affordability Period has expired. This obligation shall be deemed satisfied to the extent the Ownership Entity funds and maintains such a reserve pursuant to the requirements of a land use restriction agreement or other agreement or loan document of the MFA.

H. During the term of the Affordability Period, the Developer shall assure that the property manager for the Affordable Housing Condominium Unit 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. During the term of the Affordability Period, none of the residential units in the Affordable Housing Condominium Unit shall at any time be utilized on a short-term or transient rental basis; and none of the Affordable Housing Condominium Unit nor any portion thereof shall be used as a hotel, motel dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park; provided, however, that units in the Affordable Housing Condominium Unit may be leased for long-term residential occupancy consistent with applicable federal, state and local requirements.

J. At all times during the term of this Agreement, the Affordable Housing Condominium Unit 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 Affordable Housing Condominium Unit.

K. Developer shall not, after the closing of the tax-exempt bond financing and 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. For the avoidance of doubt, the Ownership Entity and the partners thereof shall have the right to (i) redeem the interests of the special limited partner in the Ownership Entity in conjunction with the transfer of the North Office Condominium Unit, North Retail Condominium Unit, Plaza Residential Condominium Unit, Plaza Market Hall Condominium Unit, and/or Dog Stop Retail Condominium Unit pursuant to Section 2.6, (ii) remove general partners and admit replacement general partners in the Ownership Entity, (iii) purchase the interest of the limited partners in the Ownership Entity, and (iv) purchase the Affordable Housing Condominium Unit from the Ownership Entity, as allowed by the Ownership Entity Operating Agreement, none of which will be deemed a violation of this Agreement. The Ownership Entity shall notify the City of any changes to a general partner of the Ownership Entity.

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 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 in violation of applicable federal or state law.

b. The Developer will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified employee or applicant for employment to the extent required by applicable federal or state law.

c. 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 to the extent required by applicable federal or state law.

d. To the extent required by applicable federal or state law, 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 provisions contained herein shall be binding on the successors and assigns of Developer.

O. Developer shall have sole responsibility for construction of the units within the Affordable Housing Component 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.

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

ARTICLE VIII
Monitoring/Reports Required

Section 8.1. During the construction and lease-up phases of the Affordable Housing Component, the Developer shall report, in writing, at least quarterly to the City. The quarterly report shall include, as related to the Affordable Housing Component, 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. Reports are due thirty (30) days after the end of the reporting quarter and shall be in accordance with City of Albuquerque reporting instructions.

Section 8.2. Following Completion of Construction and the lease-up of 65% of the units comprising the Affordable Housing Component, 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.

Section 8.3. The Developer shall report annually (commencing in the year following Completion of Construction of the Affordable Housing Component) within 120 days of the close of the Ownership Entity's fiscal year until the terms of this Agreement have been met. The report shall include, but not be limited to, the financial statements for the Affordable Housing Condominium Unit, Income and Expense Statement for the Affordable Housing Condominium Unit, a Program Income budget, if applicable, for proposed uses of Program Income for the forthcoming year, and a certified rent roll showing household size, ethnicity, race, whether the occupant is female head of household, date of execution of the occupants' current lease, adjusted gross income and rental rates. For purposes of complying with the *Administrative Requirements*, the Ownership Entity may utilize Program Income for the Affordable Housing Component of the Development Project, in addition to the City funding.

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 Affordable Housing Component or any interest therein or other property constructed, installed or bought by Developer on the Real Property, which, if not paid, will become a lien on the Affordable Housing Condominium Unit 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 Affordable Housing Component, 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 Affordable Housing Component. Developer agrees that, during the term of this Agreement, it shall, at its own expense, keep, or cause to be kept, the Affordable Housing Condominium Unit in as reasonably safe condition as its operations shall permit and keep the buildings and all other improvements forming a part of the Affordable Housing Condominium Unit 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 Affordable Housing Condominium Unit. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Affordable Housing Condominium Unit for labor or materials furnished in connection with the construction or installation of the Affordable Housing Condominium Unit 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 Affordable Housing Condominium Unit 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 Affordable Housing Condominium Unit shall be materially endangered or the Affordable Housing Condominium Unit 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 Affordable Housing Condominium Unit 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, 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 Affordable Housing Condominium Unit, 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 Affordable Housing Condominium Unit 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. AUTOMOBILE LIABILITY INSURANCE. Developer shall maintain, or cause to be maintained, automobile liability insurance covering all owned, hired and non-owned vehicles used in connection with the Affordable Housing Condominium Unit, with limits of not less than $1,000,000 combined single limit per accident. Such policy shall be maintained with an insurer reasonably acceptable to Developer and may be written on a blanket basis covering multiple insureds or properties.

C. 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.

D. 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 term of this Agreement 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 Affordable Housing Condominium Unit is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer and its surety shall waive any right of subrogation they may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death, resulting therefrom sustained by any employee of the insured arising out of performance of this Agreement. Neither the Developer nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitle to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, nor to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

E. 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 Affordable Housing Component of the Development 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.

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

G. 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. Completion Guaranty Agreement. Prior to the commencement of construction, Developer shall provide City with a copy of completion guaranty from the contractor to the Developer in lieu of a contractor's surety bond for payment of labor and materials and a performance and payment bond for construction of the Improvements. No work shall be initiated until the executed completion guaranty or other security has been received and approved by the City.

Section 9.6. Application of Net Proceeds of Insurance. Subject to the terms of any senior loans, 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 Mortgage 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 Affordable Housing Condominium Unit 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 Affordable Housing Component is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the Affordable Housing Component 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 Affordable Housing Component or if such proceeds are insufficient, then Developer shall fund any deficiency.

Section 10.2. Subject to Senior Lender and Condominium Requirements. Notwithstanding the foregoing, during any time when there is a senior lender for the Affordable Housing Condominium Unit, the provisions of this Article 10 will be subject to, and deemed satisfied by compliance with, the requirements of such lender. In the event of any conflicts between the terms of mortgages encumbering the Affordable Housing Condominium Unit regarding the application of casualty proceeds or condemnation proceeds, the terms of the mortgages shall control in the order of their priority. In addition, the requirements of this Article 10 will be subject to, and deemed satisfied by compliance with, the casualty and condemnation provisions of the Condominium Declaration.

ARTICLE XI
Special Covenants

Section 11.1. City's Right of Access to the Development 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 Affordable Housing Component provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Affordable Housing Component.

Section 11.2. 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 Development Project, consistent with the purposes of the Development 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 Development Project.

Section 11.3. 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 Development Project or the use thereof, except to the extent caused by the negligent or willful misconduct of the City or its officials, employees, or agents.

Developer shall defend, indemnify and hold harmless the City from any loss, claim, damage, acts, penalty, liability, disbursement, litigation expense, attorneys fees and expense or court costs arising out of or in any way relating to this Agreement, the City Mortgage, the City Note or any other cause whatsoever pertaining to the Development Project, but only to the extent resulting from the negligent acts or omissions of Developer or its contractors, agents, employees, or representatives, and subject to the limitations of 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.11.4. Sale, Assignment or Encumbrance of Affordable Housing Condominium Unit. 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 Affordable Housing Condominium Unit or any part thereof without the prior written consent of the City, such consent not to be unreasonably withheld, conditioned or delayed. Any conveyance of the Affordable Housing Condominium Unit during the term of this Agreement shall incorporate the covenants found in **Exhibit I** and agreements contained herein.

Section 11.5. 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/or right of first refusal agreement to a general partner (the "Option"), as described in the Operating Agreement or Partnership Agreement of the Ownership Entity; (D) the exercise of the Option by a general partner identified therein; (E) the execution and recording of the Condominium Declaration and Condominium Plat, or related documents; and (F) the transfer of a condominium unit following completion of construction pursuant to Section 2.6.

The City's consent to (a) the exercise of the Option by a general partner of the Ownership Entity, and to (b) the assumption without penalty of the City Note by such entity shall be required but shall not be unreasonably withheld, conditioned or delayed.

Section 11.6. Authority of Authorized City Representative. Whenever, under the provisions of this Agreement, the approval of the City is required or Developer is required to take some action at the request of the City, such approval or such request shall be made by the Authorized City Representative unless otherwise specified in this Agreement and Developer shall be authorized to act on any such approval or request.

Section 11.7. Authority of Authorized Developer Representative. The Developer represents and warrants to the City that the Authorized Developer Representative is empowered to take all actions contemplated herein and that reliance by the City on the authority of the Authorized Developer Representative shall not give rise to a complaint against the City as a result of any action taken by the City.

Section 11.8. Financial Statement of Developer. During the term of this Agreement, Developer agrees to furnish the City a copy of its audited annual financial statements at least annually within one hundred eighty (180) 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 thirty (30) days or designated time period in City Note, whichever is greater, of the receipt of notice of monies due any amount required to be paid pursuant to the City Note.

B. Failure by Developer to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, or under the City Mortgage or City Note (other than payment, which is governed under Section 12.1.A of this Agreement) for a period of thirty (30) days after written notice from City to Developer specifying such failure and requesting that it be remedied. Provided, however, if the default in question is not reasonably susceptible to cure within such thirty (30) day period Developer shall not be in default if, within such 30-day period, Developer notifies City that it has undertaken reasonable measures to cure the default and specifies the nature of such measures.

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, without written approval by City.

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 and documented fees of such attorneys and such other reasonable expenses incurred by the City.

