

**LAND DEVELOPMENT AGREEMENT****By and Between the****INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO,  
a municipal corporation,****and****BETHEL DEVELOPMENT, INC.****January, 2019****Project: THE BLUFFS****Project Location:****135 DP Road, Los Alamos, New Mexico 87544**

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Los Alamos County, NM  
AGREEMENT

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*Land Development Agreement*  
*Bethel Development, Inc.*

**LAND DEVELOPMENT AGREEMENT**

This agreement ("Agreement") is entered this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the Incorporated County of Los Alamos, New Mexico, a municipal corporation, 1000 Central Avenue, Los Alamos, New Mexico 87544 ("County") and **Bethel Development Inc.**, 201 Bradenton Avenue, Suite 120, Dublin, Ohio 43017, **an Ohio corporation and/or its successors or assigns** ("Developer"). County and Developer are sometimes hereinafter referred to collectively as "the Parties" and individually as "a Party".

**RECITALS**

WHEREAS, the County has determined by Ordinance Number 690, adopted December \_\_, 2018, that a serious shortage of decent, safe, sanitary, and affordable residential housing exists in the County; and

WHEREAS, the County adopted the Affordable Housing Plan revised January 14, 2010, adopted via Ordinance 664 on March 8, 2016, and has set Housing Goals which included promotion of the creation of a variety of housing options for all segments of the County including infill opportunities as appropriate, and supporting development of affordable housing; and

WHEREAS, the County, in County Code Chapter 14 Article VII, provides the necessary authority for the County to donate public real property and land for affordable housing projects;

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

WHEREAS, the County in Ordinance 690, proposes to donate real property located at 135 DP Road, and as set forth in more detail in the attached legal description herein, for an Affordable Housing Project; and

WHEREAS, the public land donation contribution provided by the County hereunder is authorized under County Code Chapter 14 Article VII; and

WHEREAS, the Developer signed a Letter of Understanding with the County wherein the Parties agreed to work collaboratively to enable the Developer to apply to MFA for a Low-Income Housing Tax Credit ("LIHTC") award for the 2019 round; and

WHEREAS, the Developer's proposed project is titled The Bluffs ("Bluffs" or "Project") and will result in a 64-unit affordable rental housing development; and

WHEREAS, the Project will be located on part of Tract A-8-b on DP Road, slightly east of the County's Townsite

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downtown area which has been determined by the Parties to be an area appropriate for an in-fill affordable housing project;  
and

WHEREAS, the Developer is a corporation authorized to operate in the State of New Mexico; and

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

WHEREAS, if County Ordinance 690 is approved, the Parties will finalize this Agreement and Developer will then timely apply to MFA for the LIHTC 2019 funding round; 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

### Use of Definitions

Section 1.1. The definitions County Code Chapter 14 Article VII as they exist at the time of the execution of this Agreement or as amended during the term of this Agreement are adopted by reference and incorporated herein as though set forth in full in this paragraph.

Section 1.2. Capitalized terms shall have the meaning assigned to them in this Agreement. If not otherwise defined in this Agreement, capitalized terms shall retain their customary meaning.

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

## ARTICLE II

### Project Purpose and Description

Section 2.1. Project Description. The Project, The Bluffs, is located at 135 DP Road, Los Alamos, New Mexico 87544 and is more fully described in **Exhibit "B"** ("Project Site") containing approximately 2.79 acres. The Project shall consist of a 64-unit affordable rental housing development, of which, 6 units are restricted to households earning up to 60%

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area median income (“AMI”); 52 units are restricted to households earning up to 50% AMI; and 6 units are restricted to households earning up to 40% of AMI; as calculated by the United States Department of Housing and Urban Development (“HUD”). These units will be a mix of 1 and 2 bedroom units that will serve the needs of elderly households of various sizes, types, and ages 55 and greater. [Developer agrees to maintain a balanced ratio of 1 and 2 bedroom units in each of the three-AMI categories]. The Project shall remain an affordable rental housing Project as provided herein.

Section 2.2. Purpose of Project. This Project is to provide Affordable Housing for income-qualified households. Located at 135 DP Road, as legally described in **Exhibit “B”**, the Project as proposed is consistent with the *Housing and Land Use Goals and Policies* contained in the County’s *2016 County Comprehensive Plan*, which are to encourage new housing developments in proximity to workplaces, use vacant or under-developed public land for housing, and promote the development of affordable housing. This Agreement also provides for the County’s donation of the County-owned Project Site to the Developer and for contribution of Housing Grant funds for the construction of various public work and utility infrastructure directly related to servicing the Project and as generally described in **Exhibit “C”**.

Section 2.3. Project Term. Services of the Developer designated herein are to commence upon the execution of this Agreement by the last party to sign (“Effective Date”), and shall be undertaken and completed in such sequence as to assure their expeditious completion considering the purposes of this Agreement but, in any event, all the Services required hereunder shall be continued for THIRTY-FIVE (35) years from the completion of the Project (“Affordability Period” or “Term”).

Section 2.4. Management of Property. Developer or other professional management company as may be approved by the County in writing, which approval shall not be unreasonably withheld or conditioned, shall manage the Project at all times during the Term of this Agreement.

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### ARTICLE III

#### County Donations and Contributions

Section 3.1 Description of County Contribution.

(a) Donation of Real Property. As part of the Project, the County shall donate and convey in fee by quit claim as provided by a proposed and draft quitclaim deed (“Deed”) in **Exhibit “D”**, the Project Site with an appraised fair market value (prior to the Covenants being recorded against the Project Site) of Seven Hundred, Fifty-Nine Thousand, Five Hundred and Seventy-Eight Dollars (\$759,578 US) to the Developer pursuant to the terms and conditions herein. Such conveyance shall only occur if the Developer obtains the necessary LIHTC as provided herein. The parties hereby tentatively set November 8, 2019 as the closing date, if the Developer receives the tax credits, wherein the parties will execute and transfer title to the Real Property to Developer subject the terms and conditions in the Deed, this Agreement, and related documents provided below.

(b) Enforcement Mortgage and Security Agreement. The Developer agrees to sign, as part of the closing process, of this Agreement an Enforcement Mortgage and Security Agreement (“Mortgage Document”) in a form substantially similar to **Exhibit “E”** as attached hereto, on the Real Property for the land donation value above at the agreed upon time as provided herein. On conveyance of the property to the Developer, Developer shall also enter into a final and agreed upon Restrictive Real Estate Covenants (“Covenants” or “Deed Restrictions”) warranting, at minimum, that during the Affordability Period, the Project and underlying donated public property will only be resold or leased to a qualified recipient in a form substantially similar to **Exhibit “F”** as attached herein. Such Mortgage Document and Deed Restrictions, and compliance with the terms and conditions of this Agreement, are mandatory prior to final conveyance of land from County to Developer.

(c) Additional County Contributions. County shall also contribute Affordable Housing funds to the Developer (or an affiliate) for the cost of the construction of identified public works infrastructure including roadway access and utility infrastructure necessary to serve the Project and Project Site in an amount not to exceed Seven Hundred and Forty Thousand, Four Hundred and Twenty-two Dollars (\$740,422 US) and as generally provided in **Exhibit “C”**. The Parties shall work collaboratively and in good faith on the final funding and contractual terms for construction to be constructed. The terms of the reimbursement and acceptance of the completed work shall be pursuant to the terms and conditions contained in **Exhibit**

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“C” or as may be agreed upon by the Parties.

Section 3.2. Project Budget. The Developer’s Project Budget is attached as **Exhibit “G”**.

Section 3.3. Other Loans and Subsidies. Other loans and subsidies applicable to this Project, if applicable, are listed in **Exhibit “G”** and incorporated herein as though set forth in full in this paragraph. Without the prior knowledge and written approval of the County, the Developer, or the Developer as an organization, shall not encumber the Project or Project Site with any financial instrument, promise, or obligation.

Section 3.4. Tax Credits. LIHTC’s, if applicable, are listed on the attached **Exhibit “G”** and is incorporated herein as though set forth in full in this paragraph. Should the Developer not receive a LIHTC (a.k.a., “Tax Credit”) allocation for the most current Tax Credit round, following the execution of this Agreement, the Developer must immediately notify the County of such financing gap. The County will determine whether to terminate this Agreement without penalty, costs, or fault, based upon Developer’s insufficient Tax Credit funding, identified in **Exhibit “G”**, or to extend the Completion Date specified in Section 4.2 below, based upon evidence of anticipated future funding.

## ARTICLE IV

### Commencement and Completion of the Project

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

- A. Developer shall construct the Project in accordance with the County approved Project Plans, Specifications and Elevations prepared by Developer, including any and all supplements, amendments and additions or deletions thereon or therein, as approved by the County in its reasonable discretion. Developer shall be solely responsible for submittal and obtaining approval for any State or local development and building requirements such as approval of site plans and building and safety permitting, inspection, and approvals.
- B. Developer shall construct the Project with all reasonable dispatch and diligence and according to the Development Schedule attached as **Exhibit “H”**. An updated Development Schedule shall be provided within sixty (60) days after the Effective Date of this Agreement and shall be updated, as needed, as part of the subsequent periodic

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reports provided to the County.

- C. Developer shall have sole responsibility for construction of the Project 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 all applicable funding sources, County, State or federal laws, codes, or ordinances. Developer shall procure from the appropriate state, County authorities and corporations appropriate site plans approvals, building permits, 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 Project or as may otherwise be required by law.

Section 4.2. Completion Date.

- A. The Developer shall complete the construction of the Project **no later than December 31, 2021.**
- B. The Completion Date shall be evidenced to the County by: (i) Certificate(s) of Occupancy issued by the County; (ii) if applicable, a certificate of completion and acceptance by the County accepting public infrastructure required to be constructed; and (iii) the bonding over of or release of liens by contractors, subcontractors and suppliers employed in the Project. Such documents shall be delivered to the County promptly after completion of the Project but not later than ten (10) business days, unless an extension of such date has been agreed to in writing by the parties to this Agreement. Notwithstanding the foregoing, such certificates shall be and shall state that they are given without prejudice to any rights of the County against any third party existing at the date of such documents or which may subsequently come into being. The Parties herein agree that the Developer may have various Completion Dates for each of the units, buildings, or structures at the Project Site. The Parties intent is to allow parts of the Project to have multiple dates of occupancy and/or Completion Dates.

