

NEW MEXICO MORTGAGE FINANCE AUTHORITY  
HOME ARP PROGRAM  
GRANT AGREEMENT

THIS GRANT AGREEMENT, effective as of **[INSERT CLOSING DATE] 2022**, is made between the New Mexico Mortgage Finance Authority, a public body politic and corporate, separate and apart from but constituting a governmental instrumentality of the state of New Mexico ("Grantor") and **Click here to enter text**, a **[STATE OF FORMATION] Choose an item**, ("Grantee").

WITNESSETH:

WHEREAS, Grantor has received funds appropriated under Section 3205 of the American Rescue Plan Act of 2021 (Pub. L. 117-2) for the HOME Investment Partnerships Program ("HOME")("HOME-ARP") from the from the United States Department of Housing and Urban Development ("HUD") under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) The HOME-ARP Funds must be used by Grantee in accordance with the 24 CFR Part 92 ("HOME Regulations") and the U.S. Department of Housing and Urban Development Community Planning and Development Notice CPD-21-10 ("CPD Notice");

WHEREAS, Grantor will use HOME-ARP Funds to address the need for homelessness assistance through the acquisition, construction and/or rehabilitation of multi-family affordable housing primarily to benefit individuals and families who are Homeless, at Risk of Homelessness; and

WHEREAS, Grantee desires to receive and Grantor desires to grant **\_\_\_\_\_** Dollars and 00/100 (\$ **\_\_\_\_\_**) of HOME-ARP Funds, upon the terms and conditions set forth herein, with said funds to be used by Grantee solely for the acquisition and rehabilitation of the Project, as defined below.

NOW, THEREFORE, in consideration of the premises and of the representations, covenants and undertakings herein expressed, Grantor and Grantee agree as follows:

Article I

DEFINITIONS

"Acquisition Closing Costs" means the reasonable, necessary and customary closing costs associated with acquiring the Property or the Project including title insurance premiums, title and recording fees, inspection fees, legal fees and real estate taxes.

"Acquisition Cost" means the consideration price or sales price of the Property or the Project as evidenced in a customary sales contract or purchase option agreement, not including Acquisition Closing Costs, paid for by Grantee to obtain a fee simple or qualifying leasehold interest in the Property or Project.

" At Risk of Homelessness" as defined in 24 CFR 91.5.

"Closing Date," "Closing" or "Grant Closing" means the date of this Grant Agreement which shall be the date on which the Project's construction Grant(s) shall close.

“Construction Costs” means the labor and material costs related to the rehabilitation and/or construction of the Property and Project as evidenced by an American Institute of Architects (AIA) payment certificate or other evidence satisfactory to Lender.

“HOME-ARP-Assisted Units” means [REDACTED] [NOTE TO BE REMOVED - no less than 70%] ([REDACTED]%) of the [REDACTED] ([REDACTED]) residential units located in the Project that are restricted to comply with HOME-ARP Program requirements for *Homeless and At Risk of Homelessness* Individuals or Families.

“Financing Costs” means costs incurred to obtain Construction Financing (defined below) and Permanent Financing (defined below), including origination points and fees, application and commitment fees, hazard and liability insurance premiums, performance bond fees, payment bond fees, interest on Construction Financing, title and recording fees, and inspection fees and legal fees, but excluding any Low-Income Housing Tax Credit reservation fees.

“Grant” means the Grant described in Article II hereof. Repayment of the Grant will only be required if Grantee does not comply with the terms of this Grant Agreement.

“Grant Documents” means this Agreement; the LURA; and all other documents evidencing or securing performance.

“Homeless” as defined in 24 CFR 91.5 (1), (2), or (3).

“Land Use Restriction Agreement” or “LURA” means a Land Use Restriction Agreement, as the same may be amended from time to time, between Grantee and Grantor, restricting the use of the Project to affordable housing, as more specifically set forth therein.