Section 12.4. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any Party and thereafter waived by the Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

Section 12.5. Redemption Period. In the event the City shall elect to foreclose the City Mortgage, the period of redemption shall be one month in lieu of nine months.

Section 12.6. Remedies Upon Default.

A. Upon any Event of Default (“Default”) and regardless of any other notices previously provided, the City may send a Final Notice of Default to Developer describing the Default and requiring cure within thirty (30) days from the date of the mailing or delivery of the Notice.

B. If the Default is not cured or arrangements satisfactory to the City made to cure the Default, the City may elect to (1) accelerate, impose interest and call due the City Note and the City Mortgage; and (2) sue for compensatory damages suffered by the City due to the Default. In no event will any party be entitled to punitive damages or exemplary damages.

ARTICLE XIII
Miscellaneous

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

If to the City: Authorized City Representative
Director, Department of Health, Housing and Homelessness
City of Albuquerque
Post Office Box 1293
Albuquerque, NM 87103

If to Developer: Authorized Developer Representative
Family Housing Development Corporation
8220 Louisiana Blvd. NE, Suite B
Albuquerque,
New Mexico 87113

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.

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. The City Mortgage and the Restrictive Real Estate Covenants and every assignment and modification thereof shall be recorded in the office of the County Clerk of Bernalillo County New Mexico, by the title company selected by Developer for the closing on the Development Project, in accordance with the terms of this Agreement related to recording real estate obligations related to the Development Project.

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 waiver or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

Section 13.12. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section.13.13. Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

Section 13.14. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all. Any inconsistency among the various documents shall be resolved in favor of the language in this Development Agreement which, along with its amendments, if any, is deemed to be the primary document.

Section 13.15. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 13.16. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, waiving, or defining governmental rights and the police powers of the City or abrogating the requirement of any ordinance.

Section 13.17. Cross References. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

Section 13.18. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

Section 13.19. Assignment and Subletting. Except as described in Section 2.4 and elsewhere herein, 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, unless removal of Developer from Ownership Entity by Investor Limited Partner and in accordance with Owner Equity Operating Agreement occurs. If such removal event occurs, City shall not unreasonably withhold approval of transfer or assignment of Agreement to a qualified entity mutually approved by City and Ownership Entity, to fulfill duties of this Agreement.

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

Section 13.21. Appropriations. Notwithstanding any 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 Developer. 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. Excusable Delay. 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 Excusable Delay. After the termination of any such event of Excusable Delay, 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 Affordable Housing Condominium Unit.

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 Affordable Housing Condominium Unit shall contain the covenants contained the Restrictive Real Estate Covenants.

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.

Section 13.31. No Third Party Beneficiaries. Nothing in this Agreement or any document executed or recorded in connection therewith shall create any duty, obligation, or standard of care to, or create a cause of action in favor of, any person other than the parties to such document. No parties other than the City, the Developer and the Ownership Entity shall be a beneficiary of the covenants and obligations set forth in such documents.

(THIS SPACE INTENTIONALLY LEFT BLANK)

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

CITY OF ALBUQUERQUE

Approved By:

____
Samantha Sengel, Chief Administrative Officer
City of Albuquerque

Date: __________________________

____
Gilbert Ramirez, Director
Department of Health, Housing & Homelessness

Date: __________________________

____
Lauren Keefe, City Attorney

Date: __________________________

DEVELOPER:
FAMILY HOUSING DEVELOPMENT CORPORATION

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

By: _______________________________
Rick E. Davis, Executive Director

Exhibit A

Reserved pending final Condo Diagram

(To be inserted later)

Exhibit B

Definitions

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

1. "Affordable Housing" including a unit of Affordable Housing or "Affordable Unit" means residential housing for one or more persons or family with a total gross annual income for the household that does not exceed 80% of the AMI.

2. "Affordable Housing Component" means approximately 176 units of Affordable Housing and related improvements to constructed within the North Building, and to be incorporated into the Affordable Housing Condominium Unit, including the interest of the Affordable Housing Condominium Unit in the common elements of the condominium.

3. "Affordable Units" means the 176 rental housing Units contained in the Affordable Housing Condominium Unit.

4. "AMI" means area median income adjusted for family size for households within the Albuquerque Metropolitan Statistical Area (MSA) as determined by the U.S. Department of Housing and Urban Development on an annual basis.

5. "Authorized City Representative" for the purposes of this Agreement shall be the Director of the Department of Health, Housing and Homelessness or his/her designee.

6. "Authorized Developer Representative" means the person designated to act on behalf of the Developer.

7. "City" means the City of Albuquerque, New Mexico, through its Department of Health, Housing and Homelessness, 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.

8. "City Grant" is defined in Section 3.1.

9. "City Loan" is defined in Section 3.1.

10. "City Mortgage" is defined in Section 3.1.

11. "City Note" is defined in Section 3.1

12. "Completion Date" is defined in Section 4.2.

13. "Condominium" means the co-ownership regime consisting of the Affordable Housing Condominium Unit, the North Retail Condominium Unit, the North Office Condominium Unit, the Plaza Residential Condominium Unit, the Plaza Market Hall Condominium Unit, and the Dog Stop Retail Unit, and certain common elements, created by the Condominium Declaration and Condominium Plat.

14. "Condominium Declaration" means a Declaration of Covenants, Restrictions, and Condominium (or instrument of another name) creating the Condominium for the Development Project to be recorded in the land records of Bernalillo County, New Mexico, as the same may be further amended from time-to-time.

15. "Condominium Plat" means a condominium plat (or instrument of another name) recorded with the Condominium Declaration in the land records of Bernalillo County, New Mexico, to create the Condominium, as the same may be further amended from time-to-time.

16. "Developer" is defined in the Preamble. The term includes the initial entity, and its successors and assigns.

17. "Development Project" means a mixed-use project described in Section 2.3.

18. "Excusable Delay" means any delay beyond the reasonable control of the Party affected and which in fact prevents the Party affected from discharging its respective obligations hereunder, including any delay caused by (a) damage or destruction by fire or other casualty, (b) strike, shortage of materials, civil disorder, war, terrorism, pandemic, epidemic, quarantine, (c) stay-at-home orders or similar government orders or restrictions, (d) unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, and (e) which shall include, but not be limited to, default by the other Party or any litigation interfering with or delaying the construction of all or any portion of the Development Project in accordance with this Agreement.

19. "Home Investment Partnership Program" or "HOME" means the program authorized through 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., by the U.S. Department of Housing and Urban Development.

20. "Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment, or any subsequent standard as required.

21. "LIHTC" means low income housing tax credit, as defined in Section 42 of the Code.

22. "LIHTC Program" means the requirements of Section 42 of the Code, the federal regulations promulgated pursuant thereto and applicable thereto, and the regulations and policies of the New Mexico LIHTC allocating agency.

23. “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 and administration of such gross proceeds.

24. “Person” means any natural person, firm, association, trust, partnership, corporation or public body.

25. “Program Income” means the gross income earned by the Developer from City-supported activities. Program Income shall be treated as described in the *Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque*, Section 13.B. Accounting for Program Income, as amended.

26. “RAISE Improvements” means such improvements as permitted pursuant to the RAISE Grant Agreement and Chapter III.4 of FTA Circular 7050.1C, which may include, but shall not be limited to (i) two (2) 28-foot bus circulation lanes, including space for six (6) bus docks, and an approximately 110-foot wide pedestrian plaza area, including covered waiting areas, benches, lighting, transit and wayfinding signage, and other pedestrian amenities.

27. “Real Property” means the real estate that consists of all the property described on **Exhibit C** and improvements thereon (if any).

28. “Restrictive Real Estate Covenants” means those real estate covenants imposed on the Real Property substantially in the form attached as **Exhibit J** to insure the City’s goals in regards to the Affordable Housing Component of the Development Project.

29. “Subordination Agreement” means the agreement whereby the City agrees to subordinate the lien of the City Mortgage to all other Development Project financing, in substantially the form attached as **Exhibit K**, or such other form as reasonably requested and agreed to by the City, by such lenders providing financing to the Development Project.

30. “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.

31. “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 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.

(THIS SPACE INTENTIONALLY LEFT BLANK)

Exhibit C

Legal Description

2298 Indiana Street NE

Tract E-2A1 of Jeannedale Addition, Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat, filed in the Office of the County Clerk of Bernalillo County, New Mexico on October 9, 1998, in Plat Book 98C, Page 303.

Exhibit D

MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

($9,456,656.00 Loan)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Mortgage**”) is made as of ___________________, 20[__], by **Uptown Transit Affordable, LLLP**, a New Mexico limited liability limited partnership, whose address is 8220 Louisiana Blvd. NE, Suite B, Albuquerque, New Mexico 87113, as mortgagor (“**Borrower**”) and **Family Housing Development Corporation,** a New Mexico non-profit corporation, 8220 Louisiana Blvd. NE, Suite B, Albuquerque, New Mexico 87113, as mortgagee (“**Lender**”).

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

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

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

TOGETHER WITH, all rents, issues, profits, royalties, deposits, receipts, revenues, income, and all other benefits derived from the Property (collectively, the “**Rents**”), subject to the right, power and authority hereinafter given to Borrower to collect and apply the Rents.

