

LOW INCOME HOUSING AGREEMENT

By and Between the

**INCORPORATED COUNTY OF LOS ALAMOS,
a municipal corporation,**

and

9th Street Apartments, LLC.

_____ 2025

Project: 9th Street Affordable Housing Project

Project Locations:

**Aspen Studio Apartments, 1027 & 1203 9th Street, Los Alamos, NM
Thunderbird Apartments, 1211 11th Street, Los Alamos, New Mexico**

LOW INCOME HOUSING AGREEMENT

This agreement ("Agreement") is entered this ____ day of _____ by and between the Incorporated County of Los Alamos, New Mexico, a municipal corporation, 1000 Central Avenue, Los Alamos, New Mexico 87544 ("County") and 9th Street Apartments LLC, a New Mexico limited liability company, ("Owner"). County and Owner are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party".

RECITALS

WHEREAS, the County has adopted specific language authorizing County to provide housing assistance grants within the County pursuant to Chapter 14 of the Los Alamos County Code of Ordinances ("County Code") and pursuant to the Affordable Housing Act; and

WHEREAS, on August 27, 2024, the County adopted an amended "Affordable Housing Plan", updating the market analysis, recommendations and strategies to better reflect the character and needs of the current housing market;

WHEREAS, the County subsequently adopted Incorporated County of Los Alamos Ordinance 02-360 which became effective on October 19, 2024, the ("Affordable Housing Ordinance"), to broaden the eligibility requirements and scope for affordable housing within the County to increase the current market supply and demand for affordable housing, and to update how the County can contribute and support the development of affordable housing.

WHEREAS, the State of New Mexico's Mortgage Finance Authority ("MFA"), approved the County's Affordable Housing Program as provided in Amended Article VII of Chapter 14;

WHEREAS, the cash contribution provided by the County hereunder is authorized under Article VII, Chapter 14 of the County Code.

WHEREAS, the Owner's proposed project is titled the 9th Street Affordable Housing Project ("Project") and will result in an eighty-seven (87) unit affordable rental housing development; and

WHEREAS, the Project will be located at Aspen Studio Apartments on 1027 and 1203 9th Street and at Thunderbird Apartments located at 1211 11th Street in Los Alamos, New Mexico;

WHEREAS, the Owner is a limited liability company authorized to operate in the State of New Mexico;

WHEREAS, the Owner and its development team have the necessary experience, knowledge, design, construction, and marketing expertise to develop and market the Project; and

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

ARTICLE I

Project Purpose and Description

Section 1.1. Project Description. The Project is located at Aspen Studio Apartments on 1027 and 1203 9th Street and at Thunderbird Apartments located at 1211 11th Street in Los Alamos, New Mexico 87544 and is more fully described in **Exhibit A** ("Project Site"). The Project shall consist of an eighty-seven (87) unit affordable housing rental development. Except as provided for in the Agreement, occupancy of all eighty-seven (87) units is restricted to households earning up to 45 % area median income ("AMI") as calculated by the United States Department of Housing and Urban Development ("HUD") (the "Income Qualification Requirement")¹. The Project shall also include, but may not be limited to, the renovation of between twenty (20) and twenty-five (25) apartment units and renovations to the apartment buildings currently on the Project Site with such renovations (collectively, the "Renovations") including, but not limited to, those minimum renovations described in **Exhibit B** of this Agreement. The Project Site shall remain an affordable rental housing Project for a period of twenty (20) years as provided herein.

Section 1.2. Purpose of Project. This Project is to provide housing for households that meet the Income Qualification

¹ As reported <https://www.huduser.gov/portal/datasets/il.html>

Requirements.. The Project is consistent with the goals established by the County Council in the Affordable Housing Plan and Affordable Housing Ordinance adopted by the County Council, specifically, to provide more diverse housing options for low- or moderate-income households. The Parties acknowledge that the AMI Income Qualification Requirements identified under this Agreement are below the standard for “low income.” Therefore, the County reserves the right, during the Affordability Period, to increase the AMI Income Qualification Requirements under this Agreement to a percentage above 45% if circumstances warrant such increase, to adapt to market conditions or avoid displacement of residents or tenants.

Section 1.3. Project Term. Services of the Owner designated herein are to commence upon the filing of a fully executed Agreement in the records of the County Clerk for the Incorporated County of Los Alamos (“*Effective Date*”), and shall be undertaken and completed in such sequence as to assure their expeditious completion considering the purposes of this Agreement. In any event, the Renovations shall be completed within three (3) years of the Effective Date of this Agreement unless otherwise agreed to by the County Manager and the Owner. All eighty-seven (87) apartments units located within the Project shall remain affordable housing for TWENTY (20) YEARS from the date the Proposed Restrictive Real Estate Covenant contemplated by **Exhibit C** is recorded in the real property records of the County Clerk of Los Alamos County. (“*Affordability Period*”).