“Low-Income Persons and Households”, for purposes of this Grant Agreement, means persons or households whose annual incomes do not exceed 60 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households, except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

“Organization Documents” means (i) for a corporation or non-profit corporation, its certificate of incorporation, articles of incorporation and bylaws; (ii) for a limited partnership, its certificate of limited partnership and limited partnership agreement and the Organization Documents of each general partner that is an entity; (iii) for a limited liability company, its certificate of organization and operating agreement and the Organization Documents of each member that is an entity; (iv) for a general partnership, its partnership agreement, the Organization Documents of each general partner that is an entity; and (v) for each of the foregoing, such resolutions of Grantee and each general partner or member as Grantor may reasonably request.

“Principal(s)” means (i) with respect to a partnership or limited partnership, its general partners; (ii) with respect to a limited liability company, its managing members; and (iii) with respect to a corporation, its directors and any holder of more than ten percent (10%) of the voting power or value of all classes of the corporation’s stock.

“Professional Services Costs” means costs of architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups for the Project.

“Project” means [acquisition and rehabilitation] of the real property located at [REDACTED], and as more fully described on Exhibit A hereto (the “Property”), on which Grantee shall construct a [REDACTED] unit, approximately [Click here to enter text.](#)-square-foot multifamily residential rental project containing, among other amenities, [\[describe amenities such as a multipurpose room and a community center\]](#). The term “Project” includes the “Property.”

“Project Completion” means such time as Grantee has complied with the conditions of Sections 3.1 and 3.3 of this Grant Agreement, and Grantee has closed the Permanent Financing on the Project. Notwithstanding the foregoing, solely for purposes of 24 CFR § 92.502(d), Project Completion occurs when complete Project Completion information has been entered into the HUD Integrated Disbursement and Information System (IDIS), within 120 days of the disbursement of all Loan proceeds.

“Rehabilitation Costs” means the labor and material costs related to the rehabilitation of the Property and Project as evidenced by an American Institute of Architects (AIA) payment certificate or other evidence satisfactory to Grantor.

“Soft Costs” means costs related to market studies, appraisals, environmental studies and cost certifications that are reasonable and necessary for acquisition, construction or rehabilitation of the Project, and other similar costs.

“Verified Eligible Costs” means eligible project costs and expenses as defined in Title I of the Housing and Community Development Act of 1974, Section 105, the HOME-ARP Regulations, CPD Notice that Grantee shall incur for the [acquisition and rehabilitation] of the Project and that Grantor has verified are reasonable and necessary.

Any other capitalized terms used herein but not otherwise defined herein will have the meaning assigned to such terms in the Grant Document in which they are defined.

## Article II

### THE GRANT

#### Section 2.1 Making of the Conditional Grant:

Grantor hereby agrees to make a conditional Grant to Grantee from federally-appropriated funds made available to Grantor pursuant to ARPA, the HOME Regulations, and The CPD Notice (collectively, “HOME-ARP Program”) in an amount not to exceed \_\_\_\_\_ Dollars and 00/100(\$ [\[REDACTED\]](#)). The Grant will be deemed to have been made when the proceeds of the Grant, or any portion thereof, are delivered to or on behalf of Grantee (“Grant Funding”). Default by Grantee under the Grant Documents shall both relieve Grantor of any obligations to make any advance of the Grant and shall require Grantee to immediately repay Grantor any advanced portions of the Grant. Grantor’s performance under this Agreement is contingent upon sufficient authority and appropriations being made by HUD.

#### Section 2.2 Acceptance and Evidence of the Grant:

Grantee hereby agrees to accept the Grant and, as evidence thereof, agrees to deliver the Grant Documents to Grantor.

### Section 2.3 Use of Grant Proceeds

Grantee agrees that the proceeds of the Grant will be used solely to pay for Verified Eligible Costs related to the HOME-ARP-Assisted Units at the Project.

### Section 2.4 Land Use Restriction Agreement

Grantee will execute and deliver the LURA as a condition of the Grant.

Section 2.5 Monitoring and Audit. Grantee agrees that Grantor may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

Grantee further agrees that Grantor may, at reasonable times and upon adequate notice, examine all books and records, and request and receive from Grantee one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Project or the Grantee.

Section 2.6 Grant Closing and Funding Deadline: Closing will occur no later than six (6) months after acceptance of this Grant Agreement, upon satisfaction of the conditions set forth in this Grant Agreement. The deadline for initial Grant Funding is thirty (30) days after Closing. The proceeds of the Grant will be applied to pay Verified Eligible Costs to the extent such proceeds are available, provided that applications for payment of Verified Eligible Costs shall be submitted to Grantor by the last day of the 24<sup>th</sup> month after Closing.