Borrower and Lender covenant and agree as follows:

1. **Note; Other Obligations Secured**. This Mortgage is given to secure to Lender: (1) the repayment of the indebtedness evidenced by Borrower’s Promissory Note (the “**Note**”) of

even date herewith in the principal sum of **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00) of WHTF**, according to the terms of the Note payable to order of Lender, and extensions or renewals thereof; and (2) the performance of each agreement and covenant of Borrower incorporated by reference or contained herein.

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 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 (l) 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 Development 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:

UPTOWN TRANSIT AFFORDABLE, LLLP
8220 Louisiana Blvd. NE, Suite B
Albuquerque, NM 87113

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), except as contemplated herein, (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. Notwithstanding the foregoing, Borrower and Lender acknowledge that, at the time this Mortgage was recorded, the condominium regime for the Property, including the establishment of the Affordable Housing Condominium Unit, as evidenced by the recording of the Condominium Declaration and Condominium Plat, had not yet been

established and, as a result, this Mortgage encumbers the entirety of the Property. Lender covenants and agrees that, immediately upon the establishment of the condominium regime and the creation of the Affordable Housing Condominium Unit, Lender shall execute, deliver and cause to be recorded, such partial releases, amendments or other instruments as may be reasonably requested by Borrower, in form and substance reasonably satisfactory to Borrower and Lender, to evidence that the lien of this Mortgage is limited solely to the Affordable Housing Condominium Unit, and to release from this Mortgage the remainder of the Property from the same, together with all associated common elements. For the avoidance of doubt, the transfer and release of the Property, less the Affordable Housing Condominium Unit, shall not constitute a Transfer.

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 (i) any prior mortgage and any other prior liens or encumbrances of record, (ii) any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code), (iii) any restrictive covenants required by New Mexico Mortgage Finance Authority, and (iv) the City's Restrictive Real Estate Covenants recorded against the Property, provided that such Restrictive Real Estate Covenants, by their terms, must terminate upon foreclosure under this Mortgage and/or any mortgage upon the Real Property in a senior position to 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 Principal 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 principal indebtedness secured by this Mortgage shall not at any time exceed 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:

UPTOWN TRANSIT AFFORDABLE, LLLP,

By: ________________________________
Print: ______________________________
Title: ______________________________

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

On this ______ day of _________________________, 2026, before me personally appeared [_______________________], [Authorized Signatory/Representative] of UPTOWN TRANSIT AFFORDABLE LLLP, at New Mexico limited liability limited partnership and acknowledged that he executed the same as his free act and deed on behalf of the Borrower.

My Commission Expires: ___________________

____
Notary Public

Exhibit E

PROMISSORY NOTE

$9,456,656
Dated: ____________

FOR VALUE RECEIVED, the undersigned, UPTOWN TRANSIT AFFORDABLE, LLLP, a New Mexico limited liability limited partnership ("Maker"), promises to pay to the order of FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico nonprofit corporation ("Holder"), the principal sum of **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)**, 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. Holder and the City of Albuquerque (the “City”) entered into a Work Force Housing Trust Fund Development Agreement, dated ______________, 2026 (the “WHTF Agreement”).

1. **INTEREST**

Interest will be charged from the date of this Note, on the unpaid principal balance at the rate of ZERO PERCENT (0%).

2. **REPAYMENT**

All outstanding principal under this Note shall be due and payable 99 years, plus an additional 99 years, after the date hereof (the “Maturity Date”). Borrower shall have the right to prepay this Note in whole or in part without penalty.

3. **DEFAULT**

Lender agrees to accept any payment of principal, interest or late fees or cure of any default tendered by any member of Borrower on the same terms as if tendered by Borrower.

4. **NOTICES**

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by hand delivery or by first class mail to Borrower at 412 NW 5th Avenue, Suite 200, Portland, OR 97209 or at a different address if Borrower gives Lender a notice of Borrower’s different address. Any notice that must be given to Lender under this Note will be given by hand delivery or by first class mail to Lender at the address stated above or at a different address if Borrower is given a notice of that different address.

Copies of any notices given to Borrower under this Note shall be delivered concurrently to the following parties at the following addresses:

[INVESTOR LIMITED PARTNER]
[_________________________]
[_________________________]
Attn: [_____________________]

With a copy to:

[COUNSEL OF INVESTOR LIMITED PARTNER]
[_________________________]
[_________________________]
Attn: [_____________________]

5. CHANGE, DISCHARGE, TERMINATION, OR WAIVER

No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the holder hereof to exercise and no delay by the holder hereof in exercising any right or remedy under this Note and/or under the law shall operate as a waiver thereof.

6. SEVERABILITY

If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

7. ASSIGNMENT

Lender shall not assign this Note, or any interest in this Note, to any other party without the written consent of Borrower and the City, which consent shall not be withheld or delayed unreasonably.

8. CHOICE OF LAW; VENUE

This Note shall be governed by and construed in accordance with the laws of the State of New Mexico. Any dispute involving any issue regarding this Note may be heard in any appropriate court located in Bernalillo County, New Mexico.

9. INTEGRATION

This Note contains the complete understanding and agreement of Lender and Borrower and supersedes all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

10. BINDING EFFECT

This Note will be binding upon, and inure to the benefit of, Lender, Borrower, and their respective successors and assigns. Borrower may not assign its obligations under the Note.

11. **SECURITY**

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 Development Project and the real property constituting the site therefor. All of the provisions of the Mortgage are incorporated herein by reference.

12. **COMMERCIAL LOAN**

Borrower represents, warrants, and agrees that (i) the funds advanced under this Note shall be used for business or commercial purposes, and not for personal, family, or household purposes, and (ii) the Loan is intended and shall be deemed to be a commercial loan for all purposes under the law.

Exhibit F

PROJECT BUDGET

FINANCIAL SCHEDULES FROM APPENDIX B (on following pages):

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

Uptown Connect			21-Jul-26
CONSTRUCTION USE OF FUNDS (NORTH BUILDING)			
SE Corner of Uptown Blvd and Americas Parkway			4:10 PM

	AFFORDABLE		
USES of FUNDS	**ELIGIBLE BASIS**	**INELIGIBLE BASIS**	**TOTAL USES**
LAND COST	**$ -**	**$ 988,042**	**988,042**
Nusenda Owned Land	-	988,042	988,042
CLOSING COSTS	**83,539**	-	**83,539**
CONSTRUCTION	**60,223,917**	-	**60,223,917**
Hard Construction Costs	51,293,533		51,293,533
Contractor Overhead	1,025,871		1,025,871
Contractor General Requirements	2,051,741		2,051,741
Contractor Profit	2,174,846		2,174,846
Hard Cost Contingency	2,564,677		2,564,677
Sales Tax	1,113,249		1,113,249
FURNITURE & EQUIPMENT	**170,000**		**170,000**
ARCHITECTURAL & ENGINEERING	**2,566,217**	**807,827**	**3,374,044**
Plans & Drawings	2,372,746	807,827	**3,180,573**
Civil Engineering	127,641	-	**127,641**
Traffic Impact Study	20,000	-	**20,000**
ALTA Survey	20,000	-	**20,000**
Geotechnical Report	25,830	-	**25,830**
PERMITS & ENTITLEMENTS	**546,478**	-	**546,478**
UEC Fees	152,357	-	**152,357**
Building Permit Fees	394,121	-	**394,121**
FINANCING COSTS	**356,039**	**511,480**	**867,518**
Loan Fees	256,698	231,131	**487,828**
Trustee Fee		11,250	**11,250**
Bond Issuance Fees	99,341		**99,341**
Tax Credit Fees		269,099	**269,099**
CONSTRUCTION PERIOD COSTS	**1,777,091**	**1,108,368**	**2,885,459**
Builder's Risk Insurance	512,935	-	**512,935**
Liability Insurance	307,940	-	**307,940**
Lender Inspections	45,267	-	**45,267**
Const. Period Interest - Tax-Exempt	768,927		**768,927**
Const. Period Interest - Taxable	62,405		**62,405**
Const. Period Interest - NMHTF	79,616		**79,616**
Lease-up Interest - Tax-Exempt		732,722	**732,722**
Lease-up Interest - Taxable		335,647	**335,647**
Lease-up Interest - NMHTF		40,000	**40,000**
PRE-DEVELOPMENT COSTS	**113,485**	-	**113,485**
Appraisal	24,000	-	**24,000**
Market Study	5,500	-	**5,500**
Environmental	7,000	-	**7,000**
Soft Cost Contingency	76,985	-	**76,985**
LEGAL	**280,773**	**159,468**	**440,241**
Tax Credit Legal/Syndication Fee		65,000	**65,000**
Bond Counsel	72,914	2,086	**75,000**
Lender Counsel	69,286	-	**69,286**
Borrower Counsel	138,573	92,382	**230,955**
ACCOUNTING	**20,000**	-	**20,000**
RESERVES	**-**	**759,430**	**759,430**
Operating Reserves	-	709,430	**709,430**
Rent-up Reserve	-	50,000	**50,000**
DEVELOPER FEES	**9,259,255**	-	**9,259,255**
TOTAL USES OF FUNDS	**$ 75,396,794**	**$ 4,334,615**	**$ 79,731,409**

Uptown Connect	21-Jul-26
SOURCES & USES OF FUNDS (NORTH BUILDING)	
SE Corner of Uptown Blvd and Americas Parkway	4:13 PM