Section 1.4 Replat; Legal Subdivision. The Deed Restriction contemplated herein is intended to encumber the current residential buildings and other vertical improvements (the “*Current Improvements*”) located on the Project Site. The Parties contemplate that Owner may, in the future, subdivide or replat the Project Site into one or more parcels of land, separating the Current Improvements and a portion of the vacant, unimproved land (the “*Unimproved Replatted Land*”). In the event that Owner completes the legal replat or subdivision of all or any portion of the Project Site, then the County shall release the Deed Restriction as to any Unimproved Replatted Land upon fifteen (15) days of written request from Owner and after completion of the replat and the Unimproved Replatted Land shall be removed from the definition of Project Site, Project, or shall otherwise be removed from the operation of this Agreement (except that the County’s obligation to release and waive the Deed Restriction for the Unimproved Replatted Land shall remain). For the purpose of clarification, the County shall not be required to release the Deed Restriction for any replatted or subdivided portions of land that include the Current Improvements.

ARTICLE II

County Consideration

Section 2.1 Description of County Contribution.

A. Cash Assistance to Obtain Deed Restriction Limiting Amount of Rent for Each Apartment. As part of the Project, the County shall donate THREE MILLION FOUR HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$3,480,000.00) to the Owner for the purpose of obtaining the deed restrictions provided as provided for in the Agreement (the “*Cash Assistance for Deed Restriction*”). The County shall establish proof of funds for the Cash Assistance within fifteen (15) days of the Effective Date and the Cash Assistance for Deed Restriction shall be paid in full to Owner concurrently with Owner’s acquisition of the Property and prior to or concurrently with the recording of the deed restriction.

B. Cash Assistance for Renovations. In addition to the Cash Assistance for Deed Restriction, as part of the Project, the County shall provide a reimbursement not to exceed FIVE HUNDRED TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$520,000.00) to assist Owner with the Renovations at the Project Site (the “*Cash Assistance for Renovations*”), collectively with the Cash Assistance for Deed Restriction, the “*Cash Assistance*”).

ARTICLE III
Commencement and Completion of the Project

Section 3.1. Agreement and Terms to Complete the Renovation. The Owner agrees that it shall:

A. Owner shall complete the Renovations to the Project Site with all reasonable dispatch and diligence. Owner shall have sole responsibility for the Renovations at the Project Site and shall perform the responsibilities by itself or through partners, affiliates, agents, contractors, subcontractors or others selected by it in whatever lawful manner it deems necessary or advisable provided it is in conformance with County, State or federal laws, codes, or ordinances. Owner shall procure from the appropriate State, County authorities and corporations appropriate site plan approvals, building permits, certificates of occupancy, and other agreements for the operation of the Project or as may otherwise be required by law.

B. The Owner shall make diligent efforts to complete the Renovations at the Project Site no later than three (3) years from the Effective Date of this Agreement. Owner shall make all requests for reimbursements pursuant to the Cash Assistance for Renovations not later than four (4) years following the Effective Date. The completion of the Renovations contemplated by this Agreement shall be evidenced by the Owner submitting satisfactory documentation to County demonstrating all the Renovations contemplated by this Agreement have been renovated in a timely and satisfactory manner. Upon Owner satisfying the County that the renovations have been completed as provided for in this Agreement and in a timely and satisfactory manner the County Manager shall notify the Owner that the County accepts that the Renovations contemplated by the Agreement have been completed in a timely and satisfactory manner.

C. County may conduct inspections of the Project Site for purposes of confirming that any particular renovation has been completed prior to making any disbursement of the Cash Assistance for Renovations during normal business hours after giving reasonable notice to Owner or as may be required due to other health, safety and public welfare needs. Owner is fully aware and understands that certain contractor and building standards (i.e., contractors standards and permitting, inspection, and approval of electrical, plumbing, and mechanical, etc.) are under the exclusive jurisdiction of the State's Construction Industries Division and the County has no authority to waive any fees, inspection(s), or permitting requirements.

ARTICLE IV
Conditions for Cash Assurances from the County to the Owner

Section 4.1. Cash Assistance to Obtain Deed Restriction Limiting Amount of Rent for Each Apartment: The Cash Assistance for Deed Restriction shall occur and be conditioned on the following:

A. The Owner is in the process of acquiring the Real Property. Owner's acquisition of fee title to the Real Property, if at all, shall be referred to as "Closing"). In anticipation of Closing, the County, pursuant to an escrow agreement acceptable to the County, the Owner, and the title company, shall escrow the Cash Assistance for the Deed Restriction with the title company that will perform the Closing. Owner shall notify the County fifteen (15) business days prior to the anticipated date of Closing and the County shall escrow the funds, pursuant to the terms and provisions of this Agreement, not less than five (5) days prior to the Closing.