- C. County may conduct inspections of the Project during normal business hours after giving reasonable notice to Developer or as may be required due to other health, safety and public welfare needs (e.g., the County's Life Safety Code). Developer 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. Notwithstanding the above, Developer shall arrange for a Project walk through within five (5) days after substantial completion of unit(s) per industry standards or building code with the Developer's Authorized Representative,



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County's Authorized Representative, Construction Contractor and Independent Architect/Engineer to prepare the Project unit(s) punch list. Developer shall cause each item on the punch list to be remedied no later than thirty (30) days after issuance or prior to rental of the apartment unit to the original renter, whichever occurs last.

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

## **ARTICLE V**

### **Conditions: Usage and Documentation of Land**

#### **Donation and Infrastructure Contribution**

Section 5.1. Conditions to Conveyance of County. Conveyance of County Land, which County shall agree to transfer on or before November 15, 2019 provided all other Agreement conditions and terms are met, is conditional upon the receipt and approval of the following:

- A. Plans, Specifications and Elevations for the Project. Developer shall submit three complete sets of Preliminary Plans, Specifications and Elevations for the Project to the County. Developer shall submit to the County for review and approval the final 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 County that such revised Plans, Specifications and Elevations (not to be confused with plans for building permits) will not materially affect the purpose of the Project as set forth herein, provided that no such material change shall be made without the prior written consent of the County. Plans for site plan approval, building permits, and other approvals must also be submitted to the appropriate County Departments prior to the commencement of construction.
- B. Geotechnical Investigation Report. The Developer shall or shall cause to be submitted to the County a

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Geotechnical Investigation Report in a form acceptable to the County.

- C. Letter of Commitment from Low Income Housing Tax Credit. Developer must provide to County the final and issued Reservation Letter for Low Income Housing Tax Credits as issued by MFA.
- D. Evidence of all other sources of financing dedicated to the Project. Developer, prior to transfer of public land, shall provide to County letters of intent for all sources of financing dedicated to the Project.
- E. Title Insurance Commitment and a proforma Title Insurance Policy. Prior to transfer of public land, Developer shall provide Title Insurance Commitment and a proforma Title Insurance Policy to County.
- F. Schedule of Material Events and Activities. Developer shall provide to the County a projected schedule of material events and activities from the date of acquisition of the Real Property through the stabilized occupancy of the Project to eligible households.

Section 5.2. Conveyance of County Land. The County shall convey the Project Site valued at Seven Hundred, Fifty-Nine Thousand, Five Hundred and Seventy-Eight Dollars (\$759,578 US) pursuant to the terms of this Agreement for this Project which real property shall be used as the Project Site. The County may take action to either have the Real Property returned or collect the value of the land donation from the Developer in accordance with the terms and conditions of this Agreement, Deed, Mortgage Documents, or Deed Restrictions in the event of the Developer does not abide by the terms of this Agreement.

Section 5.3. Land Donation Documentation. Developer shall execute and deliver the Deed and County Mortgage Documents in order to evidence the obligation to pay the County the value of land donation in the case the Developer does not comply with the terms of this Agreement at or prior to the issuance of a Certificate of Completion or as may be provided herein. The County shall promptly issue a Certificate of Completion ("Certificate of Completion") in recordable form after submission of the following and at the written request of Developer: (i) the County has issued a temporary or permanent Certificate of Occupancy for improvements on the Site, and (ii) the County has made a final inspection of the Project and has determined that Developer has substantially fulfilled all of its Construction obligations. If the County refuses or fails to issue a Certificate of Completion for any portion of the Project or for the Project in whole in accordance with the provisions of this Section, the County shall provide Developer with a written statement indicating how Developer failed to complete Construction and shall provide

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Developer with up to an additional twelve (12) months to remedy any deficiencies for any portion of the Project. When the County has issued a Certificate of Completion for all parts of the Project, Construction of the Project shall be deemed to be completed ("Completion of Construction").

Section 5.4. Restrictive Real Estate Covenants. As part of the closing, Developer shall execute, deliver, and record the Deed and Real Property Restrictions and Covenants to the County, as provided in base form herein as **Exhibit "F"** and to be more fully agreed to at the time of conveyance of the Project Site to Developer and in favor of the County. To insure the County's goals in regard to this Project, the County shall require the Deed Restrictions and Covenants to be recorded and to run with the land, binding upon the Developer, its successors and assigns during the term of the Agreement or the Affordability Period, whichever is longer. Such Deed Restrictions and Covenants shall be consistent with any later agreed upon Land Use Restriction Agreement ("LURA") and then applicable MFA requirements.

Section 5.6. Subordination. The County agrees that to complete the Project, the Developer will seek additional Project financing. As part of this Agreement and as provided in the Deed (**Exhibit "D"**), the County will agree to subordinate its interest in the Project and Project Site after the Completion of Construction to Developer's construction lender or permanent lender. Such County subordination may not be unreasonably withheld, conditioned or delayed. However, Developer is responsible for providing sufficient information to the County so that County may timely review, consider, and issue, where appropriate contest, its subordination approval. The County shall execute, where approval of subordination has been agreed upon, Developer-supplied documents necessary to effectuate such subordination. Developer is solely responsible for filing, recording, or otherwise effecting the subordination agreement. Developer will provide a certified or filed copy to County for its records. Developer agrees and explicitly understands that County Council approval may be necessary for some subordination requests and shall give County sufficient time for obtaining Council approval as required by the State's Open Meetings Act publication and notice requirements.

Section 5.7. Reimbursement of Utilities Infrastructure Construction Cost. The County shall contribute the amount of **not to exceed** Seven Hundred and Forty Thousand, Four Hundred and Twenty-two Dollars (\$740,422 US)

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to the Developer, or provide such funds through an assign of Developer, for the cost to develop, install, and or rehabilitate various County owned public infrastructure identified in **Exhibit “C”** and in the Project budget attached hereto and incorporated herein as **Exhibit “G”**. The contribution by County shall occur through progress payments from County to Developer, or assignee, of accepted and completed, or portions thereof, public work construction items provided in **Exhibit “C”**. The terms and conditions of the work to be done, method of payment, and general design standards will be agreed upon prior to County’s authorization and approval to Developer or assign to begin construction.

## ARTICLE VI

### Warranties and Obligations

Section 6.1. 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 by the Act 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. The Developer, after approval of the following documents by County, shall file or cause to be filed the Restrictive Real Estate Covenants, Deed, County Mortgages and other title documents upon Closing with the County Clerk of the County.

Section 6.2. Warranties and Obligations by Developer. Developer makes the following warranties as the basis for the undertakings on its part herein contained.

- A. Developer is an Ohio corporation duly organized and validly existing as such under the laws of the State of Ohio with the authority to transact business in the State of New Mexico and 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.

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- 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 donated Real Property (a.k.a., Project Site) or assets of Developer under the terms of any instrument or agreement.
- C. There are no pending or threatened legal or administrative proceedings against Developer or affecting the Project which, if determined adversely, would have a material adverse effect on Developer of the Project.
- D. The Project Site real property shall solely be used for the development of the Project.
- E. The Agreement, Deed, LURA and Deed Restrictions attached hereto are binding on the Developer, its successors, agents, or assigns who shall comply therewith.
- F. Developer warrants that it is fully aware of the Project Site environmental condition and prior use by the U.S. Department of Energy and Los Alamos National Laboratory. Developer acknowledges the environmental condition of the property as is and as will be provided in the Conveyance Documents, related Mortgage Documents. Developer further agrees the County shall not be required to conduct any further studies, reporting, analysis, or remediation of any part or portion of the Project site as part of the Project.
- G. During the Affordability Period, the Developer shall comply with the following provisions including, but not limited, to:
1. State and local planning and zoning requirements and housing code requirements and allow the County to inspect the Project Site real property 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 "F"**. Any rent increases must be approved in writing by the County prior to implementation. If utilities are not included in the rent rents and utility allowance charges must be within the current federal

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guidelines for tax credit projects.

5. Maintain income verification of tenants and their household size residing in the affordable units using current tax credit rules. Income verification and household size documentation must be secured prior to occupancy of the Project's affordable units, and thereafter verified and certified at least annually. Following occupancy, if an affordable unit's tenants' income exceeds 60% of the County's Median Income adjusted for Household size, the tenant may remain in the unit; however, the tenant must pay the lesser of 30% of the adjusted monthly income for rent and utilities or the market rent. The tax credit rules shall apply to over-income tenants following occupancy; as applicable.
  6. Execute at least annual leases, unless permissible under the federal, state, and local laws regarding the funding for this Project, as provided for in the tax credit rules.
- H. The Developer shall establish a maintenance reserve fund for the Project in an amount not less than Two Hundred Fifty Dollars and No Cents (\$250.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by Los Alamos County until the terms of this Agreement are met.
- I. The Developer shall ensure that the property manager takes reasonable and effective actions with the goal of preventing crime in the project including communicating and cooperating with the Los Alamos Police Department.
- J. None of the units in the Project shall at any time be utilized on a transient basis; and none of the Project nor any portion thereof shall ever be used as a hotel, motel dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.
- K. At all times, the Project shall comply in all material respects with all applicable zoning and planning ordinances, building codes, Energy Code, flood regulations, environmental laws, ordinances, statutes, rules and regulations relating to the Project.
- L. The Developer shall not, during the terms of this Agreement, amend or change its Bylaws or Articles of Incorporation in any manner without prior County review and approval, if such amendment or change would result in a conflict with the terms and obligations of this Agreement or subsequent related agreements or amendments thereto.

## **ARTICLE VII**

### **Monitoring, Reporting, and Record Keeping**

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Section 7.1. The Developer shall report, in writing, at least monthly, or as requested by County, during the construction and lease-up phases of the Project. The monthly, or as requested report ("Monthly Report") shall include at minimum the following, the process of construction as a percentage complete, construction funds expended with remaining balance, and number of units completed, or any information required by MFA reporting requirements. The Monthly Report shall also include any reasonably related additional information requested by County. All Monthly Reports shall be due within 10 business days of the end of the preceding month, and any requested Monthly Report shall be due within 10 business days of the request, unless Developer can show in good faith that additional time is needed to collect and report the requested information.