SOURCES of FUNDS	TOTAL SOURCES
LIHTC Equity	$ 25,632,347
Tax-Exempt Bonds Construction	$ -
Tax-Exempt Bonds Permanent	15,471,582
Taxable Bonds Construction	-
DWS Funds	1,000,000
RAISE	14,966,418
Workforce Housing Trust Fund Loan	9,456,656
CDBG	654,406
New Mexico Housing Trust Fund Loan	3,000,000
HOME (MFA)	3,000,000
National Housing Trust Fund	400,000
Deferred Developer Fee Loan	6,150,000
TOTAL SOURCES OF FUNDS	$ 79,731,409

	AFFORDABLE		
USES of FUNDS	ELIGIBLE BASIS	INELIGIBLE BASIS	TOTAL USES
LAND COST	$ -	$ 988,042	988,042
CLOSING COSTS	83,539	-	83,539
CONSTRUCTION	60,223,917	-	60,223,917
FURNITURE & EQUIPMENT	170,000		170,000
ARCHITECTURAL & ENGINEERING	2,566,217	807,827	3,374,044
PERMITS & ENTITLEMENTS	546,478	-	546,478
FINANCING COSTS	356,039	511,480	867,518
CONSTRUCTION PERIOD COSTS	1,777,091	1,108,368	2,885,459
PRE-DEVELOPMENT COSTS	113,485	-	113,485
LEGAL	280,773	159,468	440,241
ACCOUNTING	20,000	-	20,000
RESERVES	-	759,430	759,430
DEVELOPER FEES	9,259,255	-	9,259,255
TOTAL USES OF FUNDS	$ 75,396,794	$ 4,334,615	$ 79,731,409

Uptown Connect	21-Jul-26
RENTS AND INCOME	
SE Corner of Uptown Blvd and Americas Parkway	3:52 PM

OPERATING INCOME

UNIT TYPE	AMI (%)	# of Units	# of S8 Units	Monthly Tenant Rent	Monthly S8 Payment	Monthly Income	Annual Income
Studios (S1)	30%	10	0	495		4,953	59,431
Studios (S1)	80%	27	0	1,318		35,593	427,116
Studios (S1)	50%	8	0	846		6,770	81,241
Studios (S1) (HOME)	50%	5	0	846		4,231	50,776
Studios (S1) (PBV)	30%	10	10	460	582	10,420	125,040
Studios (S2)	30%	4	0	495		1,981	23,772
Studios (S2)	80%	13	0	1,318		17,137	205,649
Studios (S2)	50%	4	0	846		3,385	40,620
Studios (S2) (HOME)	50%	2	0	846		1,693	20,310
Studios (S2) (PBV)	30%	5	5	460	582	5,210	62,520
1 BD 1 BATH (A1)	30%	2	0	533		1,067	12,798
1 BD 1 BATH (A1)	80%	5	0	1,475		7,376	88,516
1 BD 1 BATH (A1)	50%	1	0	909		909	10,911
1 BD 1 BATH (A1) (HOME)	50%	2	0	909		1,819	21,822
1 BD 1 BATH (A1) (PBV)	30%	2	2	489	738	2,454	29,448
1 BD 1 BATH (A2)	30%	5	0	533		2,666	31,996
1 BD 1 BATH (A2)	80%	14	0	1,475		20,654	247,844
1 BD 1 BATH (A2)	50%	4	0	909		3,637	43,644
1 BD 1 BATH (A2) (HOME)	50%	3	0	909		2,728	32,733
1 BD 1 BATH (A2) (PBV)	30%	6	6	489	738	7,362	88,344
2 BD 2 BATH (B1)	30%	4	0	640		2,559	30,713
2 BD 2 BATH (B1)	80%	13	0	1,672		21,734	260,810
2 BD 2 BATH (B1)	50%	4	0	1,092		4,367	52,409
2 BD 2 BATH (B1) (HOME)	50%	2	0	1,092		2,184	26,205
2 BD 2 BATH (B1) (PBV)	30%	5	5	579	932	7,555	90,660
3 BD 2 Bath (C1)	30%	2	0	735		1,471	17,648
3 BD 2 Bath (C1)	80%	3	0	2,041		6,124	73,488
3 BD 2 Bath (C1)	50%	1	0	1,257		1,257	15,088
3 BD 2 Bath (C1) (HOME)	50%	1	0	1,257		1,257	15,088
3 BD 2 Bath (C1) (PBV)	30%	1	1	662	1,456	2,118	25,416
3 BD 2 Bath (C2/C3)	30%	1	0	735		735	8,824
3 BD 2 Bath (C2/C3)	80%	4	0	1,842		7,369	88,432
3 BD 2 Bath (C2/C3)	50%	1	0	1,257		1,257	15,088
3 BD 2 Bath (C2/C3) (HOME)	50%	1	0	1,257		1,257	15,088
3 BD 2 Bath (C2/C3) (PBV)	30%	1	1	662	1,456	2,118	25,416
Gross Potential Income		176	30	57,400		205,409	2,464,907
Other Income				10.00		1,760	21,120
Gross Residential Income						207,169	2,486,027
Vacancy				7.00%		(14,502)	(174,022)
Total Residential Income						$192,667	$2,312,005
Effective Gross Income (EGI)						$192,667	$2,312,005

Uptown Connect		21-Jul-26
	OPERATING EXPENSES	
SE Corner of Uptown Blvd and Americas Parkway		3:54 PM

OPERATING EXPENSES

CATEGORY	Monthly Expenses	Annual Expenses
Administrative Expenses	**27,800**	**333,600**
Accounting and Audit	587	7,040
Advertising	733	8,800
Legal	147	1,760
Property Management Fee	7,707	92,480
Management Salaries/Taxes	11,000	132,000
Office Supplies and Postage	587	7,040
Telephone	1,907	22,880
Other	5,133	61,600
Utility Expenses	**10,267**	**123,200**
Electricity	2,933	35,200
Water and Sewer	5,427	65,120
Gas	440	5,280
Garbage/Trash	1,467	17,600
Maintenance Expenses	**28,013**	**336,160**
Elevator	587	7,040
Exterminating	1,173	14,080
Grounds	2,933	35,200
Repairs	5,867	70,400
Maintenance Salaries and Taxes	10,267	123,200
Maintenance Supplies	6,160	73,920
Pool	1,027	12,320
Fixed Expenses	**5,133**	**61,600**
Insurance	5,133	61,600
Reserve for Replacement/Other Reserves	**4,400**	**52,800**
Reserve for Replacement (Annu: 3.0%	4,400	52,800
Total Operating Expenses	$75,613	$907,360
Net Operating Income	$117,054	$1,404,645
Tax-Exempt Bonds Permanent	($89,534)	(1,074,413)
New Mexico Housing Trust Fund Loan	($9,085)	(109,017)
HOME	($3,125)	(37,500)
National Housing Trust Fund	($42)	(500)
Total Distributable Cashflow		183,215
Debt Coverage Ratio		1.15

105470646.7
153238466.4 0071393-00020

Uptown Connect | Monthly Flow of Funds | 7/21/2026

SOURCES of FUNDS	TOTAL SOURCES	CONSTRUCTION SOURCES	CLOSE	DRAW 1	DRAW 2	DRAW 3
LIHTC Equity	25,632,347	6,408,087	2,563,235	-	-	-
Tax-Exempt Bonds Construction	-	22,915,451	-	-	-	-
Tax-Exempt Bonds Permanent	15,471,582	-	-	-	-	-
Taxable Bonds Construction	-	10,198,196	-	-	-	-
DWS Funds	1,000,000	1,000,000	1,000,000	-	-	-
RAISE	14,966,418	14,218,097	2,180,369	2,556,870	1,189,517	1,189,517
Workforce Housing Trust Fund Loan	9,456,656	8,983,823	-	-	-	-
CDBG	654,406	621,685	-	-	-	-
New Mexico Housing Trust Fund Loan	3,000,000	4,000,000	-	-	-	-
HOME (MFA)	3,000,000	2,850,000	-	-	-	-
National Housing Trust Fund	400,000	380,000	-	-	-	-
Deferred Developer Fee Loan	6,150,000	-	-	-	-	-
TOTAL SOURCES OF FUNDS	79,731,409	71,575,339	5,743,604	2,556,870	1,189,517	1,189,517

USES of FUNDS	TOTAL USES	CONSTRUCTION USES	CLOSE	DRAW 1	DRAW 2	DRAW 3
LAND COST	988,042	988,042	988,042	-	-	-
CLOSING COSTS	83,539	83,539	83,539	-	-	-
CONSTRUCTION	60,223,917	60,223,917	-	1,153,185	1,153,185	1,153,185
FURNITURE & EQUIPMENT	170,000	170,000	-	-	-	-
ARCHITECTURAL & ENGINEERING	3,374,044	3,374,044	2,413,490	34,716	34,716	34,716
PERMITS & ENTITLEMENTS	546,478	546,478	-	546,478	-	-
FINANCING COSTS	867,518	867,518	793,791	-	-	-
CONSTRUCTION PERIOD COSTS	2,885,459	2,698,075	-	822,492	1,617	1,617
PRE-DEVELOPMENT COSTS	113,485	113,485	24,500	-	-	-
LEGAL	440,241	440,241	440,241	-	-	-
ACCOUNTING	20,000	20,000	-	-	-	-
RESERVES	759,430	50,000	-	-	-	-
DEVELOPER FEES	9,259,255	2,000,000	1,000,000	-	-	-
TOTAL USES OF FUNDS	79,731,409	71,575,339	5,743,604	2,556,870	1,189,517	1,189,517