B. At the Closing, the Owner shall execute, deliver, and record the Restrictive Real Estate Covenants ("Covenants" or "Deed Restrictions") on the Project Site in materially the same form and substance as described in the Restrictive Real Estate Covenant attached as **Exhibit C** to this Agreement.

C. Prior to transfer of the Cash Assistance, the Owner shall provide a Title Insurance Commitment and a pro forma Title Insurance Policy to County for the Project Site reflecting that the Owner is the insured party.

D. Upon the Closing and provided that the conditions in Paragraphs B and C directly above are reasonably complied with, and meeting all other conditions precedent to close in this Agreement (and any escrow agreement) the County shall instruct the title company to disburse Cash Assistance for the Deed Restriction to the Owner, concurrently with Closing.

Section 4.2. Transfer of County Cash Assistance for Renovation of Apartments and Apartment Buildings. The County shall transfer the Cash Assistance for Renovations as follows:

A. Upon completing the Renovations, the Owner shall submit a request for reimbursement to the County with documentation demonstrating that a particular renovation provided for in this Agreement has been completed in a timely and satisfactory manner along with an itemized invoice with supporting documentation demonstrating the cost of the renovation.

B. Upon the County being satisfied that a particular renovation provided for in this Agreement has been completed in a timely and satisfactory manner and that the itemized invoice and supporting documentation demonstrates the actual and reasonable costs for the renovation, the County shall reimburse the Owner for the itemized costs within THIRTY (30) days of receipt of the request for reimbursement.

ARTICLE V

Warranties and Obligations

Section 5.1. Warranties and Obligations by the County. The County makes the following warranties as the basis for the undertakings on its part contained herein.

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

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

Section 5.2. Warranties and Obligations by Owner. Owner makes the following warranties as the basis for the undertakings on its part herein contained.

A. Owner is a New Mexico limited liability company duly organized and validly existing as such under the laws of 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 Owner's Articles of Organization 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 Owner 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 Project Site or assets of Owner under the terms of any instrument or agreement.

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

D. The Agreement and the Deed Restrictions attached hereto are binding on the Owner as fee simple owner of the Project Site, as well as the Owner's successors, agents, or assigns who shall comply therewith as the Deed Restrictions run with the land.

E. During the Affordability Period, the Owner shall comply with the following provisions including, but not limited, to:

1. State and local planning and zoning requirements and housing code requirements, applicable to the Project, and allow the County to inspect the Project Site and Project.

2. Adhere to all applicable federal, state and local laws, codes, ordinances, rules, and regulations.

3. Maintain the Project as an affordable rental housing project for the Affordability Period as provided for herein and pursuant to the Deed Restrictions.

4. Adhere to the rent formula as set forth in the Deed Restrictions and as attached to this Agreement

as **Exhibit D**. Any rent increases, beyond those shown in **Exhibit D**, must be equal to or less than either (i) the number, expressed as a dollar figure, calculated as follows: (a) forty-five percent (45%) of the then current AMI, multiplied by thirty percent (30%); or (ii) as may be otherwise approved in writing by the County prior to implementation. To the extent that any tenant income may be received or derived from tenant's employment, then an amount not less than fifty percent (50%) of such employment income shall be from employment located within Los Alamos County. After the Restriction Period, the Deed Restriction shall expire and the rent and income sources may be adjusted, modified, or amended at Landlord's discretion.

- G. Except with the consent of the tenant, no tenant shall be displaced from their apartment for purposes of Renovation. The Owner shall schedule Renovations to any apartment unit only after the expiration of a current lease or upon written request of the tenant, if applicable.
- H. The Deed Restriction shall apply to any lease terms that start or otherwise commence after the Deed Restriction is Effective and shall not apply to tenants occupying the Project Site on the Effective Date. The Parties acknowledge that the current residential tenants have contractual leases (the "Current Leases") that will not be interfered with by the placement of the Deed Restriction; however, Owner shall cause the Current Leases to become compliant with the Deed Restriction upon renewal or extension of the Current Lease term. The foregoing notwithstanding, Owner shall be required to cause all tenants to comply with the Income Qualification Requirements within two (2) years following the Effective Date of the Deed Restriction.
- I. At the time the Deed Restriction is filed, existing tenants whose income exceeds the Income Qualification Requirement shall pay rent as has been agreed to between the Owner and the tenant through their tenancy. Within ninety (90) days following the recording of the Deed Restriction, existing tenants whose income is either at or below the Income Qualification Requirement shall pay rent as has been agreed to pursuant to this Agreement, provided that, such tenant provides sufficient information to Landlord regarding the income qualifications for Landlord to comply with the Reports.
- K. Tenants shall only be required to report compliance with the Income Qualification Requirements once per annum (the "Income Testing"), or upon lease renewal if the lease term is for less than one (1) year or greater than one (1) year. If a tenant does not meet the Income Qualification Requirement for any single year, then the tenant may meet the Income Qualification Requirement for any two (2) of the prior three (3) years. Income Testing may only be required once per lease term, or upon any renewal or extension of the lease term, unless a lease term in excess of two (2) years, in which case the tenant shall be Income Tested once per annum.
- L. The Owner shall ensure that the property manager takes commercially reasonable actions with the goal of preventing crime in the project including communicating and cooperating with the Los Alamos Police Department.
- M. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project nor any portion thereof shall used as a short-term rental, hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.
- N. At all times, the Project shall comply in all material respects with all applicable zoning and planning ordinances, building codes, energy codes, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project, to the extent that any of the foregoing are applicable to the Project.
- O. The Owner shall comply with the Rent Schedule attached as **Exhibit D** to this Agreement.