Section 7.2. The Developer shall report annually within ninety (90) days of the close of the Developer's fiscal year until the terms of this Agreement have been met and such report shall include, but not be limited to, all information reported to MFA for the forthcoming year.

Section 7.3. At any time during normal business hours if reasonably requested by the County, its designee, or the appropriate funding entity, and upon no less than 2 business days' notice, there shall be made available to the County or the appropriate funding entity for examination, all of the Developer's records with respect to occupancy, tenant qualifications, rent charges and payments, and off-site construction and improvements to be dedicated to the County matters covered by this Agreement. The Developer shall permit the County, its agent, or the appropriate funding entity 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 7.3, the Project, or Developer's overall operations effecting the Projects ongoing viability. Such inspections and costs related thereto shall be the sole responsibility of the County or appropriate funding entity.

Section 7.4. The Developer, its agents, or assigns, shall comply with all applicable monitoring and reporting provisions of the State and Local Affordable Housing ordinances and laws.

Section 7.5 Inspection of Public Records. Developer acknowledges and agrees that various documents,

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communication, plans, specification, and other records related to the is Project may require the County to disclose and make available any responsive public record covered by to the State's Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 through 14-2-12 ("Act"). If any records are requested by the public, Developer will work collaboratively and in good faith with the County to provide such responsive public record(s). If Developer reasonably believes that any requested record is not a "public record" as defined by the Act, or is otherwise protected or exempt from disclosure by law or the Act, Developer, its agents, or assigns, shall provide the record to the County's Record Custodian under mark of confidential which shall also include the basis on why the requested record(s) is not a public record or why the document is otherwise exempt or protected from disclosure pursuant to the Act.

## ARTICLE VIII

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

Section 8.1. Fees and Other Amounts Payable. Developer shall promptly pay or cause to be paid, as the same become due, all governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any interest therein or other property constructed, installed or bought by Developer therein or thereon which, if not paid, will become a lien on the Real Property prior to or on a parity with the County's Deed or Mortgage Documents including all utility and other charges incurred in the operation, maintenance, use, and occupancy of the Project, provided that with respect to governmental charges that may lawfully be paid in installments over a period of years, Developer shall be obligated to pay only such installments as are required to be paid during the term of this Agreement when due. Developer may, in good faith, contest any such charges and in the event of any such contest may permit the charges so contested to remain unpaid during the period of such a contest and any appeal therefrom if allowed by law, 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 County may (but shall be under no obligation to) pay the same and any amounts so advanced therefore by the County shall become an additional obligation of Developer to the County, 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 County shall be secured by the County Mortgage Documents.



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Section 8.3. Maintenance of Project. Developer agrees that, during the term of this Agreement as described in Section 2.3, 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 Developer, its agents, or assigns, from meeting current State or local laws, ordinances, or regulations governing property maintenance or condition. Developer shall not permit any mechanic's lien, security interest, or other encumbrance to be established or to remain against the Project for labor or materials furnished in connection with the construction or installation of the Project or any additions, modifications, improvements, repairs, renewals or replacements made by it, provided that if Developer shall notify the County of its intention to do so, Developer may, in good faith, contest any mechanic's or other liens filed or established against the Project and such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Developer determines, or the County shall notify Developer that, in the opinion of the County, by non-payment of any such items, the County's Mortgage Documents as to any part of the Project shall be materially endangered or the Project or any part thereof shall be subject to loss or forfeiture in which event the Developer shall promptly pay and cause to be satisfied and discharged all such unpaid items.

Section 8.4. Insurance Required. Throughout the term of this Agreement and or Affordability Period, Developer, its contractors, subcontractors agents, or assigns, shall keep the Project insured against loss or damage by maintaining policies of insurance and by paying, as the same become due and payable, all premiums' with respect thereto including but not necessarily limited to the following coverage:

- A. COMPREHENSIVE GENERAL LIABILITY INSURANCE. Developer shall obtain comprehensive general liability insurance, including automobile insurance, with liability limits in amounts not less than \$1,000,000 aggregate limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance must include coverage for all operations performed on or about the Project, including coverage for collapse, explosion and underground liability coverage, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off the Project site and contractual liability coverage which shall

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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 on or 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, or other similar operation. Other public and private property as used above shall include but not be limited to lawns, plants, flowers, trees, fences, yards, walls, and related appurtenances, fixtures, or structures.

- B. OWNER'S PROTECTIVE PUBLIC LIABILITY INSURANCE. Developer shall procure, or cause or be procured, and maintain, during the life of construction, an owner's protective public liability insurance policy with liability limits in an amount not less than \$1,000,000 combined single limit of liability for bodily injury, including death and property damage in any one occurrence.
- C. WORKER'S COMPENSATION INSURANCE. The Developer shall ensure and require that 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

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Owner or Contractor elects to be self-insured, it shall comply with the applicable requirements of law.

If any portion of the construction of the Project is to be subcontracted or sublet, Developer shall require the contractor and subcontractor to similarly provide such coverage (or qualify as self-insured) for all latter's employees to be engaged in such work. It is agreed with respect to all worker's compensation insurance, Developer 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 Developer nor its employees, agents, contractors, or subcontractors are considered to be employees or agents of the County for any purpose whatsoever. The Developer is considered to be an independent contractor at all times in the performance of this Agreement. The Developer further agrees that neither it nor its employees are entitled to any benefits from the 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.

- D. BUILDER'S RISK INSURANCE. Developer shall procure and maintain, until Completion of Construction, a builder's risk, vandalism and malicious mischief insurance. Alternatively, Developer shall procure and maintain insurance against loss or damage to the Project by fire, lightning, vandalism, and malicious mischief with the uniform extended coverage endorsement limited only as may be provided in the standard form or extended coverage endorsement at the time in use by the State of New Mexico to provide for not less than 90% recovery of the market value of the buildings and other improvements but in any event no less than the cost of fully paying the County Loan.
- E. INCREASED LIMITS: The County may require Developer to reasonably increase the maximum limits of any insurance required herein and Developer shall promptly comply. Any such requirement shall be provided in writing to the Developer's listed contact or Project Manager.
- F. 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, Developer shall provide to the

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County without demand, or more frequently upon demand, proof of all required insurance coverage.

Section 8.5. Performance. Payment and Other Bonds. Developer or Developer's Contractor shall furnish or cause to be furnished, performance and payment bonds as security for the faithful performance and payment of all its obligations pursuant to the construction of the Project. These bonds shall be in amounts at least equal to the amount of the appraised value of the land as secured by the enforcement mortgage and in such form and with such sureties as are licensed to conduct business in the State of New Mexico and are named in the current list of surety companies acceptable on federal bonds as published in the Federal Register by the Audit Staff of Accounts, U. S. Treasury Department. The performance bond shall also include coverage for any guaranty period provided by the contractor. The surety on the performance bond shall furnish a waiver whereby it consents to the progress or partial payment to any contractor of amounts for materials and acknowledges that such payment shall not preclude enforcement of such remedies as may be available against such surety. Developer shall cause the County to be named a joint obligee on such bonds. If the surety on any bond furnished by Developer is declared bankrupt or becomes insolvent or its right to do business in the State of New Mexico is revoked, Developer shall substitute or cause to be substituted another bond and surety within ten (10) days thereafter. The Developer may furnish an irrevocable letter or letters of credit in form satisfactory to the County as an alternative to the performance, payment bonds specified above. Any such letter must be drawn against a financial institution qualified to conduct business in New Mexico whose deposits are federally insured and shall be payable exclusively to the County on demand.

Section 8.6. Application of Net Proceeds of Insurance. The Net Proceeds of builder's risk insurance and of fire and other hazard and casualty insurance, carried pursuant to the provisions of this Agreement hereof, shall be applied as provided in this Agreement and the Net Proceeds of liability insurance carried pursuant to the provisions of this Agreement hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid. The net proceeds of the bonds provided pursuant to this Agreement shall be applied to curing the defect in performance or payment.

Section 8.7. 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

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companies authorized to do business in the state of New Mexico selected by Developer. All applicable policies evidencing such insurance shall name both the County and Developer as named insured and the County shall be named as loss payee as to the County's Mortgage Document established security value 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 8 hereof shall be deposited with the County. Prior to expiration or exchange of such policy, Developer shall furnish the County evidence satisfactory to the County that the policy has been renewed or replaced or is no longer required by this Agreement. All policies required hereunder shall provide that the County 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 County notice" shall not be allowed.

Section 8.8. Advances by County. If Developer shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating condition shall permit or shall fail to keep the buildings in good repair and good operating condition, the 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 Developer to the County 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 County shall be secured by the County Mortgage Documents and shall be paid upon demand by the County.

Section 8.9. Waiver of Certain County Planning, Zoning, and Building Fees. The County through its duly elected Council, in Ordinance 690, has agreed to waive all County Planning, Zoning, and Building Permit fees related to the Project as may be assessed by the Community Development Department of County Fire Department.

## **ARTICLE IX**

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

Section 9.1. Damage, Destruction and Condemnation. In the event the Project is destroyed or damaged, in whole or in part, by fire, or other casualty or title to or the temporary use of the Project or any part thereof shall be

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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 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 Real Property, which shall be restored to 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;
- C. Third, to reimburse to the County the land donation amount as set forth in Section 3 of this Agreement.; and
- D. Fourth, to the Developer any balance.

## ARTICLE X

### Special Covenants

Section 10.1. County's Right of Access to the Project. Unless, otherwise provided herein, Developer agrees that upon at least two business days' notice the County and any of its duly authorized agents shall have the right at all reasonable times to enter upon and examine and inspect the Project provided that any such inspections shall be conducted in a manner that will minimize any intrusion on the operations of the Project and shall be subject to the rights provided to any tenant in possession of any rented unit.

Section 10.2. Good Standing. Developer warrants and represents that it has executed, filed and recorded all certificates and other documents and has done and shall continue to do throughout the term of this Agreement such other acts as may be necessary or appropriate to comply with all applicable requirements for the formation, qualification and operation of Owner as either a limited liability company or a limited partnership and the operation and ownership of the Project under the laws of the State of New Mexico.