### Section 2.7 Conditions Precedent to Funding:

Grantor will fund the Grant upon written request by Grantee only if the following conditions are met, together with any additional conditions described in this Grant Agreement, prior to the Grant Closing.

(a) HUD Environmental Review. Prior to Grant Closing Grantee will have completed, to the satisfaction of Grantor, all requirements under 24 CFR Part 58, the Review Procedures for Entities Assuming HUD Environmental Responsibilities, pursuant to 24 CFR § 92.352 of the HOME Regulations;

(b) Conditional Commitment of Federal HOME-ARP Funds. This Grant Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of HUD Environmental Review and receipt by Grantor of an approval of the Request for Release of Funds and Certification from HUD or the state of New Mexico under 24 CFR Part 58. The provision of any funds to the Project is conditioned on Grantor's determination to proceed with, modify or cancel the Project based on the results of the HUD Environmental Review;

(c) Statement of Assurances. Concurrently with acceptance of this Grant Agreement, Grantee will execute and deliver the Statement of Assurances in the form attached hereto as **Exhibit B** and prior to Grant Closing Grantee will have complied with all applicable requirements stated therein;

(d) Title. Grantee shall provide evidence satisfactory to Grantor that it holds, or will hold after the Grant Closing, good and indefeasible fee simple title to the Property;

(e) Bidding Documentation. Grantee will have submitted to Grantor bidding documentation for any general construction contract put out to bid for construction or rehabilitation of the Project, in form and substance satisfactory to Grantor.

(f) Organization Documents, Certificates of Existence and Good Standing. At least thirty (30) days prior to Grant Closing, Grantee will provide Grantor with (i) true and accurate copies of its Organization Documents, (ii) a Certificate of Existence, if Grantee is a partnership, or a Certificate of Good Standing, if Grantee is a corporation or limited liability company, from the New Mexico Secretary of State (iii) Certificate(s) of Existence or Good Standing, as applicable, for each entity Principal and, as applicable, the Principals of each entity Principal, and (iv) any other evidence of the standing of Grantee in New Mexico and any other state in which Grantee may be incorporated or formed, as may be required by Grantor;

(g) Project Budgets. At least thirty (30) days prior to Grant Closing, Grantee will provide Grantor, all of which will be satisfactory to Grantor in form and substance, with updated Grantor Grant Application Schedules as follows (i) Development Cost Budget, (ii) Sources of Funds Statement, (iii) Unit Type & Rent Summary, (iv) Operating Expense Budget, (v) Contractor & Applicant's Cost Breakdown, (vi) Development Schedule, and (vii) an updated fifteen- (15-) year cash flow proforma;

(h) Construction Contract. At least fifteen (15) days prior to Closing Grantee will provide a copy of a signed construction contract acceptable to Grantor reflecting the costs in the Contractor & Applicant's Cost Breakdown in the Project Budgets section above. This condition may be waived or modified at Grantor's discretion.

(i) Funding Commitments. At least thirty (30) days prior to Closing, Grantee will provide Grantor with evidence of firm commitment(s) of any Loans, Grants or other forms of financial assistance necessary to complete and operate the Project, including fully executed copies of (i) Construction Financing commitment(s), (ii) Permanent Financing commitments(s), (iii) a copy of Grantee's limited partnership or operating agreement or other evidence verifying the commitment of equity contributions to the Project, and (iv) any project-based rent assistance contracts;

(j) Equity/Construction Financing. At or prior to Grant Closing, Grantee must have closed equity and Construction Financing agreements acceptable to Grantor. This condition may be waived or modified at Grantor's discretion.