105470646.7
153238466.4 0071393-00020

Uptown Connect | Monthly Flow of Funds | 7/21/2026

SOURCES of FUNDS	DRAW 4	DRAW 5	DRAW 6	DRAW 7	DRAW 8	DRAW 9
LIHTC Equity	-	-	-	-	-	-
Tax-Exempt Bonds Construction	-	-	-	-	-	-
Tax-Exempt Bonds Permanent	-	-	-	-	-	-
Taxable Bonds Construction	-	-	-	-	-	-
DWS Funds	-	-	-	-	-	-
RAISE	1,477,813	1,766,110	1,766,110	1,766,110	325,681	-
Workforce Housing Trust Fund Loan	-	-	-	-	1,440,428	1,766,110
CDBG	-	-	-	-	-	-
New Mexico Housing Trust Fund Loan	-	-	-	-	-	-
HOME (MFA)	-	-	-	-	-	-
National Housing Trust Fund	-	-	-	-	-	-
Deferred Developer Fee Loan	-	-	-	-	-	-
TOTAL SOURCES OF FUNDS	1,477,813	1,766,110	1,766,110	1,766,110	1,766,110	1,766,110

USES of FUNDS	DRAW 4	DRAW 5	DRAW 6	DRAW 7	DRAW 8	DRAW 9
LAND COST	-	-	-	-	-	-
CLOSING COSTS	-	-	-	-	-	-
CONSTRUCTION	1,441,481	1,729,777	1,729,777	1,729,777	1,729,777	1,729,777
FURNITURE & EQUIPMENT	-	-	-	-	-	-
ARCHITECTURAL & ENGINEERING	34,716	34,716	34,716	34,716	34,716	34,716
PERMITS & ENTITLEMENTS	-	-	-	-	-	-
FINANCING COSTS	-	-	-	-	-	-
CONSTRUCTION PERIOD COSTS	1,617	1,617	1,617	1,617	1,617	1,617
PRE-DEVELOPMENT COSTS	-	-	-	-	-	-
LEGAL	-	-	-	-	-	-
ACCOUNTING	-	-	-	-	-	-
RESERVES	-	-	-	-	-	-
DEVELOPER FEES	-	-	-	-	-	-
TOTAL USES OF FUNDS	1,477,813	1,766,110	1,766,110	1,766,110	1,766,110	1,766,110

Uptown Connect — Monthly Flow of Funds — 7/21/2026

SOURCES of FUNDS	DRAW 10	DRAW 11	DRAW 12	DRAW 13	DRAW 14	DRAW 15
LIHTC Equity	-	-	-	-	-	-
Tax-Exempt Bonds Construction	-	-	-	-	-	-
Tax-Exempt Bonds Permanent	-	-	-	-	-	-
Taxable Bonds Construction	-	-	-	-	-	-
DWS Funds	-	-	-	-	-	-
RAISE	-	-	-	-	-	-
Workforce Housing Trust Fund Loan	1,766,110	1,765,471	1,802,335	443,369	-	-
CDBG	-	-	-	621,685	-	-
New Mexico Housing Trust Fund Loan	-	-	-		-	1,001,360
HOME (MFA)	-	-	-	320,417	1,765,471	764,112
National Housing Trust Fund	-	-	-	380,000	-	-
Deferred Developer Fee Loan	-	-	-	-	-	-
TOTAL SOURCES OF FUNDS	1,766,110	1,765,471	1,802,335	1,765,471	1,765,471	1,765,471

USES of FUNDS	DRAW 10	DRAW 11	DRAW 12	DRAW 13	DRAW 14	DRAW 15
LAND COST	-	-	-	-	-	-
CLOSING COSTS	-	-	-	-	-	-
CONSTRUCTION	1,729,777	1,729,777	1,729,777	1,729,777	1,729,777	1,729,777
FURNITURE & EQUIPMENT	-	-	-	-	-	-
ARCHITECTURAL & ENGINEERING	34,716	34,078	34,078	34,078	34,078	34,078
PERMITS & ENTITLEMENTS	-	-	-	-	-	-
FINANCING COSTS	-	-	36,864	-	-	-
CONSTRUCTION PERIOD COSTS	1,617	1,617	1,617	1,617	1,617	1,617
PRE-DEVELOPMENT COSTS	-	-	-	-	-	-
LEGAL	-	-	-	-	-	-
ACCOUNTING	-	-	-	-	-	-
RESERVES	-	-	-	-	-	-
DEVELOPER FEES	-	-	-	-	-	-
TOTAL USES OF FUNDS	1,766,110	1,765,471	1,802,335	1,765,471	1,765,471	1,765,471

105470646.7
153238466.4 0071393-00020

Uptown Connect | Monthly Flow of Funds | 7/21/2026

SOURCES of FUNDS	DRAW 16	DRAW 17	DRAW 18	DRAW 19	DRAW 20	DRAW 21
LIHTC Equity	-	-	-	-	-	-
Tax-Exempt Bonds Construction	-	538,586	1,775,008	2,361,060	2,950,235	2,965,957
Tax-Exempt Bonds Permanent	-	-	-	-	-	-
Taxable Bonds Construction	-	-	-	-	-	-
DWS Funds	-	-	-	-	-	-
RAISE	-	-	-	-	-	-
Workforce Housing Trust Fund Loan	-	-	-	-	-	-
CDBG	-	-	-	-	-	-
New Mexico Housing Trust Fund Loan	1,767,140	1,231,500	-	-	-	-
HOME (MFA)	-	-	-	-	-	-
National Housing Trust Fund	-	-	-	-	-	-
Deferred Developer Fee Loan	-	-	-	-	-	-
TOTAL SOURCES OF FUNDS	1,767,140	1,770,086	1,775,008	2,361,060	2,950,235	2,965,957

USES of FUNDS	DRAW 16	DRAW 17	DRAW 18	DRAW 19	DRAW 20	DRAW 21
LAND COST	-	-	-	-	-	-
CLOSING COSTS	-	-	-	-	-	-
CONSTRUCTION	1,729,777	1,729,777	1,729,777	2,306,370	2,882,962	2,882,962
FURNITURE & EQUIPMENT	-	-	-	-	-	-
ARCHITECTURAL & ENGINEERING	34,078	34,078	34,078	34,078	34,078	34,078
PERMITS & ENTITLEMENTS	-	-	-	-	-	-
FINANCING COSTS	-	-	-	-	-	-
CONSTRUCTION PERIOD COSTS	3,286	6,231	11,154	20,613	33,195	48,918
PRE-DEVELOPMENT COSTS	-	-	-	-	-	-
LEGAL	-	-	-	-	-	-
ACCOUNTING	-	-	-	-	-	-
RESERVES	-	-	-	-	-	-
DEVELOPER FEES	-	-	-	-	-	-
TOTAL USES OF FUNDS	1,767,140	1,770,086	1,775,008	2,361,060	2,950,235	2,965,957

Uptown Connect | Monthly Flow of Funds | 7/21/2026

SOURCES of FUNDS	DRAW 22	DRAW 23	DRAW 24	DRAW 25	DRAW 26	DRAW 27
LIHTC Equity	-	-	-	-	-	-
Tax-Exempt Bonds Construction	2,981,763	2,997,654	3,084,492	3,260,695	-	-
Tax-Exempt Bonds Permanent	-	-	-	-	-	-
Taxable Bonds Construction	-	-	-	444,540	3,148,574	3,230,158
DWS Funds	-	-	-	-	-	-
RAISE	-	-	-	-	-	-
Workforce Housing Trust Fund Loan	-	-	-	-	-	-
CDBG	-	-	-	-	-	-
New Mexico Housing Trust Fund Loan	-	-	-	-	-	-
HOME (MFA)	-	-	-	-	-	-
National Housing Trust Fund	-	-	-	-	-	-
Deferred Developer Fee Loan	-	-	-	-	-	-
TOTAL SOURCES OF FUNDS	2,981,763	2,997,654	3,084,492	3,705,236	3,148,574	3,230,158

USES of FUNDS	DRAW 22	DRAW 23	DRAW 24	DRAW 25	DRAW 26	DRAW 27
LAND COST	-	-	-	-	-	-
CLOSING COSTS	-	-	-	-	-	-
CONSTRUCTION	2,882,962	2,882,962	2,882,962	3,524,131	2,947,539	2,947,539
FURNITURE & EQUIPMENT	-	-	34,000	34,000	34,000	34,000
ARCHITECTURAL & ENGINEERING	34,078	34,078	34,078	34,078	34,078	34,078
PERMITS & ENTITLEMENTS	-	-	-	-	-	-
FINANCING COSTS	-	-	36,864	-	-	-
CONSTRUCTION PERIOD COSTS	64,724	80,614	96,589	113,027	132,958	151,049
PRE-DEVELOPMENT COSTS	-	-	-	-	-	38,492
LEGAL	-	-	-	-	-	-
ACCOUNTING	-	-	-	-	-	-
RESERVES	-	-	-	-		25,000
DEVELOPER FEES	-	-	-	-	-	-
TOTAL USES OF FUNDS	2,981,763	2,997,654	3,084,492	3,705,236	3,148,574	3,230,158