ARTICLE VI

Monitoring, Reporting, and Record Keeping

Section 6.1. The Owner shall report, in writing, at least quarterly, or as requested by County, until the earlier of (i) the distribution of all Cash Assistance for Apartment Rehabilitation, or (ii) the date that is four (4) years following the Effective Date, (as applicable, the "Quarterly Report"). Each Quarterly Report shall include the following: the progress of Renovation, along with any other information reasonably requested by the County related to the

Renovation. The Quarterly Report shall also include any reasonably related additional information requested by County. All Quarterly Reports shall be due within fifteen (15) business days of the end of the preceding calendar quarter, unless Owner can show in good faith that additional time is needed to collect and report the requested information.

Section 6.2. The Owner shall report annually (the “Annual Report”, collectively, with the Quarterly Report, the “Report(s)”) within ninety (90) days of the close of the Owner's calendar year and for so long as the Deed Restriction is in full force and effect, The Annual Report shall reasonably demonstrate compliance with the restrictive covenant by inclusion of the following information: the household income for each household in any unit, reasonable verification of reported income, household size, and the total rent paid by each household in any unit. Landlord shall make inquiry from the Tenants regarding the household income for each household in any unit, and Landlord shall take reasonable steps to verify the household income for each household in any unit by any of the following: (i) obtaining tenants’ most recent federal or state income tax return, (ii) obtaining paystubs, w-2s, or other current income verification document issued by the employer; or (iii) obtaining a letter or statement from tenant(s)’ employer confirming employment and payroll, along with a verified statement from tenant that no other employment income is received by tenant. As part of the Annual Report the Landlord shall furnish an affidavit to the County stating that household income for each household in any unit that has been supported by one of the means specified in subsection (i), (ii), or (iii) of this Section 6.2. Landlord shall not be responsible or liable for any false, misleading, or forged documents provided to Landlord.

Section 6.3. At any time during normal business hours if reasonably requested by the County or its designee, and upon no less than two (2) business days’ notice, there shall be made available to the County for examination, all of the Owner's records with respect and reasonably related to the occupancy, tenant qualifications, and payments received from the tenant(s). The Owner shall permit the County, or its designee to audit, examine, and make excerpts or transcripts from such records, and to make audits of any applicable contracts, invoices, and other data reasonably relating to the matters covered by this Section 6.3, the Project, or Owner’s overall operations effecting the Projects ongoing viability. Such inspections and costs related thereto shall be the sole responsibility of the County.

Section 6.4 Inspection of Public Records.

(A) Owner acknowledges and agrees that the County may be required to disclose and make responsive public record covered by to the State’s Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 through 14-2-12 (“Act”). Owner understands that certain records maintained by the Owner may be subject to the Act. Owner is a private entity and the agreements by and between the Owner and the County are limited to this Agreement, as may be modified, and occur on private property owned by Owner. The Reports were specifically negotiated between the Parties for the purpose of providing the County information reasonably related to the distribution of Cash Assistance. The Owner will work in good faith with the County to comply with relevant and applicable requests under the Act.

(B) If the County receives a request under the Act for records in the possession of the Owner and the County believes those are responsive to the request, the County shall promptly request in writing the records from the Owner.

(C) Within fifteen (15) days of the County’s request, the Owner shall respond to the County indicating whether the Owner will furnish the requested records to the County. If the Owner agrees to furnish the records to the County, the Owner shall furnish the records in due haste. However, if Owner believes the request for records is overly burdensome or broad or beyond the scope of the Act, the Owner shall provide the County with a written statement explaining why the Owner believes the request is excessively burdensome and broad along with reasonable timeline to furnish the requested records to the County, or a statement as to how the request is beyond the scope of the Act.

(D) If the Owner fails or refuses to provide the requested record to the County, and the Owner’s failure

or refusal to provide the records results in a civil action being filed against the County under the Act , the Owner shall seek to intervene in the civil action and may implead the requested records with the court. The County shall not oppose any motion filed by the Owner to keep the requested records confidential until and unless the court enters an order requiring the release of the records.