(k) Verified Eligible Costs. Prior to Grant Closing, Grantee will verify that the Grant is needed to pay Verified Eligible Costs and that Grantee has satisfied all Grantor and HOME-ARP Program requirements;

(l) Request for Reimbursement. Grantee will submit to Grantor a signed and completed Request for Reimbursement form with respect to the installment of Grant proceeds at least ten (10) days prior to the time Grantee requires such installment;

(m) Delivery of Grant Documents. At Grant Closing, Grantee will deliver or will cause to be delivered to Grantor the Grant Documents, duly executed by Grantee, all of which documents and

instruments will be satisfactory to Grantor in form and substance;

(n) Charitable Organization Registration. If Grantee; any of Grantee's managers, members or general partners, as applicable; or any manager, member or general partner of the foregoing is a non-profit organization, as a condition of entering into this Grant Agreement and of the Grant of HOME-ARP Funds, then Grantee will provide evidence that Grantee and such managers, members or general partners are registered with the New Mexico Attorney General's Office's Registry of Charitable Organizations as required by the Charitable Solicitations Act, Sections 57-22-1 NMSA 1978 et seq., and the New Mexico Attorney General's Office. Grantee will keep such registration current, and will cause such managers, members or general partners to keep such registration current, during the Restriction Period, and will provide Grantor with proof of current registration upon request;

(o) Financial Statements. At least fifteen (15), but not more than forty-five (45) days prior to Closing, Grantee will provide Grantor with its most recent fiscal year-end financial statement (audited if available) and a recent (within 90 days) interim year-to-date financial statement certified by an authorized officer or employee of Grantee. If requested by Grantor, Grantee will provide the same types of statements for each Principal of Grantee. If a Principal is an individual, the following may be submitted instead: (1) the most recent federal tax return with all schedules, attachments and copies of K-1's, (ii) a recent (within 90 days) personal financial statement (HUD form 92417 or equivalent), and (iii) a recent (within 90 days) personal cash flow statement. All such statements must be acceptable to Grantor in its sole discretion.

(p) Default. No Event of Default will exist under this Grant Agreement; and

(q) Any other information that Grantor may reasonably request.

Section 2.8 Timely Expenditure of Funds: Grantee agrees that all of the proceeds of the Grant will be expended in accordance with the approved Development Cost Budget attached hereto as **Exhibit C-1**, with the Sources of Funds and Financing Commitments statement attached hereto as **Exhibit C-2**, with the Disbursement Schedule attached hereto as **Exhibit C-3**, and with the Completion Schedule attached hereto as **Exhibit D**.

Section 2.9 Release of Funds: Subject to the Grantee meeting the requirements of this Grant Agreement, Grantor will release and disburse the Grant to, or for the benefit of, Grantee in the amounts and at the times specified below and in accordance with the attached hereto **Exhibit C-3**:

(a) At Closing, Grantor will disburse to, or for the benefit of, Grantee an amount not less than \$25,000 and not to exceed ninety percent (90%) of the Grant Amount, minus the minimum \$25,000 to be funded in section (b) below, as is necessary to fund: (i) up to seventy-five percent (75%) of the lesser of the Acquisition Cost or the appraised value of the Property, and (ii) Acquisition Closing Costs. For purposes of this provision, the appraised value of the Property must be determined by a written appraisal prepared by a licensed real estate appraiser approved by, and acceptable to, Grantor;

(b) After the Project has achieved fifty percent (50%) of completion of the construction or rehabilitation work identified in the Development Cost Budget attached as **Exhibit C-1**, and provided the request for disbursement occurs twelve (12) months or less after the first disbursement, Grantor will disburse to, or for the benefit of, Grantee an amount not less than \$25,000 and not to exceed ninety percent (90%) of the Grant Amount less amounts previously disbursed to or for the benefit of Grantee,



such that the amount of the disbursements under this provision does not exceed the value in place of the Project at the time of such disbursement as a result of rehabilitation of the Project. Grantee must provide evidence of having achieved fifty percent (50%) completion of the rehabilitation work in the form of an AIA value-in-place schedule that must be executed by Grantee, Grantee's architect, general construction contractor, and Construction Grantor;

(c) Within [Click here to enter text.](#) months of Closing and upon Project Completion and Grantee's submittal to Grantor of a final HOME-ARP Program Completion Report, a form HUD 40107 Annual Performance Report collecting information on Minority Business Enterprises and Women Business Enterprises, and a form HUD 60002 Section 3 Summary Report, both in form and substance satisfactory to Grantor, Grantor will disburse to, or for the benefit of, Grantee any remaining undisbursed Grant proceeds necessary to pay for Verified Eligible Costs.