105470646.7
153238466.4 0071393-00020

Uptown Connect | Monthly Flow of Funds | 7/21/2026

SOURCES of FUNDS	DRAW 28	DRAW 29	DRAW 30	DRAW 31	DRAW 32	DRAW 33
LIHTC Equity	3,844,852	-	-	-	-	-
Tax-Exempt Bonds Construction	-	-	-	-	-	-
Tax-Exempt Bonds Permanent	-	-	-	-	-	-
Taxable Bonds Construction	2,453,939	182,092	183,139	184,191	185,249	186,314
DWS Funds	-	-	-	-	-	-
RAISE	-	-	-	-	-	-
Workforce Housing Trust Fund Loan	-	-	-	-	-	-
CDBG	-	-	-	-	-	-
New Mexico Housing Trust Fund Loan	-	-	-	-	-	-
HOME (MFA)	-	-	-	-	-	-
National Housing Trust Fund	-	-	-	-	-	-
Deferred Developer Fee Loan	-	-	-	-	-	-
TOTAL SOURCES OF FUNDS	6,298,791	182,092	183,139	184,191	185,249	186,314

USES of FUNDS	DRAW 28	DRAW 29	DRAW 30	DRAW 31	DRAW 32	DRAW 33
LAND COST	-	-	-	-	-	-
CLOSING COSTS	-	-	-	-	-	-
CONSTRUCTION	4,965,612	-	-	-	-	-
FURNITURE & EQUIPMENT	34,000	-	-	-	-	-
ARCHITECTURAL & ENGINEERING	34,078	-	-	-	-	-
PERMITS & ENTITLEMENTS	-	-	-	-	-	-
FINANCING COSTS	-	-	-	-	-	-
CONSTRUCTION PERIOD COSTS	169,609	182,092	183,139	184,191	185,249	186,314
PRE-DEVELOPMENT COSTS	50,492	-	-	-	-	-
LEGAL	-	-	-	-	-	-
ACCOUNTING	20,000	-	-	-	-	-
RESERVES	25,000	-	-	-	-	-
DEVELOPER FEES	1,000,000	-	-	-	-	-
TOTAL USES OF FUNDS	6,298,791	182,092	183,139	184,191	185,249	186,314

Uptown Connect

Monthly Flow of Funds

7/21/2026

SOURCES of FUNDS	DRAW 34	TOTAL SOURCES	REMAINING SOURCES
LIHTC Equity	19,224,260	25,632,347	-
Tax-Exempt Bonds Construction	(22,915,451)	-	-
Tax-Exempt Bonds Permanent	15,471,582	15,471,582	-
Taxable Bonds Construction	(10,198,196)	-	-
DWS Funds	-	1,000,000	-
RAISE	748,321	14,966,418	-
Workforce Housing Trust Fund Loan	472,833	9,456,656	-
CDBG	32,720	654,406	-
New Mexico Housing Trust Fund Loan	(1,000,000)	3,000,000	-
HOME (MFA)	150,000	3,000,000	-
National Housing Trust Fund	20,000	400,000	-
Deferred Developer Fee Loan	6,150,000	6,150,000	-
TOTAL SOURCES OF FUNDS	8,156,070	79,731,409	-

USES of FUNDS	DRAW 34	TOTAL USES	REMAINING USES
LAND COST	-	988,042	-
CLOSING COSTS	-	83,539	-
CONSTRUCTION	-	60,223,917	-
FURNITURE & EQUIPMENT	-	170,000	-
ARCHITECTURAL & ENGINEERING	-	3,374,044	-
PERMITS & ENTITLEMENTS	-	546,478	-
FINANCING COSTS	-	867,518	-
CONSTRUCTION PERIOD COSTS	187,384	2,885,459	-
PRE-DEVELOPMENT COSTS	-	113,485	-
LEGAL	-	440,241	-
ACCOUNTING	-	20,000	-
RESERVES	709,430	759,430	-
DEVELOPER FEES	7,259,255	9,259,255	-
TOTAL USES OF FUNDS	8,156,070	79,731,409	-

Exhibit G

Grant Payment Schedule

Source of Funds	Amount	Forgiven
Workforce Housing Trust Funds (Construction)	$8,356,656.00	End of Affordability Period
State Capital Outlay	$1,100,000	End of Affordability Period

(THIS SPACE INTENTIONALLY LEFT BLANK)

Exhibit H

DEVELOPMENT SCHEDULE FROM ATTACHMENT A (on following page):

1. Development Schedule B

Initial Closing Date	December 10, 2026
Construction Start Date	December 14, 2026
25% Construction Completion	July 14, 2027
50% Construction Completion	February 14, 2028
75% Construction Completion	September 14, 2028
90% Construction Completion	January 14, 2029
First Building Completion Date	April 14, 2029
Last Building Completion Date	April 14, 2029

Achievement of Sustaining Occupancy	July 14, 2029
Closing of Permanent Financing	October 14, 2029

Exhibit I

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.

Instructions for Completing Financial Status Report and Request for Reimbursement

1. Enter the name and mailing address of the agency submitting the report.

2. Enter the telephone number of the agency.

3. Enter the title of the City-funded project for which reimbursement is being requested.

4. Enter the contract number assigned to the project by the City.

5. For each contract. Requests for Reimbursement must be numbered sequentially, with the first request numbered "1" and so on for succeeding requests. Enter the number of this request.

6. Enter the name of a contact person at the agency from whom information about the request may be obtained.

7. Enter the starting date and ending date of the period for which reimbursement is being requested.

8. Enter the date that the request will be submitted to the City.

9. In the column headed "Approved Budget," enter the amounts for each line item in the most recent project budget approved by the City.

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

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

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

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

10c. Enter the typed name of the official.

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

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

Exhibit J

Family Housing Development Corporation
Uptown Connect

RESTRICTIVE REAL ESTATE COVENANTS

Made in Albuquerque, New Mexico   Date ___________

These Restrictive Real Estate Covenants are made by Uptown Transit Apartments LLLP ("Owner") in favor of the City of Albuquerque whose address is One Civic Plaza, Albuquerque, New Mexico, 87102, Post Office Box 1293, Albuquerque, NM, 87103, a municipal corporation ("City"), and shall run with the land until modified or released by the City, as more fully described herein.

1. Recitals:

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

B. For consideration for the assistance given by the City for the benefit of the Owner, the Owner has agreed to restrictions on the use and rental of the Affordable Housing Condominium Unit as defined in that certain Work Force Housing Trust Fund Development Agreement by and between Owner and City dated [_____________], 2026, (the "Development Agreement"), the Owner has agreed to comply with the terms set forth herein.

2. Definitions

"Affordability Period" means the period described in Section 9 hereof.

"AMI" means area median income adjusted for family size for households within the Albuquerque Metropolitan Statistical Area (MSA) as determined by the U.S. Department of Housing and Urban Development on an annual basis. For purposes of these Restrictive Real Estate Covenants, the relevant geographic area is the Albuquerque, New Mexico, Metropolitan Statistical Area.

"Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain decent, safe and sanitary living environment, or any subsequent standards as required.

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

"Program Income" means the gross income earned by the Contractor from City-supported activities. Program Income shall be treated as described in the *Administrative Requirements for*

Social Services Contracts Awarded Under the City of Albuquerque, Section 13.B. Accounting for Program Income, as amended.

"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 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.

3. Restrictive Real Estate Covenants

A. Use of Property. During the Affordability Period, the Owner shall maintain at least 176 affordable housing units (the "Affordable Units") in the Affordable Housing Condominium Unit for tenants between 30% and 80% of AMI, or less, with 79 units at or below 80% AMI, 39 units at or below 50% AMI, and 58 units at or below 30% AMI.

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

C. Income Qualifications. The Owner shall determine the annual income of a household occupying or seeking to occupy the Affordable Units, in accordance with the requirements of the low income housing tax credit program. The Affordable Housing Condominium Unit is intended to serve 176 households at or below 30% AMI, 50% AMI, and 80% AMI, as described herein. However, should the City and the Owner agree in good faith to change the income requirements, the income of the household for the Affordable Units shall not exceed **eighty percent (80%)** of the HUD published Area Median Income for the City of Albuquerque.

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

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

D. Rent Determination. Rents charged to occupants of the Affordable Units shall not exceed the maximum gross rent limits in Section 42 of the Internal Revenue Code and related Treasury Regulations.

(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, Owner shall have the right, at its sole cost and expense, to obtain and utilize an independent utility allowance study prepared by a qualified third-party for purposes of establishing the Utility Allowance for the Affordable Units. In the absence thereof, 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) If, after initial occupancy, a tenant's income increases above the applicable income limit, the unit shall continue to qualify as an Affordable Unit provided that the Affordable Housing Condominium Unit complies with the "Next Available Unit Rule" under Section 42 of the Internal Revenue Code and applicable Treasury Regulations. In such event, rent for the unit shall remain subject to the maximum gross rent limits established under Section 42 (including applicable utility allowances) and shall not be increased based on the tenant's actual income or prevailing market rents.

(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.

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 in an amount not less than Three Hundred Dollars ($300.00) per Affordable Unit per annum within (90) days of achieving 100% occupancy and from the date of acceptance of the Certificate of Occupancy issued by the City of Albuquerque until the terms of this Agreement have been met. Owner regulatory agreement in favor of the MFA, provided that the reserve is funded in amounts and on terms consistent with this Section.