Section 10.3. Granting of Easements. If no event of default under this Agreement shall then be continuing,

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Developer may at any time grant easements, licenses, rights-of-way including the dedication of public roads or streets, and other rights or privileges in the nature of easements with respect to any Real Property included in the Project, consistent with the purposes of the Project, free from the lien of the County 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 County. Developer shall furnish to the County 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 the Developer and that such grant or release shall not impair the effective use of market value or interfere with the effective operation of the Project.

Section 10.4. Release and Indemnification Agreement. Developer releases the County and covenants and agrees that the County shall not be liable to the Developer 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. Developer 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, the Deed, Mortgage Documents, 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 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 County or of its officials, employees and agents. This indemnification agreement shall survive the term of this Agreement.

Section 10.5. Sale, Assignment or Encumbrance of Project. Except as otherwise expressly permitted herein (including the transfer of Project to Owner and Owner's syndication to a tax credit investor and the entering into of any loan documents or mortgages with respect to any financing) Developer shall not sell, assign, dispose of, mortgage or in any way encumber the Project or any part thereof without the prior written consent of the County. Any

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conveyance of the Project during the term of this Agreement shall, at minimum, incorporate the covenants found in **Exhibit “F”** and agreements, terms, and conditions contained herein.

Section 10.6. Authority of Authorized County Representative. Whenever, under the provisions of this Agreement, the approval of the County is required or Developer is required to take some action at the request of the County, such approval or such request shall be made by the Authorized County Representative unless otherwise specified in this Agreement and Developer 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.

Section 10.7. Authority of Authorized Developer Representative. The Developer represents and warrants to County that the Authorized Developer Representative is empowered to take all actions contemplated in this Agreement. If the Developer fails to respond to any request made by County pursuant to this Agreement within thirty (30) business days, such request shall be considered approved and County shall be allowed to recover all costs in enforcing or enacting the request.

Section 10.8. Financial Statement of Developer. In addition to the reports provided in Article VII above, during the term of this Agreement, Developer agrees to furnish the County a copy of its annual financial statements at least annually within ninety (90) days of the end of the Developer's fiscal year.

## **ARTICLE XI**

### **Events of Default Defined**

Section 11.1. 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 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



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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 day period Developer shall not be in default if, within such thirty (30) day period, Developer notifies County that it has undertaken reasonable measures to cure the default and specifies the nature of such measures, and date such actions Developer believes such alleged default has been cured.

B. Developer 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 occurrence of an "Event of Default" under the Deed or Mortgage Documents.

D. The violation of any provision under the final and filed Deed or Deed Restrictions as proposed and attached in **Exhibits "D" or "F"**.

Section 11.2. No Remedy Exclusive. No remedy herein conferred upon or reserved to the County nor any remedy conferred upon or reserved to the County pursuant to the Deed, Mortgage Documents, 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 11.3. Agreement to Pay Attorneys' Fees and Expenses. If Developer defaults under any of the provisions of this Agreement, Deed, Mortgage Documents, 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 Developer herein contained in this Agreement, Deed, Mortgage Documents, and Deed Restrictions Developer 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.

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Section 11.4. 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. Developer 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 11.5. 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 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 County made to cure the Default, the County may sue for compensatory and consequential damages suffered by the County due to the Default as well as, if appropriate, punitive damages.

## ARTICLE XII

### Miscellaneous

Section 12.1. 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 Developer:

With Copy to:

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Authorized Developer Representative

Bethel Development Inc.

201 Bradenton Avenue, Suite 120

Dublin, Ohio 43017

E-mail: dan@bethel94.com

Barnes & Thornburg LLP

41 South High Street, Suite 3300

Columbus, Ohio 43215

Attention: Holly H. Heer

e-mail: holly.heer@btlaw.com

The County and Developer 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 12.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County, Developer and their respective successors and assigns, subject however to the limitations contained herein.

Section 12.3. 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 Developer in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

Section 12.4. 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 12.5. 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 12.6. Other Instruments. Developer and the County covenant that they shall do, execute, acknowledge

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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 12.7. 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 with Venue to be the First Judicial District, Los Alamos.

Section 12.8. Recording. This Agreement as well as the Deed, Mortgage Documents, and Deed Restrictions and every assignment and modification thereof shall be recorded in the office of the County Clerk of the County.

Section 12.9. 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 12.10. Officials, Agents and Employees Not Personally Liable. No official, agent, or employee of the County and no member of the County Council shall be personally liable on this Agreement.

Section 12.11. 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 12.12. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed

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to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 12.13. 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 12.14. 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 Agreement which, along with its ~~amendments~~, if any, is deemed to be the primary document. It is understood and agreed by the parties that the Deed, Mortgage Documents, Construction Agreement, and Deed Restrictions will be considered final and effective at Closing or as may be mutually agreed upon.

Section 12.15. 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 12.16. 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 County or abrogating the requirement of any ordinance.

Section 12.17. 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 12.18. Time is of the Essence. Subject to the qualifications otherwise set forth herein, time is of the essence in the performance of this Agreement.

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Section 12.19. Assignment and Subletting. Except as otherwise permitted 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, Deed, or Mortgage Document 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 Developer.

Section 12.20. 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 County for any purpose whatsoever.

Section 12.21 Force Majeure. Except as expressly provided in this Agreement, neither County nor Developer shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rental, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control. 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 12.22. 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 12.23. Compliance with Laws. The Developer shall comply with all applicable laws, ordinances, regulations and procedures of Federal, State, and local governments in the development, construction, maintenance and management of the Project.

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Section 12.24. County 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. County 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 12.25. Survival. All obligations, covenants and agreements contained herein which are not performed at or before the closing but which are to be performed after the closing as provided in this Agreement shall survive the closing of this transaction.

Section 12.26. Approval Required. This Agreement shall not become effective or binding until approved by the County's Director of the Community Development Department or County Council as required by State law and local charter and ordinances. The Effective Date of this Agreement shall be the date of the last signature below.

Section 12.27. Agreement Binding. This Agreement and all parts contained herein shall be binding upon each party and such transferees, their successors, assigns and all parties claiming by, through or under any of them. It is further agreed that each and every conveyance of any portion of the Project shall contain the covenants specified in this Agreement, Deed, Mortgage Document, and Deed Restrictions attached hereto and or as may be recorded in the County Clerk's Office in final form.

Section 12.28. Open Meetings Act, NMSA 1978, §§ 10-15-1 through 10-15-4. Developer 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 Council approval shall be noticed at least 72 hours of a scheduled open public meeting in which the matter will be heard. Developer 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.

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IN WITNESS WHEREOF the County and Developer 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**

By:

[Signature]  
Harry Burgess, County Manager

Date:

1/18/19

**BETHEL DEVELOPMENT, INC.,**

By:

[Signature]

Daniel N. Terlecki, President

Date:

1-18-19

Developer:

03112890004  
State Taxation and Revenue Department Taxpayer Identification Number

31-1425624  
Federal Taxpayer Identification Number

**County Acknowledgement**

STATE OF NEW MEXICO )

) ss.

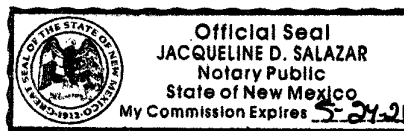
LOS ALAMOS COUNTY )

This instrument was acknowledged before me on this 18<sup>th</sup> day of January, 2019  
by Harry Burgess, Harry Burgess, County Manager for the Incorporated County of Los Alamos, a New  
Mexico municipal corporation, on behalf of the corporation.

[Signature]  
Notary Public

My Commission Expires:

5-24-2021





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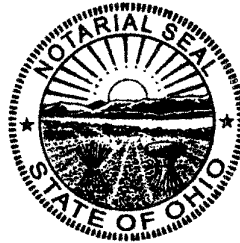
**Developer Acknowledgement**

STATE OF OHIO )  
COUNTY OF Franklin ) ss:

The above and foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2019, by  
DANIEL N. TERLECKI, as President of Bethel Development, Inc.

  
NOTARY PUBLIC

My commission expires: 4-24-2020



**Roger Simmons**  
Notary Public, State of Ohio  
My Commission Expires 04-24-2020

### Exhibit A - Definitions

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

1. "Adjusted Income" means the Annual Income of a household less any eligible allowances as specified in the Land Use Agreement ("LURA").
2. "Adjusted Monthly Income" means one twelfth of Adjusted Income.
3. "Affordable" means the total housing cost as provided in the LURA.
4. "AMI" means Area Median Income which is the annual income figure for a specific geographic area which is determined annually by the U.S. Department of Housing and Urban Development and adjusted for household size.
5. "Annual Income" means the anticipated total income from all sources, as defined provided in the LURA, to be received by the household head and spouse and each additional member of the household during a twelve-month period.
6. "Authorized County Representative" for the purposes of this Agreement shall be the Director of the Community Development Department or his/her designee.
7. "Authorized Developer Representative" means the person designated to act on behalf of the Developer.
8. "Buildings" means those certain buildings and all other structures, improvements, equipment, fixtures and facilities described or shown in the plans and specifications fanning a part of the Project which are now or hereafter located on the Real Property as they may at any time exist.
9. "Closing" shall mean the date that the Parties to the Agreement execute the Deed, Deed Restrictions, and Enforcement Mortgage and Security Agreement as provided herein.
10. "Completion Date" means the date of completion of the construction of the Project as that date shall be certified pursuant to Section 4.2 hereof.
11. "Construction Period" means the period between the beginning of construction or installation of the Project and the Completion Date.
12. "Council" means the Council of the County or any successor governing body of the County.
13. "County" means the Community Development Department, Los Alamos County, New Mexico, which is acting on behalf of the County as manager of this Agreement and does not obligate other County Departments which have separate and distinct obligations in regard to planning, zoning, inspections, licensing and permitting.
14. "Deed" shall mean the Quit Claim Deed provided in draft and proposed form in **Exhibit "D"**, which shall be amended at or before the time of Closing.
15. "Developer" means the natural or artificial person who enters into a Development Agreement with the County for the purpose of constructing, owning or managing a Project under the Act. The term Developer includes the initial entity, its partners, successors, assigns, agents and representatives.
16. "Developer's Fees" means those fees earned by the Developer involved in the Project which are the result of services provided to obtain Project financing, managing the construction of the Project, and maintaining and/or managing the Project after completion of construction.
17. "Enforcement Mortgage and Security Agreement" means the enforcement mortgage levied on and against the

Real Property, in substantially the form set forth in **Exhibit "E"** attached hereto, executed by the Developer in favor of the County to secure performance of the Developer where Developer does not meet or comply with the terms of this Agreement or Deed.