(E) If an adverse judgment is entered against the County based on the Owner's failure or refusal to provide the requested records to the County, the Owner shall pay the County and/or the County's insurer for the attorneys fees and costs of litigation incurred by the County or its insurer in defending the action, any deductible paid by the County to its insurer as a result of the claim, as well as any damages, including attorneys fees and costs of litigation, awarded to the Plaintiff(s) in the civil action.

ARTICLE VII

Fees, Taxes, Insurance and Other Amounts Payable

Section 7.1. Maintenance of Project. Owner agrees that, during the term of this Agreement as described in Section 1.3 and during the Affordability Period, it shall, at its own expense, keep the Project in as reasonably safe condition as its operations shall permit and keep the buildings and all other improvements forming a part of the Project in good repair and in good operating condition making, from time to time, all necessary repairs thereto and renewals and replacements thereof. Nothing herein discharges or relieves the Owner, its agents, or assigns, from meeting current State or local laws, ordinances, or regulations governing property maintenance or condition.

Section 7.2. Insurance Required. Throughout the term of this Agreement and Affordability Period, Owners shall keep the Project insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums with respect thereto including but not necessarily limited to the following coverage:

A. **PROPERTY INSURANCE FOR THE PROJECT SITE:** Owner shall obtain and maintain open-peril replacement cost property insurance with standard exemptions for the Project Site in an amount and form acceptable to the County.

B. **WORKERS' S COMPENSATION INSURANCE.** The Owner shall ensure and require that Owner and any contractor for the Project ("Contractor") shall comply with the provisions of all local, state, or federal worker's compensation insurances such as that covered by the Worker's Compensation Act and the New Mexico Occupational Disease Disablement Law. Owner, if applicable, shall procure and, maintain, during the life of the Project complete Worker's and Employer's Liability Insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under NMSA 1978, §52-1-10 for safety devices. With respect to worker's compensation insurance, if Owner or Contractor elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the Project is to be subcontracted or sublet, Owner 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, Owner shall require that the Contractor and its surety shall waive any right of subrogation they may acquire against the County, 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 Owner nor its employees, agents, contractors, or subcontractors are employees or agents of the County for any purpose whatsoever. The Owner is an independent contractor at all times in the performance of this Agreement. The Owner further agrees that neither it nor its employees are entitled to any benefits from the County 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 County under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

C. **INCREASED LIMITS:** The County may require Owner to reasonably increase the maximum limits of any insurance required herein and Owner shall promptly comply. Any such requirement shall be provided in

writing to the Owner's listed contact or Project Manager.

D. **PROOF OF INSURANCE:** During the term of this Agreement, not less than once each year, on or before the annual anniversary Effective Date of this Agreement, Owner shall provide to the County without demand, or more frequently upon demand, proof of all required insurance coverage.

Section 7.3. Application of Net Proceeds of Property Insurance. The Net Proceeds of property 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.

Section 7.4. Advances by County. If Owner shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating condition shall permit or shall fail to keep the buildings in good repair and good operating condition, the County 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 County shall become an additional obligation of Owner to the County which amounts, together with any interest thereon at the statutory judgment interest rate thereof, Owner agrees to pay on demand.

Section 7.5. Waiver of Certain County Planning, Zoning, and Building Fees. The County through its Affordable Housing Ordinance shall waive all County Planning, Zoning, and Building Permit fees related to the Project as may be assessed by the Community Development Department or County Fire Department.

ARTICLE VIII

Damage, Destruction and Condemnation

Section 8.1. Damage, Destruction and Condemnation. In the event the Project Site is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the Project Site 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, Owner shall cause the net proceeds of insurance or from any award made in such eminent domain proceedings to be applied as follows:

A. First, to the restoration of the buildings and other improvements located on the Project Site, which shall be restored to not less than substantially the same conditions as existed prior to the casualty causing the damage or destruction or the exercise of eminent domain, provided such repair or re-construction is physically and economically feasible.

B. Second, to repay any liens on the Project to any lender; and

C. Third, and only if the project cannot be rebuilt for the purpose of providing affordable housing pursuant to this Agreement due to economic in-feasibility, then the Deed Restriction shall be terminated, and Owner shall reimburse to County a portion of the Cash Assistance as follows:

- (i) *ProRata Return of the Cash Assistance for Renovations* - If the casualty occurs during the first ten (10) years following the Effective Date, then a portion of the Cash Assistance for Renovations shall be refunded to the County being (a) the sum of all Cash Assistance for Rehabilitation actually made by the County shall be multiplied by (b) a fraction, expressed as a percentage, (y) the numerator being the difference between the number of months having elapsed from the Effective Date, minus 120; and (z) the denominator being 120;
- (ii) *ProRata Return of the Cash Assistance for Deed Restriction* - If the casualty occurs during the first twenty (20) years following the Effective Date, then a portion of the Cash Assistance for Deed Restriction shall be refunded to the County being (a) the sum of all Cash Assistance for Deed Restriction actually

made by the County shall be multiplied by (b) a fraction, expressed as a percentage, (y) the numerator being the difference between the number of months having elapsed from the Effective Date, minus 360; and (z) the denominator being 360.