Failure to meet these timelines for disbursement may result in cancellation of funding by HUD.

### Article III

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTEE

##### Section 3.1 Agreement to Complete the Project:

Grantee agrees to complete the rehabilitation, acquisition and installation of the Project with all reasonable dispatch in accordance with the Project plans and specifications and the Completion Schedule attached hereto as **Exhibit D**. If the Grant amount is insufficient to pay the costs of completing the Project, Grantee will complete the Project in accordance with the Completion Schedule attached hereto as **Exhibit D** and will be responsible for causing the costs thereof to be paid. Grantee will procure any and all building permits, use and occupancy permits, and other permits, licenses and authorizations necessary for the completion, occupancy and use of the Project.

##### Section 3.2 Amendments to Project Plans and Specifications and Change Orders:

Grantee will not amend the Project plans and specifications in any material respect without first obtaining the prior written consent of Grantor.

Except as provided below, all change orders must be approved in advance in writing by Grantor and Grantee agrees to notify Grantor in advance of all change orders, regardless of whether Grantor approval is required. Notwithstanding the foregoing, change orders that meet all of the following requirements shall not require the consent of Grantor: (a) change orders not to exceed \$[Click here to enter text.](#) for a single item or an aggregate of \$[Click here to enter text.](#) for all changes, (b) change orders that do not result in a material change to the design or the structural components of the improvements, and (c) change orders that have been approved by all applicable governmental authorities, if the approval of such governmental authorities is required. Grantor will endeavor to notify Grantee of whether Grantor approves of the requested change order within twenty (20) days of the receipt by Grantor of all items required by Grantor in order to evaluate such request. If Grantor is unable to complete its review within such twenty (20) day period, Grantor will endeavor to notify Grantee of the reasons for the delay in responding and a good faith estimate of the date by which Grantor will complete its review. Grantor's notice to Grantee must be in writing. Grantor shall not have liability to Grantee or any other person for failure to complete Grantor's review of a requested change order

within a specified time. Grantor may require periodic inspections, at Grantee's expense. Notwithstanding the foregoing, during Project construction Grantor may choose to accept third-party inspection reports. Grantor may request any other documents deemed necessary by it to help verify requests for disbursements and may, at Grantee's expense, contract with a third party for verification of requests for disbursements.

### Section 3.3 Project Completion:

Within fifteen (15) days of the completion of the Project, Grantee will file the following items with Grantor:

(a) a certificate of Grantee certifying, without prejudice to any rights of Grantee against third parties, (i) that the Project has been constructed, acquired and installed in accordance with Project plans and specifications, (ii) the date of Project completion, and (iii) that all labor, services, materials and supplies used to construct, acquire and install the Project have been paid in full or otherwise provided for, except for such portion thereof (which will be identified in detail) that Grantee is disputing in good faith and by appropriate proceeding;

(b) a Certificate of Substantial Completion signed by the inspecting engineer or architect in charge of the Project; and

(c) a final occupancy permit or comparable local equivalent issued by the municipality having jurisdiction over the Project.

### Section 3.4 Maintenance and Improvement of the Project:

Upon Project Completion and thereafter so long as the Grant is outstanding, Grantee agrees to maintain the Project in good repair and condition and to make all necessary and proper repairs, replacements and renewals. Grantee will not commit or permit any waste on, or of, the Property.

### Section 3.5 Use of Project:

Grantee represents that it will use and maintain the Project and the HOME-ARP-Assisted Units in full compliance with this Grant Agreement and with the LURA for so long as such agreements are in effect.

### Section 3.6 Existence and Authorizations:

Grantee represents that it is a **Choose an item.**, duly organized and existing under the laws of the state of **New Mexico**, and is qualified to do business in the state of New Mexico and that it has obtained all authorizations necessary on its part for the due and valid execution and delivery of the Grant Documents and the assumption of the obligations represented thereby.

### Section 3.7 Absence of Conflicting Agreements:

Grantee represents that the execution and delivery of the Grant Documents and the performance by Grantee thereunder will not conflict with or constitute a breach of or default under its Organization Documents or any indenture, Grant agreement or instrument or agreement to which Grantee is a party or by which Grantee or its properties are bound.