18. "Household" means one or more individuals residing in a household.
19. "Household Income" means the gross annual income earned or received through all sources by a household.
20. "Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment.
21. "Income Determination Criteria" means those income inclusions and exclusions as permitted under the current tax credit rules.
22. "Independent Engineer" means an engineer or architect or engineering or architectural firm approved by the County qualified to practice the profession of engineering or architecture under the laws of the State and who or which is not an employee of the County.
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 of such gross proceeds.
24. "Permitted Encumbrances" means as follows but which are in no particular order or priority:
  - i) Liens for taxes and special assessments on the Project contested or not then delinquent as permitted by Article VIII hereof;
  - ii) Utility, access or other easements and rights-of-way, mineral rights, restrictions and exceptions that shall not materially interfere with or impair Developer's use of the Project (or if no operations are being conducted therein, the operations for which the Project was designed;
  - iii) Mechanic's liens, security interests or other encumbrances to the extent permitted by Article VIII hereof;
  - iv) Liens resulting from governmental regulations on the use and occupancy of the Project;
  - v) Liens subordinate to the lien given to the County under and subject to the terms of this Agreement;
  - vi) Liens arising by reason of deposits with or the giving of any form of security to or required by any governmental agency or anybody created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license by Developer or to enable Developer to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with worker's compensation or other insurance or to share in the privileges or benefits required for entities participating in such arrangements
  - vii) Any judgment lien against Developer so long as the finality of such judgment is being contested and execution thereof is stayed by appropriate proceedings promptly initiated and diligently conducted; and viii) such minor defects, irregularities, encumbrances, easements, rights-of-way, reservations, patents, and clouds on title as normally exist with respect to properties similar in character to the Project and as so not in the aggregate materially impair the Real Property affected thereby for the purpose for which it is acquired or is held by Developer.
  - viii) Add the permitted construction/perm loans here
25. "Person" means any natural person, firm association, trust, partnership, corporation or public body.
26. "Plans, Specifications and Elevations" means the plans, specifications and elevations for the Project as they shall be revised by Developer pursuant to Section 5.1 hereof.
27. "Project" means the residential apartment development to be constructed upon the Real Property, including Buildings, related on-site and off-site improvements, equipment and related rights therein.
28. "Real Property" means the real estate that consists of all or portions of legally described in Exhibit "B-2"

("Project site") and improvements thereon (if any), interest in real estate and other rights purchased under this Agreement and any instrument supplementing or amending this Agreement together with all additions thereto and substitutions therefore, less such real estate and interests in real estate taken by the exercise of the power of eminent domain as provided herein.

29. "Restrictive Real Estate Covenants" means those real estate covenants imposed on the Property in the form attached as Exhibit "F" to insure the County's goals in regard to the Project.
30. "Utility Allowance" is the amount established by a MFA appropriate for a specific rent to cover the cost of utilities.

**Exhibit B - Project Site**

The project site for The Bluffs Apartments is located at 135 DP Road, Los Alamos, New Mexico 87544 containing approximately 2.79 acres of Tract A-8-b. Tract A-8-b contains approximately 3.2132 acres.

**Legal Description: Tract A-8-b:**

Parcel of land being a part of DP Road Site, as filed in the office of the County Clerk of Los Alamos County, Document No. 126918 in Book 6 at Page 97 of the Records of Plats, situate in Sections 14 and 15, Township 19 North, Range 6 East of the New Mexico P.M., County of Los Alamos, State of New Mexico. Being more particularly described as follows:

Commencing at the Northeast corner of Tract WC of Eastern Area No. 2, as filed in the office of the County Clerk of Los Alamos County, Document No. 4505 in Book I at Page 57 of the Records of Plats, said point also being on the Southerly Right-of-Way line of OP Road, thence along said Southerly Right-of-Way line the following three (3) courses: (1) thence S66 degrees 35' 54" E a distance of 110.89 feet; (2) thence 179.74 feet along the arc of a 540.87 foot radius non-tangent curve to the left having a central angle of 19 degrees 02' 27" and subtending a chord bearing S76 degrees 06' 12" E a distance of 178.92 feet; (3) thence S85 degrees 37' 34" E a distance of 224.00 feet to the true Point of Beginning; thence continuing along said Southerly Right-of-Way line S85 degrees 37' 34" E a distance of 350.00 feet; thence departing said Southerly Right-of-Way line S03 degrees 12' 12" W a distance of 400.00 feet; thence N85 degrees 37' 34" W a distance of 350.00 feet; thence S03 degrees 12' 12" W a distance of 400.00 feet to the true Point of Beginning. Said parcel contains 139,971 square feet (3.2132 acres) more or less.

### **Exhibit C - Infrastructure Construction Donation**

The Parties shall work collaboratively and in good faith to develop mutual terms and conditions for donation of County Affordable Housing Funds of up to \$740,422 to the Project and the County's requirement for acceptance of the donated public and utility works improvement. The initially considered public work items discussed and agreed by the Parties at this time include off-site water, sewer, gas and electric utilities and roadworks within and near to DP Road as listed below. Sewer work would include capacity upgrade to the sewer lift station near the southeast corner of Tract A-8-b. Infrastructure shall meet County design and construction standards.

#### **Offsite Utility and Roadworks Cost Estimates for Tract A-8-b and A-9 Affordable Housing Projects:**

Water Infrastructure - Replace/Upsize Existing:	\$264,000
Sewer - New Gravity Line, Lift Station capacity upgrade for A-8 and Manholes	\$281,900.00
Gas - Replace/Upsize Existing	\$185,900
Electric - Run 3-phase main power feed along DP Road. Switches, vaults, conduit	\$225,000.00
General Cost - Mobilization/Demobilization, Traffic Control, SWPPP	\$65,000.00
<b>Utilities Subtotal with 10% contingency and GRT 7.3125%</b>	<b>\$1,206,171.04</b>
Roadworks - DP Road from Trinity Intersection work to east edge of A-8-b, 1,170 linear feet	\$ 1,190,516.99
<b>Roadworks Subtotal with inspections and testing 20% contingency and GRT 7.3125%</b>	<b>\$ 1,600,000.00</b>
<b>Total Estimate:</b>	<b>\$2,806,171.04</b>

**Exhibit D – Proposed Quitclaim Deed**

~DRAFT~

**STATE OF NEW MEXICO**  
**INCORPORATED COUNTY OF LOS ALAMOS**

**QUITCLAIM DEED**

**THIS QUITCLAIM DEED** (“Deed”), entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Incorporated County of Los Alamos, New Mexico (“County”) as Grantor, and \_\_\_\_\_ (“Grantee”), as Grantee.

**RECITALS**

**WHEREAS**, the County is the owner of certain public real property, consisting of all those plots, pieces, or parcels of real property situated lying and being in the County and State of New Mexico, as more particularly described in **Exhibit A** annexed hereto and made a part hereof (“Land”), and all buildings and improvements now situated on the Land (“Improvements”) (the “Land” and “Improvements” being referred to herein as the “Property”); and

**WHEREAS**, the County desires to encourage the redevelopment of deteriorated and remediated federal transferred County-owned properties and to promote development of affordable housing; and

**WHEREAS**, the County Council, having held a public hearing following notice of the date, time, place, and purpose of such hearing, approved the transfer of the land pursuant to that certain Land Disposition Agreement dated as of \_\_\_\_\_ (the “LDA”), which is annexed hereto as **Exhibit B**; and

**WHEREAS**, Grantee proposes to purchase the Property from the County upon the terms and conditions set forth in the LDA and to undertake the redevelopment of the Property, which redevelopment shall accomplish the construction and development of The Bluffs Apartments (“Project”).

**NOW THEREFORE**, the County, in consideration of the sum of ONE DOLLAR AND NO CENTS (\$1.00 US) and other valuable considerations and promises paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and release the Property to Grantee, its successors and assigns forever as follows:

1. **Conveyance.**

A. **Title.** The County hereby conveys to Grantee, and Grantee accepts from the County, all right, title, and interest the County has in and to the Property, subject to, the terms, covenants, and conditions of this Quitclaim Deed, the LDA (**Exhibit “B”**), and the Real Property Covenants attached hereto as **Exhibit C** and the Land Use Restriction Agreement (“Regulatory Agreement”) attached hereto as **Exhibit “D”**, are all specifically incorporated herein.

B. **“As Is” Condition.** Grantee accepts the Property in its “as is” condition on the date of the last signature herein (“Closing Date”) of delivery of this Deed to Grantee (“Closing”). The County

has not made any representations regarding the condition of the Property and neither has nor had any obligation to undertake demolition, site clearance, or site preparation. The County neither warrants nor represents the surface and subsurface conditions of the Property, including environmental conditions, that such conditions will be suitable for the Project, or that the Property is or will be level to grade. Grantee represents and warrants that it has inspected the Property and is fully familiar with its condition.

- C. Development. Grantee agrees that the conveyance of the Property is for the purpose of the development of a 64-unit affordable housing project and otherwise in accordance with the LDA.

2. Revesting.

A. Revesting.

1. Default. Until the issuance of a Certificate of Occupancy for the entire Project pursuant to the LDA, the occurrence of any of the following shall constitute an event of default ("Default"):
  - a. Failure to commence Construction on or before the Commencement Date;
  - b. Failure to perform the Construction in accordance with the Approved Plans;
  - c. Abandonment or substantial suspension of Construction after the Commencement Date and before Completion Date;
  - d. Failure to complete ninety-five percent (95%) of the value of Construction in accordance with the Approved Plans, as such percentage and compliance are determined by Grantee's architect (or another qualified architect approved by a Holder if Grantee's architect is unavailable) pursuant to an AIA Form G704, Certificate of Substantial Completion on or before the Completion Date; and
  - e. Any Prohibited Transfer without prior written consent of County.