ARTICLE IX Special Covenants

Section 9.1. County's Right of Access to the Project. Unless, otherwise provided herein, Owner agrees that upon at least two (2) business days' notice the County and any of its duly authorized agents shall have the right at all reasonable times to enter upon, examine, and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Project and shall be subject to the rights provided to any tenant in possession of any rented unit.

Section 9.2. Good Standing. Owner warrants and represents that it is in good standing with the State of New Mexico and will remain in good standing with the State of New Mexico through the Term of this Agreement.

Section 9.2. Release and Indemnification Agreement. Owner releases the County and covenants and agrees that the County shall not be liable to the Owner or any other third party for any loss or damage to property or any injury to or death of any person or persons occasioned by any cause whatsoever pertaining to the Project or the use thereof, other than County's willful negligence. Owner shall defend, indemnify and hold harmless the County 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 and the Deed Restrictions or any other cause whatsoever pertaining to the Project, subject to the limitations found in NMSA 1978 § 56-7-1, but excluding any acts or omissions of County that were unlawful or willfully negligent. The County 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 County in respect of which indemnity hereunder may be sought, notify Owner 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 County or of its officials, employees and agents. This indemnification agreement shall survive the Term of this Agreement.

Section 9.3. Sale and Assignment. Except as otherwise expressly permitted herein Owner shall not sell, assign, dispose of, the Project or any part thereof without the prior written consent of the County which shall not be unreasonably withheld.

Section 9.4. Authority of Authorized County Representative. Whenever, under the provisions of this Agreement, the approval of the County is required or Owner is required to take some action at the request of the County, such approval or such request shall be made by the County Manager or her designee unless otherwise specified in this Agreement and Owner shall be authorized to act on any such approval or request. If the County fails to respond to any request made pursuant to this Agreement within thirty (30) business days, such request shall be considered approved.

ARTICLE X Events of Default Defined

Section 10.1. 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 Owner to observe and perform any covenant, condition, or term of this Agreement on its part to be observed or performed hereunder for a period of thirty (30) days after written notice from County to Owner 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 Owner shall not be in default if, within such thirty (30) day period, Owner notifies County that it has undertaken reasonable measures to cure the default and specifies the nature of such measures, and date such actions Owner believes such alleged default will be cured.

B. Owner agrees that as long as this Agreement is in effect, it shall maintain its existence as a corporation in good standing and shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another entity.

C. The violation of any provision of the Deed Restrictions as proposed and attached in **Exhibit C**.

Section 10.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the County nor any remedy conferred upon or reserved to the County in this Agreement or the Deed Restrictions 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 County 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 10.3. Agreement to Pay Attorneys' Fees and Expenses. If Owner defaults under any of the provisions of this Agreement, or Deed Restrictions, and the County employs attorneys or incurs other expenses for the enforcement of performance or observance or any obligations or agreement on the part of Owner herein contained in this Agreement or Deed Restrictions Owner agrees that it shall on demand therefor pay to the County the reasonable fees of such attorneys and such other reasonable costs and expenses incurred by the County.

Section 10.4. No Additional Waiver Implied by One Waiver. If any term or condition contained in this Agreement should be breached by either Party and thereafter waived by the Party, such waiver shall be limited to only the particular breach so waived and shall not be deemed to waive any other breach. Owner understands and agrees that County, as a public body may not by any one employee or agent, unless approved by the County Council, waive certain inalienable remedies and rights as provided by State, federal or local law.

Section 10.5. Remedies Upon Default. The following are the remedies available upon default:

A. Upon any Event of Default (“Default”) and regardless of any other notices previously provided, the County may send a Final Notice of Default to Owner 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 County made to cure the Default, the County may sue for all damages suffered by the County due to the Default as well as, if appropriate, punitive damages.

ARTICLE XI

Miscellaneous

Section 11.1. 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 County:
County Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544

With Copy to:
Community Development Director
Incorporated County of Los Alamos
1000 Central Avenue, Suite 150
Los Alamos, New Mexico 87544

If to Owner:
Authorized Owner Representative
9th Street Apartments LLC,
a New Mexico limited liability company
171 Calle Medico, Suite L
Santa Fe, New Mexico 87505

With Copy to:
The Cash Law Firm
Attn: Amber G. Cash
PO Box 20718
Albuquerque, New Mexico 87154

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

Section 11.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County, Owner and their respective successors and assigns, subject however to the limitations contained herein.

Section 11.3. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the County or the Owner in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 11.4. Amendments, Changes and Modifications. Except as otherwise provided in this, this Agreement shall not be effectively amended, changed, modified, altered or terminated except by mutual written agreement of the Parties or by operation of law and/or the terms contained herein.

Section 11.5. 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 11.6. Other Instruments. Owner and the County 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 herein.