### Section 3.8 Taxes:

Grantee represents that it has no outstanding unpaid tax liabilities (other than taxes that are currently accruing from its current operations and ownership of property and are not delinquent) and that no tax deficiencies are proposed or have been assessed and are unsatisfied against Grantee.

### Section 3.9 Regulatory Approvals:

Grantee represents that no authorization, approval, consent or license of any governmental regulatory body or authority, not already obtained, is required for the valid and lawful execution and delivery of the Grant Documents by Grantee or the assumption of the obligations of Grantee represented thereby.

### Section 3.10 Absence of Litigation:

Grantee represents to the best of Grantee's knowledge that it is not a party to any litigation or administrative proceeding, nor so far as is known by Grantee is any litigation or administrative proceeding threatened against it that in either case would, if adversely determined, cause any material adverse change in its financial condition, the conduct of its business or its ability to perform its obligations under the Grant Documents. Grantee will promptly furnish to Grantor written notice of the filing of any such litigation or administrative proceeding.

### Section 3.11 Date and Survival of Representations:

The representations of Grantee made in this Article III are made as of the date of this Grant Agreement, and all such representations will survive the execution and delivery of this Grant Agreement and the making of the Grant.

### Section 3.12 Information Regarding Compliance With Land Use Restriction Agreement:

Grantee, in satisfaction of the requirement of the LURA, covenants to obtain from each Low-Income or Moderate-Income Person or Household occupying a HOME-ARP-Assisted Unit within the Project during the Restriction Period, at or prior to the earlier of (i) initial occupancy of a HOME-ARP-Assisted Unit by such Low-Income or Moderate-Income Person or Household or (ii) execution of a lease by such Low-Income or Moderate-Income Person or Household for occupying a HOME-ARP-Assisted Unit, and annually thereafter, "characteristic data" in the form of an income certification certifying household income, race/ethnicity, age of household members, size of household, special needs households, and military status, in such form as will be required or approved by Grantor. Grantee further covenants, in satisfaction of the requirements of the LURA, to prepare and submit to Grantor at the end of each year after one or more HOME-ARP-Assisted Units in the Project are completed and available for occupancy, and thereafter during the Restriction Period, a compliance certificate substantially in the form of **Exhibit E** attached hereto or in such other form as may be approved by Grantor. Grantee will retain records of individual tenant income verifications, Project rents and Project inspections for the most recent five (5) year period, until five (5) years after the Restriction Period terminates.

### Section 3.13 Accounting Records

a. Grantee will maintain adequate financial accounting and other records, including records required by Grantor to permit Grantor to fulfill their obligations under the CDBG

Regulations, this Agreement, the CARES Act, and the documents evidencing this Grant. Grantee will retain such records until five (5) years after Project Completion or five (5) years after the record was created. Grantee will submit audited financial statements annually to Grantor within 6 months of the end of Grantee's calendar or fiscal year.

Section 3.14 Low-Income Housing Tax Credit ("LIHTC"):

If the Project is the recipient of federal LIHTC, Grantee agrees to comply with Section 42 of the Internal Revenue Code of 1986, as amended, and all rules and regulations thereunder.

Section 3.15 Sales and Other Transfers:

Grantee will not, without the prior written approval of Grantor, sell, trade, transfer, assign, exchange or otherwise dispose of the Property (except for leases of individual Project units to tenants) or change the ownership of Grantee or Grantee's partner(s) or member(s), as applicable, prior to expiration of the Restriction Period. For purposes of this Grant Agreement: (a) any sale, trade, transfer, assignment, exchange or other disposition of all or any substantial part of the Property or interests in the Property is a "transfer," (b) the conversion or attempted conversion of the Property into a condominium, planned unit development or other similar development is a "transfer," (c) the transfer of any owner's interest in Grantee to any other existing owner or affiliate of owner of Grantee, including, without limitation, the transfer of a limited partner's interest in a limited partnership to an affiliated entity, is not a "transfer," and (d) removal and replacement of Grantee's managing member, if Grantee is a limited liability company or general partner, if Grantee is a limited partnership, is a "transfer." "Affiliate" for this purpose means any individual or entity that controls, is controlled by, or is under common control with Grantee, limited partner or investor member, as applicable. Any transferee will enter into an agreement, in a form acceptable to Grantor, assuming all obligations of Grantee under the LURA and, if the Grant is to be assumed, under the other Grant Documents.