2. Cure.

- a. Upon the occurrence of any Default, County shall give written notice of such Default ("Default Notice") to Grantee and to any Holder as provided in the LDA or which has previously requested such Default Notice in writing.
- b. Grantee and any Holder shall be permitted thirty (30) days from the date of any Default Notice ("Cure Period") to cure such Default to the satisfaction of the County ("Cure").
- c. If County, in its sole discretion, determines in writing that the nature of the Default makes it impossible to complete a Cure within the Cure Period, Grantee or any Holder shall be permitted to commence the Cure of such Default during the Cure Period and to thereafter



diligently and continuously pursue the Cure of such Default until such Default shall be completely Cured; provided, however, that such Default shall be completely Cured not later than ninety (90) days after the Completion Date ("Extended Cure Period").

- d. Any Default which is Cured within the Cure Period or, if applicable, and Extended Cure Period, shall be deemed to be a Cured Default ("Cured Default"). Any Default which is not Cured within the Cure Period or, if applicable, and Extended Cure Period, shall be deemed to be an Uncured Default ("Uncured Default").
  - e. If, after the issuance of a Default Notice, such Default is Cured within the Cure Period or, if applicable, any Extended Cure Period, County shall issue, within thirty (30) days after receipt of a written request therefor by Grantee or any Holder, a written notice ("Cure Notice") (i) certifying that such Default is a Cured Default, (ii) certifying that such Default will not result in an exercise of the County's rights pursuant to this Section 2, and (iii) reserving the right of the County to Exercise its rights pursuant to this Section 2 for any other or future Default; provided, however, that the failure to explicitly reserve any right on the Cure Notice shall not result in the waiver of any such right.
  - f. In the event of any Uncured Default, the County may, at its sole option, exercise the County's rights pursuant to Section 2.a.3.
3. Revesting. If any Uncured Default shall occur prior to the issuance of a Certificate of Occupancy for the entire Project pursuant to Section 201.B of the LDA, the County may at its sole discretion, subject to the laws of the State of New Mexico, re-enter and take possession of the Property and terminate and re-vest in the County the estate conveyed to Grantee, in which event all right, title, and interest of Grantee in and to the Property shall revert to the County. Upon the issuance of a Certificate of Occupancy for the Project pursuant to the LDA, the County's rights pursuant to this Section 3 shall terminate. If after an Uncured Default the County is unable to or chooses not to re-vest the estate conveyed to Grantee as a result of the lien of a Mortgage as provided in Section 2.a.4 or any other liens on the Property, the Grantee shall pay the County a Revesting Fee (as defined in section 2.a.5 below).
  4. Subordination.
    - a. Notwithstanding the provisions of Section 3 hereof, any re-vesting of title in the County pursuant to the terms of this Deed of the LDA shall be subject to and limited by, and shall not defeat, render invalid, or limit in any way (i) the lien of any mortgage ("Mortgage") held by a Holder that is authorized by the LDA, or (ii) any rights or interests provided in the LDA for the protection of the Holder of such Mortgage. The parties acknowledge that regardless of whether or not a subordination agreement is

granted pursuant to Section 2.A.4(b), below, the County's subordination of its rights to the revesting of title is explicitly subject to the County receiving Acceptable Collateral, as defined in Section 2.A.4(d), below, prior to the granting of any Mortgage entered into prior to the issuance of a Certificate of Occupancy.

- b. Upon the request of the Grantee, the County shall deliver to the Holder at the Closing an instrument in recordable form, whereby the County's rights and interests and Grantee's covenants under this Deed and the LDA are subordinated to the lien of the Mortgage in the event that Grantee ceases to hold title to the Property as a result of the Holder's exercise of a remedy for the Grantee's default under the LDA Documents. The County shall also confirm in such agreement that it has received Acceptable Collateral prior to or concurrently with the execution of such agreement.
  - c. If, after the issuance of any Default Notice, any Holder shall Cure the Default before the expiration of the Cure Period (or, if applicable, any Extended Cure Period), such Holder may add the cost of Curing such Default to the Mortgage debt and to the lien of its Mortgage.
  - d. For the purposes of this Section, Acceptable Collateral shall mean collateral in a form mutually agreeable to County and Grantee securing Grantee's obligation to pay County the Revesting Fee. Acceptable Collateral may include, without limitation, a bond, direct pay irrevocable letter of credit or cash collateral from a credit provider or surety reasonably acceptable to County.
  - e. County shall promptly release any collateral provided as Acceptable Collateral upon the completion of ninety-five percent (95%) of the value of Construction in accordance with the Approved Plans, as such percentage and compliance are determined by any Holder's construction inspector, or if none, the County.
5. Revesting Fee. The Revesting Fee is at Seven Hundred, Fifty-Nine Thousand, Five Hundred and Seventy-Eight Dollars (\$759,578 US), which amount is equal to the County's investment on the Land prior to the date of this Deed. If the Revesting Fee is paid in full to County, County's right to revest pursuant to Section 2.A.3 hereof shall be terminated.
- B. Other Remedies. Notwithstanding any provisions of this Section 2 to the contrary, the remedies of the County pursuant to this Section shall not be exclusive. With respect to any Default, the remedies of the County pursuant to this Section shall be in addition to and concurrent with all other defenses, rights, and remedies which the County has, will have, or may have pursuant to this Deed, the LDA, or any other agreement between the County and Grantee or under law, equity, or otherwise. With respect to any violation of the LDA which is not a Default, the County shall

retain each and every defense, right, and remedy which the County has, will have, or may have pursuant to this Deed, the LDA, or any other agreement between the County and Grantee or under law, equity, or otherwise. The County shall not collect the Revesting Fee prior to the Completion Date (as such date may be extended hereunder or pursuant to the terms of the LDA) provided a party reasonably acceptable to County has undertaken to finish the Project pursuant to the Approved Plans.

3. No Transfer. Prior to issuance of a Certificate of Occupancy for the entire Project by the County pursuant to Article IV of the LDA, there shall be no transfer of title to the Property or change of ownership interest in Grantee except in accordance with or as allowed by the LDA.
4. Program Compliance and Non-Discrimination. Grantee, by its acceptance and execution of this Deed, covenants and agrees, for and on behalf of itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, to be bound by the covenants in the LDA and as recorded in relation to this Deed, which shall be binding for the benefit of the County and enforceable by the County against Grantee and its successors and assigns to the fullest extent permitted by law and equity through the 35th anniversary of the issuance of the Certificate of Completion.
5. No Merger. Notwithstanding the specific recital in this Deed of certain of the covenants and agreements which are provided for in the LDA, the Regulatory Agreement, or any Loan Documents, each and every covenant, term, provision, and condition contained in the LDA, the Regulatory Agreement, or and Loan Documents shall survive this Deed and shall remain in full force and effect, and no covenant, term, provision, or condition contained in the LDA, the regulatory Agreement, or any Loan Documents shall in any event or in any respect be merged with this Deed.
6. Covenants Running with Land. The agreements and covenants set forth on this Deed or recorded separately shall run with the land and shall be binding to the fullest extent permitted by law and equity. Such covenants shall inure to the benefit of the County and shall bind and be enforceable against Grantee and its successors and assigns and every successor in interest to the Property or any part thereof during the Term of the LDA, or Affordability Period, whichever is greater.
7. Severability. If any term or provision of this Deed shall be found to be void, voidable, or otherwise unenforceable, such term or provision shall be deemed severed from this Deed and shall have no further force or effect, and the remaining terms and provisions shall thereafter continue in full force and effect to accomplish the intent and purpose of this Deed to the fullest extent possible.
8. Defined Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the LDA.

**IN WITNESS WHEREOF**, the County acting through its County Manager, has caused this Deed to be duly signed by and authorized official and Grantee has caused this Deed to be signed as of the day and year first written above.

**GRANTOR:**

**THE INCORPORATED COUNTY OF LOS ALAMOS**, New Mexico,

By:

\_\_\_\_\_  
Harry Burgess, County Manager

STATE OF NEW MEXICO                    )  
  ) ss:  
COUNTY OF LOS ALAMOS    )

The above and foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by HARRY BURGESS, as County Manager of the Incorporated County of Los Alamos, Los Alamos County, New Mexico.

\_\_\_\_\_  
NOTARY PUBLIC

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

**GRANTEE:**

**[to be determined affiliate of Bethel Development, Inc.]**

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The above and foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as President of Bethel Development, Inc., managing member of \_\_\_\_\_ MM, LLC, manager of \_\_\_\_\_, LLC.