6. Reserved.

7. Property Standards Requirements. The Affordable Housing Condominium Unit shall be maintained in compliance with all applicable local building codes, zoning, and state or agency standards applicable to low-income housing tax credit properties. The Owner shall permit inspection of the Real Property and the Project by the City and the MFA, or its authorized

representatives, upon at least seventy-two (72) hours' prior notice, or such notice as required in any applicable code or standard for such properties, 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 will require a reasonable annual administrative fee in the amount of $250.00 from the Owner for the purpose of monitoring the Affordable Housing Component of the Development Project.

C. Income received from the rental of Affordable Units: 1) If funded by HOME, shall be considered Program Income and must comply with 24 CFR § 92.503; 2) If funded by any other funds through the City, including Workforce Housing Trust Funds, shall be considered Program Income and must comply with the *Administrative Requirements for Social Services Contracts Awarded Under the City of Albuquerque*. For purposes of complying with the *Administrative Requirements*, the Owner may utilize Program Income for the Affordable Housing Component of the Development Project, in addition to the City funding. 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. During the Affordability Period, the Owner shall report annually within 90 days of the close of the Owner's fiscal year. The report shall include, but not be limited to, the financial statements for the Affordable Housing Component of the Development Project, Income and Expense Statement for the Affordable Housing Component, a Program Income budget for the Affordable Housing Component, 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. Subject to the terms of Section 3(A) hereof, 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 two

consecutive ninety-nine (99) year periods from the Completion Date of the Affordable Housing Component of the Development Project ("Affordability Period"), at which time such obligations shall cease. If the Owner can provide sufficient credible evidence that the building placed on the Real Property for 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 Real Property 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.

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. City covenants and agrees that, immediately upon the expiration of the Affordability Period, the City shall execute, deliver and cause to be recorded, such releases, amendments or other instruments as may be reasonably requested by Owner in form and substance reasonably satisfactory to Owner and the City, to release the Real Property from these Restrictive Real Estate Covenants.

11. Repayment Obligation. The City has contributed the sum of **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)** in Workforce Housing Trust Funds and Capital Outlay Funds (collectively "the Funds") towards the development of the Affordable Housing Component of the Development Project on the Real Property. The 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 "Repayment Obligation") during the first ninety-nine (99) years of the term of these Restrictive Real Estate Covenants. The 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 Funds Repayment Obligation shall become due. The addresses for the Owner and the Investor are as follows:

Owner: Family Housing Development Corporation
8220 Louisiana Blvd. NE, Suite B
Albuquerque, NM 87113

Investor: TBD

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

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

14. Restrictive Real Estate Covenants Limited to Affordable Housing Condominium Unit. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that these Restrictive Real Estate Covenants are intended to encumber solely the Affordable Housing Condominium Unit as defined in the Development Agreement. The parties further acknowledge that, at the time these Restrictive Real Estate Covenants are recorded, the condominium regime as contemplated under the Development Agreement for the Affordable Housing Condominium Unit may not yet be established and, as a result, these Restrictive Real Estate Covenants may encumber the entirety of the Real Property. In such event, the City covenants and agrees that, immediately upon the establishment of the condominium regime and the creation of the Affordable Housing Condominium Unit, the City shall execute, deliver and cause to be recorded, such partial releases, amendments or other instruments as may be reasonably requested by Owner in form and substance reasonably satisfactory to Owner and the City, to evidence that the restrictions of the Restrictive Real Estate Covenants are limited solely to the Affordable Housing Condominium Unit, and to release the remainder of the Real Property from such restrictions.

(THIS SPACE INTENTIONALLY LEFT BLANK)

Signed on this ______day of ____________, 2026

FAMILY HOUSING DEVELOPMENT CORPORATION
a New Mexico nonprofit corporation

By:________________________________
RICK E. DAVIS, Executive Director

STATE OF NEW MEXICO)
) **SS**
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on ___day of ____________, 2026, by RICK E. DAVIS of FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico nonprofit corporation.

____
Notary Public

My Commission Expires:
____

Exhibit K

SUBORDINATION OF MORTGAGE

This Subordination of Mortgage ("Subordination"), dated __________ ___, 2026, 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 FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico non-profit corporation (the "Developer") whose address 8220 Louisiana Blvd. NE, Suite B, Albuquerque, New Mexico 87113, and UPTOWN TRANSIT AFFORDABLE, LLLP, a New Mexico Limited Partnership (the "Borrower"), whose address is 8220 Louisiana Blvd. NE, Suite B, Albuquerque, New Mexico 87113. 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 ___________ ____, 2026, that certain Mortgage, Assignment of Rents and Security Agreement recorded in the real property records of Bernalillo County, as Doc# ________ on _________ ___, 2026 (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 Work Force Housing Trust Fund Development Agreement ("Development Agreement") between City and the Developer dated ______________, 2026.

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 _________ ___, 2026 (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 ___, 2026 in the aggregate principal amount of $___________.00 (collectively, the "Bank Note"), and that the lien of the City Mortgage be subordinated to the lien of the Bank Mortgage.

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

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

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

a. the Bank Note in the aggregate principal amount of $___________.00;

b. amounts advanced by Bank under the Bank Mortgage, its Loan Agreement or otherwise to complete construction of the Project, including cost overruns in any amount;

c. amounts advanced by Bank under the Bank Mortgage, its Loan Agreement or otherwise to protect or preserve the Project, for taxes, insurance, or receivership costs: and

d. interest on all such amounts together with costs, expenses and attorneys' fees of all such actions and any further actions to foreclose the Bank Mortgage or collect the Bank Note.

City shall not accelerate the obligations securing the City Mortgage or foreclose the City Mortgage without first providing not less than <u>30 days</u> 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:

____
SAMANTHA SENGEL
Chief Administrative Officer, City of Albuquerque

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

This Instrument was acknowledged before me on this _____ day of __________, 2026 by SAMANTHA SENGEL, Chief Administrative Officer of the City of Albuquerque.

____
Notary Public

My commission expires: ________________ SEAL

DEVELOPER:

FAMILY HOUSING DEVELOPMENT CORPORATION,
a New Mexico non-profit corporation

By:__________________________________
RICK E. DAVIS, Executive Director

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

This instrument was acknowledged before me on __________ ___, 2026, by RICK E. DAVIS, Executive Director of FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico non-profit corporation.

____
Notary Public

My commission expires: ________________________ SEAL

BORROWER:

UPTOWN TRANSIT AFFORDABLE, LLLP
a New Mexico limited liability limited partnership

By: ______________________________
Print: ____________________________
Title: _____________________________

On this ______ day of _________________________, 2026, before me personally appeared _____________________, [Authorized Signatory/Representative] of UPTOWN TRANSIT AFFORDABLE LLLP, a New Mexico limited liability limited partnership, and acknowledged that he executed the same as his free act and deed on behalf of said limited liability limited partnership.

My Commission Expires: ___________________

____
Notary Public

Exhibit L

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 _______________, 2026, is made by FAMILY HOUSING DEVELOPMENT CORPORATION ("Assignor"), in favor of the CITY OF ALBUQUERQUE, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico ("Assignee").

Recitals

1. Assignor is an affiliate of UPTOWN TRANSIT AFFORDABLE, LLP, 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 UPTOWN CONNECT (the "Project").

2. Pursuant to a Work Force Housing Trust Fund Development Agreement dated February ______, 2026, (the "Development Agreement"), Assignee granted **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)** of funds to Assignor (the "Funds Grant"), and Assignor will loan, as of the date hereof, such funds to Owner for the construction and development of the Project (the "Loan").

3. Owner executed the Promissory Note of even date herewith in the principal amount of **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)** 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 _________________, 2026 (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.

FAMILY HOUSING DEVELOPMENT CORPORATION,
a New Mexico nonprofit corporation

____

By: RICK E. DAVIS
Its: Executive Director

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

This instrument was acknowledged before me on _______ day of _________________, 2026, by RICK E. DAVIS as Executive Director of FAMILY HOUSING DEVELOPMENT CORPORATION, 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.

On this ______ day of _________________________, 2026, before me personally appeared RICK E. DAVIS, Managing Member of TBD FHDC UTC, LLC, a New Mexico limited liability company and managing general partner of UPTOWN TRANSIT AFFORDABLE LLLP, at New Mexico limited liability limited partnership 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 _________________________, 2026, before me personally appeared RICK E. DAVIS, Executive Director of FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico nonprofit corporation, the manager and sole member of TBD

FHDC UTC, LLC, a New Mexico limited liability company, and administrative general partner of UPTOWN TRANSIT AFFORDABLE LLLP, at New Mexico limited liability limited partnership and acknowledged that he executed the same as her 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 _________________________, 2026, before me personally appeared RICK E. DAVIS, Executive Director of FAMILY HOUSING DEVELOPMENT CORPORATION, and acknowledged that he executed the same as her free act and deed on behalf of the FAMILY HOUSING DEVELOPMENT CORPORATION.

My Commission Expires: ________________________________
____________________ Notary Public

Exhibit M

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), UPTOWN TRANSIT AFFORDABLE, LLLP, a New Mexico limited liability limited partnership (hereinafter "Developer" or "Assignee"), and FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico nonprofit corporation, or (hereinafter "Assignor"), on the _____ day of _______________, 2026. City, Assignee, and Assignor are sometimes hereinafter referred to collectively as the Parties and individually as a Party.