Section 11.7. Governing Law. The Parties herein specifically agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

Section 11.8. Recording. This Agreement as well as the Deed Restrictions and every assignment and modification thereof shall be recorded in the office of the Los Alamos County Clerk.

Section 11.9. No Pecuniary Liability of County. No provision, covenant or agreement contained in this Agreement or any obligations herein imposed upon the County or the breach thereof shall constitute an indebtedness of the County 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 County or a charge against its general credit or taxing powers.

Section 11.10. 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 11.11. Assignment and Subletting. Except as otherwise permitted herein, the Owner 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 Deed Restrictions without the prior written approval of the County. The County has no obligation to and shall not be required to approve any assignment or other transfer of this Agreement that would result in the Project services required in this Agreement being performed by any other person or entity other than the Owner.

Section 11.12. 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 Owner the general representative or agent of County for any purpose whatsoever.

Section 11.13 Force Majeure. Except for the County's obligation to make the Cash Assistances, neither County nor Owner shall be deemed to be in default hereunder, if either Party is prevented from performing any of the obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions, pandemic or epidemic, or the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. Pending after the termination of any such event of Force Majeure forbearance shall terminate, and the obligation to perform shall recommence with an appropriate and reasonable extension to any deadlines.

Section 11.14. Forum. 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 Los Alamos 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 11.15. Compliance with Laws. The Owner shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project.

Section 11.16. Legal Counsel. County and Owner 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. County and Owner 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 11.17. 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 11.18. Approval Required. This Agreement shall not become effective or binding until approved by the County Council as required by State law and local charter and ordinances. The Effective Date of this Agreement shall be as provided in Section 1.3.

Section 11.19. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each Party and such transferees, their successors, assigns and all Parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement and Deed Restrictions attached hereto and or as may be recorded in the County Clerk's Office in final form.

Section 11.20. Open Meetings Act, NMSA 1978, §§ 10-15-1 through 10-15-4. Owner acknowledges and agrees to work collaboratively in ensuring that any necessary approvals required under this Agreement meet the State Open Meetings Act, NMSA 1978, §§ 10-15-1 through 10-15-4 ("Open Meetings Act") requirement that any matter requiring County Council approval shall be noticed at least seventy-two (72) hours of a scheduled open public meeting in which the matter will be heard. Owner further acknowledges that some matters may require the action to occur via an ordinance requiring both an initial introduction and public hearing; all in accordance with the County Charter.

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

INCORPORATED COUNTY OF LOS ALAMOS

9TH STREET APARTMENTS, LLC By:

By:

Anne W. Laurent, County Manager

Russell Brott, President

Date:

Date:

County Acknowledgement

STATE OF NEW MEXICO)

) ss.

LOS ALAMOS COUNTY)

This instrument was acknowledged before me on this _____
by _____, Anne W. Laurent, County Manager for the Incorporated County of Los Alamos, a New Mexico municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

Owner Acknowledgement

STATE OF NEW MEXICO)
) **ss:**
COUNTY OF _____)

The above and foregoing instrument was acknowledged before me this _____, by
Russell Brott as the managing member of **9TH STREET APARTMENTS LLC.**

NOTARY PUBLIC

My commission expires: _____

Exhibit A
Project Site



Parcel PIN 1034112172402, Legal EA2 138B, also known as 1211 11th Street, comprised of 24 studio apartments

Parcel PIN 1034112205394, Legal EA2 140, also known as 1027 and 1203 9th Street, comprised of 63 studio apartments.

Exhibit B
Minimum Renovation Requirement

- 1) Convert a portion of downstairs units of at least 10% to ADA accessible residential units;
- 2) Repair or replace the rooftop of the three Buildings located on the Project Site;
- 3) Repair or replacement of HVAC units, mini split units, and decommission gas boiler within the Building.

Exhibit C
Proposed Restrictive Real Estate Covenants

~DRAFT~

STATE OF NEW MEXICO
THE INCORPORATED COUNTY OF LOS ALAMOS

RESTRICTIVE REAL ESTATE COVENANTS

NOW COMES, 9TH STREET APARTMENTS LLC., a New Mexico limited liability company ("Owner") who enters into the following Real Estate and Property Use Covenants made by in favor of the Incorporated County of Los Alamos ("County") whose address is 1000 Central Avenue, Los Alamos, New Mexico, 87544, an incorporated county, which covenants shall run with the below identified real property until _____, 2045 (the "Term"), unless earlier modified or released by the County

1. Burdened Property and Consideration.

- A. The Owner is the owner fee simple of that certain real estate in Los Alamos County New Mexico, legally described as follows (collectively, the "Real Property"):

Lot 140 of Eastern Area No. 2, as shown on "ALTA / NSPS Land Title Survey Plat Prepared for S & J Development of Lot No. 140, Eastern Area 2, Los Alamos County, State of New Mexico, Corrected March 9 2016.", recorded on March 10, 2016, in Book 171, page 907, records of Los Alamos County, New Mexico;

AND

Lot 138B, of Eastern Area No. 2, as shown on "Boundary Survey Plat Prepared for S & J Development, LLC, a New Mexico Limited Liability Company, Lying and Being Situate at 1211 11th Street, Lot 138 B, Eastern Area No. 2, County of Los Alamos, State of New Mexico.", recorded on June 7, 2013, in Book 163, page 489, records of Los Alamos County, New Mexico.