Section 3.16 Affordability Requirements:

Grantee will ensure compliance of all HOME-ARP-Assisted Units of the Project with all applicable affordability requirements and will do so by executing and authorizing the recording against the Property and the Project of the LURA, a copy of the form of which Grantee has received. Restriction periods, initial rents and procedures for rent increases are set forth in the LURA.

Section 3.17 Federal Funding Accountability and Transparency Act and Other Federal Requirements:

Grantee will comply with all subaward reporting requirements applicable to this contract under the Federal Funding Accountability and Transparency Act, P.L. 109-282, as requested by Grantor or HUD. Additionally, Grantee will, in purchasing, constructing or rehabilitating and managing the Project, comply with and carry out each activity of Grantee in compliance with all federal laws and regulations.

Section 3.18 Religious Organizations:

Grantee will, when applicable, adhere to all requirements for use of HOME-ARP Funds by religious organizations. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive HOME-ARP Funds; however, faith-based organizations that are directly funded by HOME-ARP Funds may not engage in inherently religious activities, such as worship, religious

instruction, or proselytization, as part of the activities funded. HOME-ARP Funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities.

Section 3.19 Affirmative Marketing:

For all projects with five (5) or more HOME-ARP-Assisted Units, Grantee will adopt, and submit to Grantor for its approval, which must be obtained prior to the funding of the Grant, appropriate affirmative marketing procedures and requirements. Form HUD-92243-PRA “Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily Housing” is to be used for this purpose. It can be found at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/hud9](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9).

Section 3.20 Fair Lease/Grievance:

Grantee will adhere to the Fair Lease/Grievance Procedures as approved by Grantor and attached hereto as **Exhibit F**.

Section 3.21 Uniform Owner-Resident Relations Act:

Grantee will comply with New Mexico’s Uniform Owner-Resident Relations Act, §47-8-1. NMSA 1978 et seq.

Section 3.22 Section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (Economic Opportunities for Low-Income People).

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (“Section 3”) as amended (Economic Opportunities for Low- and Moderate-Income Persons, Minority Business Enterprise and Women’s Business Enterprise Policy). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall be directed to low and very low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Grantee shall comply with HUD’s regulations in 24 CFR Part 75, which implement Section 3, including the Section 3 requirements outlined in 24 CFR Part 75.19. As evidenced by its execution of this contract, Grantee certifies that it is under no contractual or other impediment that would prevent it from complying with the Part 75 regulations.

Grantee shall complete, to the satisfaction of the Grantor, the Section 3 Recipient Compliance Form attached hereto as Exhibit G, along with all required documentation. Grantee agrees to include this Section 3 clause in every subcontract and agrees to collect and provide all contractor and subcontractor information required to meet the reporting requirements of 24 CFR Part 75.25. Grantee will not subcontract with any contractor where the Grantee has notice or knowledge the contractor has been found in violation of the regulations in 24 CFR Part 75.

Noncompliance with HUD’s regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

[CHOOSE ONE:]

## OPTION ONE

In addition to Grantee complying with 24 CFR § 75.19 Grantee shall meet the procurement procedures outlined below:

(a) Small Purchase Procedures. For Section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth below.

(1) Solicitation.

(A) Quotations may be solicited by telephone, letter or other informal procedure provided the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (a)(1)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(2) Award.

(A) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(b) Procurement by sealed bids (Invitations for Bids or "IFB"). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(1) Bids shall be solicited from all businesses (Section 3 business concerns, and non-

section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is:

- (A) Within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and  
 (B) Is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

Bid Amount	X=Lesser
At least \$100,000, but less than \$200,000.	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000.	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000.	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000.	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million.	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million.	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000.
\$7 million or more.	1.5% of the lowest responsive bid, with no dollar limit.