NOTARY PUBLIC

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

**EXHIBIT A**

Project Site

**EXHIBIT B**

Land Development Agreement (LDA)

**EXHIBIT C**

Real Estate Covenants

**EXHIBIT D**

Affordable Housing Land Use Restriction Agreement

**Exhibit E—Enforcement Mortgage and Security Agreement**

Draft

\_\_\_\_\_, LLC

**ENFORCEMENT MORTGAGE AND SECURITY AGREEMENT****(Not to Exceed the Principal Sum of \$759,578 US)**

**KNOW ALL PERSONS BY THESE PRESENTS THAT** this instrument (“Enforcement Mortgage”) made this \_\_\_\_ day of \_\_\_\_\_, 2019, between \_\_\_\_\_ (“Borrower”), and the Mortgagee/Grantee, **THE INCORPORATED COUNTY OF LOS ALAMOS**, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with offices at 1000 Central Avenue, Los Alamos, New Mexico 87544 (“Lender” or “County”) herby agree as follows:

**1. RECITALS**

**WHEREAS**, if Borrower defaults under that certain LDA (defined below), it shall be indebted to Lender in the principal sum of and for Land Valued at \_\_\_\_\_ (\$\_\_\_\_\_ US);  
**and**

**WHEREAS**, Borrower and Lender have entered into that certain agreement, entitled “Land Development Agreement” between the Incorporated County of Los Alamos, New Mexico, and Bethel Development Inc. (“LDA”) as of \_\_\_\_\_, 2019, which LDA provides for Borrower to construct a certain affordable housing project (“Project”), as defined and described in said LDA on the real property located at 135 DP Road, Los Alamos, New Mexico 87544, and as more fully described below; and

**WHEREAS**, Borrower has agreed to build the Project keep the Project as affordable housing for thirty-five (35) years from completion date as provided in the LDA and the Restrictive Real Estate Covenants entered into as of the date hereof between Borrower and Lender (“Covenants”) in exchange for the sale of land with a fair market value (prior to the Covenants being recorded against the Land) of **Seven Hundred, Fifty-Nine Thousand, Five Hundred and Seventy-Eight Dollars (\$759,578 US)** (“Enforcement Amount”);

**2. ENFORCEMENT MORTGAGE TERMS, CONDITIONS, AND REQUIREMENTS**

2.1. This Enforcement Mortgage and Security Agreement (“Mortgage”) secures the performance of the following obligations: (i) all terms and conditions in said LDA and the Restrictive Real Estate Covenants, (ii) the repayment of the Enforcement Amount if the Project does not receive a Certificate of Completion as provided in the LDA or is not maintained as affordable housing during the Affordability Period as provided in the Covenants, and (iii) the performance of all covenants contained therein; (iv) the payment of such amounts, if any, advanced,

or costs incurred by Lender in accordance herewith, to protect the security of this Enforcement Mortgage or in connection with the enforcement of this Enforcement Mortgage; (v) the performance of the covenants, agreements and obligations of Borrower herein contained, and (vi) upon the statutory mortgage conditions, for the breach of which it is subject to foreclosure as provided by law. No interest shall accrue or be payable on the principal balance except in the event of default as provided in the LDA, or as otherwise provided or allowed by law.

2.2 For consideration paid, Borrower does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Lender, its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants. Such Mortgage also includes:

(a) All of Borrower's interest in the Real Property situated in the County, and State of New Mexico, and containing all or portion of the real property located at 135 DP Road, Los Alamos, New Mexico 87544, and as more fully described as: a parcel of land being a part of [add legal description].

(b) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditament, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Borrower of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Borrower, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property to the centerline hereof;

(d) All right, title and interest of Borrower in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above;

(e) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Borrower;



(f) To the extent assignable, any and all plans, specifications, site plans, drawings renderings and schematics, however characterized, from time to time prepared for use in connection with the construction and operation of the Project;

(g) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any services, the supply of any materials or the conduct of operations in the management of the Real Property or the Project including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to hotel operations, franchise agreements and other similar agreements;

(h) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Real Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, bar or restaurant permits, liquor or cabaret licenses, food service operation licenses, elevator licenses, warranties and guaranties; and

(i) All municipal or utility deposits made by or on behalf of Borrower or made in connection with the Real Property or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Borrower hereunder, and any and all other assets revenues and profits of any kind of the Project.

All of the property described in the foregoing subparagraphs (a) through (i) shall sometimes hereinafter be collectively referred to as the "Property." All of the assignments hereinabove referenced are subject to the right of Borrower to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid loan indebtedness, inclusive of interest thereon, which may be outstanding at any time One Million Dollars (\$1,000,000US).

2.3 In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of advances made for the payment of taxes, tax increment payments, assessments, insurance premiums, and other costs incurred for the protection of the Real Property or the Project, if not paid by Borrower as required by law or this Mortgage.

2.4 Borrower represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Lender in the Property against all claims and demands

whatsoever, except any encumbrances acceptable to Lender, and that Borrower shall maintain the priority of the lien of and the security interest granted by this Mortgage upon the property until the Mortgage is defeased as provided herein.

2.5 Lender shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places required in order to establish, preserve, and protect the lien of this Mortgage as a valid second mortgage lien on all real property, fixtures, and interests therein included in the Property, and a valid, perfected second priority security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

2.6 All property of every kind acquired by Borrower in relation to, for, placed, or affixed to the Project after the date hereof which, by the terms herein, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by Borrower, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by Borrower and specifically described herein. Borrower shall take such actions and execute such additional instruments as the Lender shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

2.7 Any sale, lease, assignment, or sublet of the Property must have prior approval by Lender, which approval will not be unreasonably withheld, conditioned or delayed, and such shall be subject to the terms and conditions contained in this Mortgage. Lender reserves the right to subordinate this Enforcement Mortgage.

2.8 Subordination. The County's Enforcement Mortgage shall be subject and subordinate to a mortgage securing the construction loan and any refinancing of that loan to a permanent loan (or any refinancing thereof) with a term of up to 35 years consistent with the financing described in the Land Development Agreement, if there is such a loan, and County shall execute documents as may be reasonably necessary to effectuate such subordination.

2.9 Security Interest in the Project. This Enforcement Mortgage constitutes a security agreement as to all or any part of the Property which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Enforcement Mortgage also constitutes a financing statement with respect to any and all property included in the Property which is or may become fixtures.

### **3. PAYMENT OF FEES, TAXES, ASSESSMENTS AND OTHER COSTS**

3.1 Borrower shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof. Where Borrower disputes any such fees, costs, assessment, or taxes, Borrower shall promptly report to Lender

such dispute.

#### **4. INSURANCE AND OTHER COSTS**

4.1 During construction of the Project, until issuance of Certificates of Occupancy for each unit and, if applicable, a certificate of completion and acceptance by the County for public infrastructure, Borrower, at its expense, shall keep or cause to be kept, the Property fully insured pursuant to the insurance requirements in the Land Development Agreement and in an amount not less than the outstanding balances of the Enforcement Amount plus any loan evidenced by any mortgage to which this Enforcement Mortgage is subordinate.

4.2 Upon issuance of a Certificate of Occupancy for the each unit, and thereafter during the Affordability Period, Borrower, at its expense, shall keep or cause to be kept, the Property insured, as required by the Land Development Agreement or in an amount not less than the outstanding balances of the Enforcement Amount evidenced by the Enforcement Mortgage and of any mortgage to which this Mortgage is subordinate, against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals thereof, whichever is more. All policies of insurance required by this paragraph shall be endorsed to indicate Lender as an insured Mortgagee.

4.3 In the event of any damage or injury to the Project, Borrower agrees that it shall take any and all actions necessary to restore the Project substantially to its condition prior to the damage or injury, and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

4.4 If Borrower shall fail to make any payments or perform any act required to be paid or performed hereunder or under the Covenants, Lender may, but shall be under no obligation to do so, upon five (5) days written notice to Borrower and to the Lender of any mortgage loan to which this Mortgage is subordinate, make such payment or perform such act for the account of and at the expense of Borrower. All payments so made by the Lender and all costs, fees and expenses incurred in connection therewith shall, together with interest thereon as provided herein, be additional indebtedness secured by this Mortgage, to the extent permitted by law, and shall be paid by Borrower to the Lender on demand. In any action brought to collect such indebtedness, or to foreclose this Mortgage, the Lender shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision rendered in any such proceedings.

#### **5. DEFAULT**

5.1 Notwithstanding any other provisions of this Enforcement Mortgage, the Restrictive Real Estate Covenants, or the Land Development Agreement, upon any failure by Borrower to pay when due any Enforcement Amount installment of principal or interest, or failure to pay any other obligation under the Land Development Agreement and such failure is not cured within thirty (30) business days after receipt of written notice from the Lender, such failure to pay or cure shall constitute an immediate default entitling the Lender to

exercise any remedy hereafter described in this paragraph, or elsewhere in this Enforcement Mortgage, the Restrictive Real Estate Covenants, or the Land Development Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, which has not been remedied or cured within thirty (30) days after receipt of written notice thereof from Lender, or for such longer period as the Lender shall agree to in writing, then the Lender at its option may declare a default to have occurred hereunder. Subject to the foregoing provisions, with respect to either a default in failure to make payment or any other default, the remedies available to Lender include its ability at any time at its election to exercise any or all or any combination of the remedies conferred upon or reserved to it under this Enforcement Mortgage, the Land Development Agreement, the Restrictive Real Estate Covenants, or other right(s) now or hereafter existing at law or in equity. Without limitation, the Lender may declare the entire unpaid Enforcement Amount immediately due and payable without notice or demand, the same being expressly waived by Borrower; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part, of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

5.2 Each right, power, and remedy of the Lender provided for in the Land Development Agreement, the Restrictive Real Estate Covenants, and Enforcement Mortgage, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other rights, power, or remedy provided for this Mortgage, the Land Development Agreement, the Restrictive Real Estate Covenants, or now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such rights, power or remedies.

5.3 No Waiver. No failure by the Lender to insist upon the strict performance of any term whereof to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Enforcement Mortgage, and the Enforcement Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

5.4 PROVIDED, however, that these presents are upon the condition that if Borrower shall well and truly pay to Lender, its successors and assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Borrower under this Enforcement Mortgage, then this Enforcement Mortgage shall be void; otherwise to remain in full force and effect in law and equity forever.

6.0 The existence and lien of this Mortgage shall not impede or affect the right of Borrower from time to time with respect to all or a portion of the Premises, to dedicate public areas by plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements.

7.0 Notices. Unless Lender or Borrower gives written instructions to the other party of a change in the person or address set forth below, all notices, demands or requests permitted or required to be given under the provisions of this Enforcement shall be hand-delivered or mailed, registered or certified mail, return receipt requested to the following addresses:

LENDER:

Authorized County Representative:  
County Manager  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544

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

BORROWER:

Authorized Developer Representative  
\_\_\_\_\_  
201 Bradenton Avenue, Suite 120,  
Dublin, Ohio 43017

In WITNESS WHEREOF, the said borrower, Bethel Development, Inc., hereunto duly authorized has caused, this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
By: \_\_\_\_\_ MM, LLC, it manager

By Bethel Development, Inc., its managing member

By: \_\_\_\_\_  
Daniel N. Terlecki, President

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The above and foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by DANIEL N. TERLECKI, as President of Bethel Development, Inc., managing member of \_\_\_\_\_ MM, LLC, manager of \_\_\_\_\_, LLC.

NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

## Exhibit F – Proposed Restrictive Real Estate Covenants

~DRAFT~

STATE OF NEW MEXICO

THE INCORPORATED COUNTY OF LOS ALAMOS

### RESTRICTIVE REAL ESTATE COVENANTS

NOW COMES \_\_\_\_\_, 201 Bradenton Avenue, Suite 120, Dublin, Ohio 43017, a \_\_\_\_\_ (“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 a municipal corporation (“City”), which covenants shall run with the below identified real property until modified or released by the County.

#### 1. **Burdened Property and Consideration:**

- A. The Owner is the owner fee simple of that certain real estate (“Real Property”) in Los Alamos County New Mexico, being approximately 2.79 acres of Tract A-8-b.

#### **Legal Description: Tract A-8-b:**

Parcel of land being a part of DP Road Site, as filed in the office of the County Clerk of Los Alamos County, Document No. 126918 in Book 6 at Page 97 of the Records of Plats, situate in Sections 14 and 15, Township 19 North, Range 6 East of the New Mexico P.M., County of Los Alamos, State of New Mexico. Being more particularly described as follows:

Commencing at the Northeast corner of Tract WC of Eastern Area No. 2, as filed in the office of the County Clerk of Los Alamos County, Document No. 4505 in Book I at Page 57 of the Records of Plats, said point also being on the Southerly Right-of-Way line of OP Road, thence along said Southerly Right-of-Way line the following three (3) courses: (1) thence S66 degrees 35' 54" E a distance of 110.89 feet; (2) thence 179.74 feet along the arc of a 540.87 foot radius non—tangent curve to the left having a central angle of 19 degrees 02 ' 27" and subtending a chord bearing S76 degrees 06' 12" E a distance of 178.92 feet; (3) thence S85 degrees 37' 34" E a distance of 224.00 feet to the true Point of Beginning; thence continuing along said Southerly Right-of-Way line S85 degrees 37' 34" E a distance of 350.00 feet; thence departing said Southerly Right-of-Way line S03 degrees 12' 12" W a distance of 400.00 feet; thence N85 degrees 37' 34"W a distance of 350.00 feet; thence S03 degrees 12' 12"W a distance of 400.00 feet to the true Point of Beginning. Said parcel contains 139,971 square feet (3.2132 acres) more or less.

- B. In consideration for the donation of public land and contribution 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.

## **2. Definitions:**

“AMI” means Area Median Income which is the annual income figure for a specific geographic area which is determined annually by the U.S. Department of Housing and Urban Development and adjusted for 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. “Housing Quality Standards” means the standards set forth in 24 CFR Part 887 to maintain decent, safe and sanitary living environment,

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

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

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

“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 MFA.

## **3. Restrictive Covenants**

A. Use of Property. The Real Property shall be used as and only for the construction and operation of the Project. The Project named The Bluff Apartments is located at 135 DP Road, Los Alamos, New Mexico 87544 as legally described in Exhibit “B-2” (“Project site”) containing approximately 2.79 acres. The Bluffs shall consist of a 64-unit affordable rental housing development, of which, 6 units are restricted to households earning up to 60% area median income (AMI); 52 units are restricted to households earning up to 50% AMI; 6 and units are restricted to households earning up to 40% of AMI; as calculated by the United States Department of Housing and Urban Development (HUD). These units will be a mix of 1 and 2 bedroom units that will serve the needs of elderly households of various sizes, types, and ages over 55. The Project shall remain an affordable rental housing Project as provided herein.



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

(1) The Owner shall determine whether the annual income of household(s) occupying or seeking to occupy 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 Section B of these covenants.

4. The Owner will ensure that the property manager takes reasonable and effective actions with the goal of preventing crime in the project including communicating and cooperating with the Los Alamos Police Department towards this goal.

5. The Owner shall establish a replacement reserve fund for the Project from funds other than County funds, in an amount not less than Two Hundred Fifty Dollars and No Cents (\$250.00) per unit per annum from the date of acceptance of the Certificate of Occupancy issued by the County until the terms of this Agreement have been met unless replacement reserve has been capitalized in an amount approved by the County in its reasonable discretion.

6. Encumbrances. The Owner covenants and agrees that it shall not refinance, mortgage, suffer or allow the creation of a lien, nor otherwise encumber the Real Property (other than as provided in the LDA, Deed, and Enforcement Mortgage), without the prior written consent of the County, which consent may not be unreasonably withheld or delayed.

7. Property Standards Requirements. The Project will meet at all time all Housing Quality Standards, or other physical property standards regulated by HUD, and local building code requirements, and allow the County to inspect the property, 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. The quarterly report shall conform with the requirements as specified by MFA.

(b) Income received for the rental of affordable units shall be reported annually. An Income report detailing the uses of income received from the rental of affordable units for the reporting period will be provided

by Owner within 30 days after the close of the quarter until the terms of this Agreement have been met. The report provided to the County shall conform to the requirements for the project as specified by MFA.

(c) The Owner shall report annually within 90 days of the close of the Owner's fiscal year through the Affordability Period. The report provided to the County shall conform to the requirements for the project as specified by MFA.

(d) At any time during normal business hours and as often as the County and/or the appropriate funding entity may deem necessary, there shall be made available to the County for examination, all of the owner's records with respect to all matters covered by this Agreement.

9. Term. After the Effective Date the Covenants contained herein shall run with and remain effective for thirty five (35) years from the completion of the Project ("Term").

10. 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.

11. Any failure of the Owner to comply with any provision of these covenants shall constitute a default under the Development Agreement, and Mortgage executed concurrent with these Restrictive Real Estate Covenants.

12. 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 \_\_\_\_ day of \_\_\_\_\_, 2019.

[TBD affiliate controlled by BDI]

By: \_\_\_\_\_ MM, LLC, it manager

By Bethel Development, Inc., its managing member

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

Daniel N. Terlecki, President

STATE OF OHIO                    )  
  ) ss.  
\_\_\_\_\_ COUNTY            )

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2019, by Daniel N. Terlecki, President of Bethel Development Inc., an Ohio Corporation, 201 Bradenton Avenue, Suite 120, Dublin, Ohio 43017, managing member of the manager of \_\_\_\_\_, LLC, on behalf of the corporation.

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

My Commission Expires:

\_\_\_\_\_

**Exhibit G - Developer Project Budget**

**THE BLUFFS**  
**Los Alamos, NM**  
**Sources and Uses**  
 rev. 11-19-18

**SOURCES**

Equity	\$8,862,521
Permanent Loan	2,000,000
City Donation	1,500,000
Deferred Developer Fee	268,172
<b>TOTAL</b>	<b>\$12,630,693</b>

**BUDGET**

	<b>COSTS</b>	<b>COST/DU</b>	<b>70% HTC BASIS</b>
Acquisition Land	\$639,788	9,997	0
Site work	961,675	15,026	961,675
Construction Costs	7,635,880	119,311	7,635,880
Permits and Fees	64,000	1,000	64,000
Lift Station/Offsite Utilities	450,000	7,031	450,000
Soils Report	6,000	94	6,000
Architect	250,000	3,906	250,000
Engineering	62,500	977	62,500
Architectural Inspections	18,000	281	18,000
Real Estate Taxes	12,750	199	12,750
Insurance Builders Risk	80,000	1,250	80,000
Environmental studies	6,000	94	6,000
Appraisal	7,500	117	7,500
Survey	2,500	39	2,500
Title policy/charges	65,000	1,016	60,000
Legal	81,700	1,277	50,000
Accounting	12,400	194	0
Market Study	8,500	133	8,500
Marketing	10,000	156	0
Construction Loan Fee	80,000	1,250	80,000
Permanent Loan Fee	25,000	391	0
Construction Interest	216,000	3,375	152,500
Tax Credit Fees/HOME	79,000	1,234	0
Contingency	351,500	5,492	150,000
Soft Cost Contingency	13,500	211	2,500
Syndication Costs	0	0	0
Developer Fee	1,259,500	19,680	1,259,500
Operating reserve	232,000	3,625	0
<b>TOTAL</b>	<b>\$12,630,693</b>	<b>\$197,355</b>	<b>\$11,319,805</b>

Basis 11,319,805

%LIHTC 100.00%

Tax credit rate 9.00%

Applicable fraction 100.00%

Calculated Annual Credit 1,018,782

**TOTAL CALCULATED CREDIT 1,018,782**

**Exhibit H - Project Development Schedule (Proposed/Draft)**Project Title: **Los Alamos Affordable Housing**Applicant: **Bethel Development, Inc.****Item****Project Date of Completion****SITE**Environmental Assessment Completed (if applicable)  
Site Acquired (Transfer Ordinance adopted)January, 2019  
November, 2019**LOCAL PERMITS**Conditional Use or Special Use Permit  
Variance  
Site Plan Review/MFA Approval  
Grading Permit  
Building PermitN/A  
N/A  
February, 2019  
March, 2020  
March, 2020**CONSTRUCTION FINANCING**Loan Application (Preliminary)  
Enforceable Commitment  
Closing and DisbursementJanuary, 2020  
February, 2020  
March, 2020**PERMANENT FINANCING**Loan Application (Preliminary)  
Enforceable Commitment  
Closing and DisbursementJanuary, 2020  
February, 2020  
March, 2020**OTHER LOANS AND GRANTS**Type and Source: Los Alamos County (non-amortizing)  
Application  
Closing or Award  
Funds AvailableJanuary, 2020  
November, 2018  
January, 2019  
March, 2020

## **Exhibit I - Project Scope**

### **Project Description:**

The Project name The Bluffs Apartments is located at 135 DP Road, Los Alamos, New Mexico 87544 containing approximately 2.79 acres also described on Exhibit “B-2” (“project site”). The project site is on Tract A-8-b which contains approximately 3.2132 acres.

### **Affordable Housing Units:**

The Project shall consist of a 64-unit affordable rental housing development for senior of which 6 units are restricted to households earning up to 60% area median income (AMI); 52 units are restricted to households earning up to 50% AMI; and 6 units are restricted to households earning up to 40% of AMI; as calculated by the United States Department of Housing and Urban Development (HUD). Units will be a mix of 1 and 2 bedroom units. The Project shall remain an affordable rental housing Project for the 35-year Affordability Period. The project will be managed by Bethel Development Inc. or another professional management company approved by County in writing.