- B. In consideration of the Assistance of Affordable Housing grants given by the County for the benefit of the Owner and the Real Property, the Owner has agreed to the below land and use restrictions on the use and rental of the Real Property for the Term.

2. Definitions:

"AMI" means Area Median Income, adjusted annually based on the annual income figure for a specific geographic area which is determined annually by the U.S. Department of Housing and Urban Development and adjusted for household size.

"Annual Income" means the anticipated total income from all sources, as defined in Internal Revenue Code Section 42, to be received by the household head and spouse and each additional member of the household during a twelve-month period.

"Effective Date" is the date this agreement is signed and recorded in the County Clerk's Office.

"Household" means one or more individuals residing in a household.

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

"Unit" shall mean any one of the existing residential apartments units located on the Real Property.

3. Restrictive Covenants. The following shall constitute the “Covenants” on the Real Property for the Term:
 A. Use of Property. Except as provided for in the Land Development Agreement, the residential occupancy of any Unit shall be restricted to only those Households having an Annual Income or Household Income, as applicable, of not more than forty-five percent (45%) of AMI for the preceding calendar year, or anticipated Household Income for the prospective calendar year. The Project shall remain an affordable rental housing Project for the Term as provided herein.

B. Rent Control. The rents charged by the Owner (or by the Owner’s property manager) shall not exceed the greater of (i) those amounts as such is shown and described in Table 1, below; or (ii) the number, expressed as a dollar figure, calculated as follows: (a) forty-five percent (45%) of the then current AMI, multiplied by thirty percent (30%); or (iii) as may be otherwise approved in writing by the County prior to implementation. Rents contemplated herein do not include utilities, amenities, deposits, or other sums due, owing or accruing, other than base rent.

Table 1:

<u>Year</u>	<u>Average Rent</u>
<u>Year 1</u>	<u>\$900</u>
<u>Year 2</u>	<u>\$945</u>
<u>Year 3</u>	<u>\$992</u>
<u>Year 4</u>	<u>\$1,042</u>
<u>Year 5</u>	<u>\$1,094</u>
<u>Year 6</u>	<u>\$1,138</u>
<u>Year 7</u>	<u>\$1.183</u>

4. Term. After the Effective Date the Covenants contained herein shall run with the land and remain effective for the duration of the Term. These Restrictive Real Estate Covenants shall automatically expire at midnight on the last day of the Term. The restrictions, covenants, terms, and conditions of this Agreement shall expire and terminate, without further action by any party on _____ 2045.

5. Waiver of Restriction in the event of Replat; Legal Subdivision. The Covenants contemplated herein are intended to encumber the current residential buildings and other vertical improvements (the “Current Improvements”) located on the Real Property as of the Effective Date. The parties contemplate that Owner may, in the future, subdivide or replat the Real Property into one or more parcels of land, separating the Current Improvements and a portion of the vacant, unimproved land (the “Unimproved Replatted Land”). In the event that Owner completes the legal replat or subdivision of all or any portion of the Real Property, then the County shall release these Covenants Restriction as to any Unimproved Replatted Land upon fifteen (15) days of written request from Owner. For the purpose of clarification, the County shall not be required to release these Covenants for any replatted or subdivided portions of land that include the Current Improvements.

6. Covenants Running with Real Property. This Agreement shall be and constitute covenants running with the title to the Real Property for the benefit of the County during the Term of this Agreement and shall be enforceable by the County by legal and equitable action, including an action for injunctive relief.

7. Any failure of the Owner to comply with any provision of these covenants, after written notice and a thirty (30) day right to cure, shall constitute a default under the Land Development Agreement, executed in connection with these Restrictive Real Estate Covenants.

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

Signed on this _____.

9TH STREET APARTMENTS, LLC

By: _____
Russell Broth, Managing Member

STATE OF NEW MEXICO)
) ss.
_____ COUNTY)

This instrument was acknowledged before me on _____ by Russell Brott as Manager of **9TH STREET APARTMENTS LLC**, a New Mexico limited liability company.

Notary Public

My Commission Expires:

Exhibit D
Rent Schedule

<u>Year</u>	<u>Average Rent</u>
Year 1	\$900
Year 2	\$945
Year 3	\$992
Year 4	\$1,042
Year 5	\$1,094
Year 6	\$1,138
Year 7	\$1,183