RECITALS:

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

WHEREAS, the Development Project located at the southeast corner of America's Parkway NE and Uptown Boulevard NE, which shall include an affordable housing component and condominium unit, as legally described in **Exhibit A** (the "Real Property'). The Real Property shall be used only for the purpose of providing 176 affordable housing units (the "Affordable Units") with 79 units at or below 80% AMI, 39 units at or below 50% AMI, and 58 units at or below 30% AMI (the "Affordable Housing Component"); and

WHEREAS, Palindrome Properties Group, LLC, an experienced developer of low-income housing tax credit developments has the necessary construction, and marketing expertise to develop and market the Affordable Housing Component, and is partnering with the Assignor; and

WHEREAS, the Assignee 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 Affordable Housing Component of the Development Project; and

WHEREAS, in order to obtain the benefits of LIHTCs and other tax benefits, the Affordable Housing Component will be owned by Assignee, whose co-general partner is FHDC UTC, LLC. The sole member of FHDC UTC, LLC, is the Assignor; and

WHEREAS, the City entered into that certain Work Force Housing Trust Fund Development Agreement dated [_____], 2026, with the Assignor under which the City agreed to advance no more than **NINE MILLION, FOUR HUNDRED FIFTY-SIX THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND NO CENTS ($9,456,656.00)** to construct the Affordable Housing Component of the Development 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 Affordable Housing Component activities as described in said Development Agreement and shall execute such documents in its own name.

B. Adhere to all Restrictive Real Estate Covenants as referenced 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 Chief Administrative Officer of the City of Albuquerque.

(THIS SPACE INTENTIONALLY LEFT BLANK)

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

CITY OF ALBUQUERQUE

By ______________________________
SAMANTHA SENGEL,
Chief Administrative Officer, City of Albuquerque

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

On this ______ day of _________________________, 2026, before me personally appeared SAMANTHA SENGEL, Chief Administrative Officer of the CITY OF ALBUQUERQUE, a New Mexico municipal corporation, on behalf of the City.

My Commission Expires:
____

____
Notary Public

ASSIGNEE:

UPTOWN TRANSIT AFFORDABLE, LLLP
a New Mexico limited liability limited partnership

By: ______________________________
Print: ____________________________
Title: _____________________________

On this ______ day of _________________________, 2026, before me personally appeared ____________________, [Authorized Signatory/Representative] of UPTOWN TRANSIT AFFORDABLE LLLP, at New Mexico limited liability limited partnership and acknowledged that he executed the same as his free act and deed on behalf of said limited liability limited partnership.

My Commission Expires: ________________________________
____
Notary Public

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

ASSIGNOR:

FAMILY HOUSING DEVELOPMENT CORPORATION

By:___________________________________
RICK E. DAVIS, Executive Director

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

This instrument was acknowledged before me on _______ day of ________________, 2026, by RICK E. DAVIS as Executive Director of FAMILY HOUSING DEVELOPMENT CORPORATION, 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.

On this ______ day of _________________________, 2026, before me personally appeared RICK E. DAVIS, Managing Member of TBD FHDC UTC, LLC, a New Mexico limited liability company and managing general partner of UPTOWN TRANSIT AFFORDABLE LLLP, at New Mexico limited liability limited partnership and acknowledged that he executed the same as his free act and deed on behalf of the Borrower.

My Commission Expires:
____

____
Notary Public

CONTRACT CONTROL FORM

Contact: Marlene Chavez
Phone: 505-768-4469

Req. Num.:
Acct. Num. : 432032
Act. Num.: 7379020

CCN: 202500014

PRELIMINARY

Type of Agreement: Intergovernmental

Description: FY24, DFA, Affordable housing pursuant. New agreement 24-I2698.
Dept/Div: Municipal Development/CIP

For Grants Only:
Indirect Costs for General Fund Services
% ______________________________

$ ______________________________

Vendor: New Mexico State, Department of Finance and Administration
Contract Amount: $1,100,000.00 Receivable
Contract Total:

Contract Term: 10/1/2024 to: 06/30/2028

FY Aggregate: $0.00

Date Submitted: 07/02/2024

PROCUREMENT:

WAIVERS REQUIRED:

RFP: No Waiver Letter Attached: ________ Approved: __________
Ins: Waiver Letter Attached: ________ Approved: __________

DRAFT CONTRACT:

Recd by Legal: ______________________ Rejected/Returned to Dept: ____________/____________
Returned to Legal:______________/________________ Approved: _____________ Initials: ___________

INSURANCE AND BONDS REQUIRED:

Bonds Required: NONE Attached: _______________
Insurance Required: NONE Attached: _______________

****

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:	Date Delivered	Returned to Dept.	Approved by	Approval Date	Approved by	Approval Date
Purchasing:						
Asst. City Attorney:					DS BR	9/25/2024 8:10 AM MDT
CIP:					DS CM DS CMP	9/10/2024 5:30 PM MDT 9/25/2024 7:57 AM MDT
City Attorney:					DS LK	9/28/2024 4:34 PM MDT
CAO:					DS	9/29/2024 7:03 PM MDT
Department:					DS JT	9/28/2024 10:12 AM MDT
Budget:						
Others: City Clerk					DS AS	10/7/2024 9:49 AM MDT

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of the date it is executed, by and between the Department of Finance and Administration, hereinafter called the “Department” or abbreviation such as “DFA/LGD”, and **CITY OF ALBUQUERQUE**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2024, Chapter 66, Section 28, Paragraph 56**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

24-I2698 $1,100,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 28, Paragraph 56, One Million One Hundred Thousand ($1,100,000.00), from the General Fund 93100 to acquire land for and to plan, design, construct and renovate affordable housing pursuant to the Albuquerque Workforce Housing Opportunity Act and as provided through a joint city-county affordable housing agreement for Albuquerque and Bernalillo county in Bernalillo county;

The Grantee's total reimbursements shall not exceed One Million One Hundred Thousand $1,100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero $0.00, which equals One Million One Hundred Thousand $1,100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [Optional Language if special conditions apply. Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

   i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

   ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

   iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

   iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

   v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

      a. must be approved by the applicable oversight entity (if any) in accordance with law; or

      b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

   Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

   vi. The Grantee shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

      a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

      b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

      c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.

      d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

---

[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF ALBUQUERQUE
Name: Dr. Samantha Sengel, EdD
Title: Chief Administrative Officer
Address: P.O. Box 1293, Albuquerque, NM 87103
Email: ssengel@cabq.gov
Telephone: 505-768-3000

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF ALBUQUERQUE
Name: Shawn M. Maden
Title: CIP Official
Address: P.O. Box 1293, Albuquerque, NM 87103
Email: smaden@cabq.gov
Telephone: 505-768-3616

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Lynda Martinez
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Lynda.Martinez@dfa.nm.gov
Telephone: 505-699-3971

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2028** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form provided by the Department. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of execution of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or

iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their 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 or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project’s funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **CITY OF ALBUQUERQUE** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **CITY OF ALBUQUERQUE**’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **CITY OF**

ALBUQUERQUE or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF ALBUQUERQUE** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF ALBUQUERQUE may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF ALBUQUERQUE only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department’s obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project’s assigned bond proceeds if the project doesn’t proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF’s Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

City of Albuquerque

Entity Name

DS BR 9/25/2024 | 8:10 AM MDT

DS Uk 9/28/2024 | 4:34 PM MDT

DocuSigned by:

BC2424C09B8741A...

Signature of Official with Authority to Bind Grantee

By: Dr. Samantha Sengel
(Print Name)

Its: Chief Administrative Officer
(Title)

9/29/2024 | 7:03 PM MDT

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:

Jeannette Gallegos

020E740B753A4C1...

By:

Its: Cabinet Secretary or Designee

10/1/2024

Date

STATE OF NEW MEXICO
GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: ______________________

B. Address: ______________________

(Complete Mailing, including Suite, if applicable)

____

City, State, Zip

C. Contact Name/Phone #: ______________________

D. Grant No: ______________________

E. Project Title: ______________________

F. Grant Expiration Date: ______________________

II. Payment Computation

A. Payment Request No. ______________________

B. Grant Amount: ______________________

C. AIPP Amount *(If Applicable)* : ______________________

D. Funds Requested to Date: ______________________

E. Amount Requested this Payment: ______________________

F. Reversion Amount (I*f Applicable*): ______________________

G. Grant Balance: ______________________

H. Final Request for Payment (*if Applicable*)

III. Fiscal Year : ______________________

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with the Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

______________________ ______________________

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

______________________ ______________________

Printed Name

Printed Name

Date: ______________________

Date: ______________________

(State Agency Use Only)

Vendor Code: ____________ **Fund No.:** ____________ **PO #** ____________ **Loc No.:** ____________

I certify that the State Agency financial and vendor file information agree with the above submitted information.

______________________ ______________________

Division Fiscal Officer Date

Division Project Manager Date

Revised 4-2022

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # __________

DATE: ______________________________

TO: Department Representative: ______________________________, ___________________________

FROM: Grantee Entity: ____

Grantee Official Representative:____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: ____

Grant Termination Date: ____

As the designated representative of the Department for Grant Agreement number ___________________________ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: ____

Third Party Obligation Amount: ____

Vendor or Contractor: ____

Third Party Obligation Amount: ____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _______________________________________

The Amount of this Notice of Obligation: _______________________________________

The Total Amount of all Previously Issued Notices of Obligation: _______________________________________

The Total Amount of all Notices of Obligation to Date: _______________________________________

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: ____

Title: ____

Signature: ____

Date: ____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.