(C) if no responsive bid by a Section 3 business concern meets the requirements of paragraph (b)(1) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(c) Documentation Requirements

In an effort to maximize Section 3 business concerns participation contractors shall implement strategies for notifying Section 3 business concerns in the metropolitan area (or nonmetropolitan county) or where feasible the service area or neighborhood where the covered project is located about contracting opportunities as they become available. In an effort to seek out Section 3 business concerns the contractor may publish an opportunity on its company website; notify local chambers of commerce; network through meetings to involve local Section 3 business concerns in the community. In addition to the form Section 3 Recipient Compliance the following documents will be required to substantiate

Section 3 business concern preference.

Required documentation at project completion will be the awarded contracts in connection with the project activities. The total dollar amount of the contracts. Contractor and subcontractor invitations, bid documentations, and a summary of all bids received. The contracts awarded to Section 3 business concerns and the total dollar amount of contracts awarded to Section 3 business concerns (provide each subaward contract).

Contactors may utilize the HUD opportunity portal (<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>) to seek out registered Section 3 business concerns in area and shall provide a print out of Section 3 business registry result and contact information.

#### OPTION TWO

In addition to Grantee complying with 24 CFR § 75.19 Grantee shall meet the outreach and development activities outlined below:

(a) Following contract completion Grantee shall cause Grantee to submit the following evidence that Grantee engaged in outreach efforts to reach Section 3 workers, and Section 3 targeted workers [[SELECT ACTIVITIES THAT GRANTEE IS REQUIRED TO COMPLETE](#)]:

(1) Set up recruitment in service area or neighborhood boundaries in the covered project area for hiring efforts to include a job vacancy advertisement by posting notices five days prior to the hiring in the area or vicinity of the contract project and worksite. The notice shall include number of positions; job titles; section 3 hiring preference; name and locations of where to apply; and anticipated work begin date. Possible advertising and posting areas include: nearby housing or housing manager office; faith based organization; community center; related or similar business; community college or trade program; civic associations; social media post (attach copy of notice);

(2) Recruit and train by conducting advertised job fairs monthly until Section 3 workers and targeted Section 3 workers are acquired prior to the job start date. The job fair announcement should include positions available, date, time, and location of fair. Possible advertising and posting areas include: social media; nearby housing or housing manager office; faith based organization; community center; related or similar business; community college or trade program; and civic associations (attach copy of each advertisement and the job fair sign in sheet for attendees);

(3) Utilize the services provided by New Mexico Department of Workforce Solutions. Post a business outreach employment recruitment (attach print out of posting and referral list).

Utilize the services of local YouthBuild program participant (attach program contact documentation);

(4) Utilize the services of the HUD opportunity portal (<https://hudapps.hud.gov/OpportunityPortal/>) to review posted resumes for Section 3



workers available in the area (attach copy of Section 3 Resume or search results); and

(5) Utilize the HUD opportunity portal (<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>) to seek out registered Section 3 business concerns in area (provide print out of Section 3 business registry result and contact information).

(b) Documentation Requirements:

(1) Set up recruitment in service area or neighborhood boundaries in the covered project area for hiring efforts to include a job vacancy advertisement by posting notices five days prior to the hiring in the area or vicinity of the contract project and worksite. The notice shall include number of positions; job titles; section 3 hiring preference; name and locations of where to apply; and anticipated work begin date. Possible advertising and posting areas include: nearby housing or housing manager office; faith based organization; community center; related or similar business; community college or trade program; civic associations; social media post (attach copy of notice);

(2) Recruit and train by conducting advertised job fairs monthly until Section 3 workers and targeted Section 3 workers are acquired prior to the job start date. The job fair announcement should include positions available, date, time, and location of fair. Possible advertising and posting areas include: social media; nearby housing or housing manager office; faith based organization; community center; related or similar business; community college or trade program; and civic associations (attach copy of each advertisement and the job fair sign in sheet for attendees);

(3) Utilize the services provided by New Mexico Department of Workforce Solutions. Post a business outreach employment recruitment (attach print out of posting and referral list);

(4) Utilize the services of local YouthBuild program participant (attach program contact documentation);

(5) Utilize the services of the HUD opportunity portal (<https://hudapps.hud.gov/OpportunityPortal/>) to review posted resumes for Section 3 workers available in the area (attach copy of Section 3 Resume or search results); and

(6) Utilize the HUD opportunity portal (<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>) to seek out registered Section 3 business concerns in area (provide print out of Section 3 business registry result and contact information).

Section 3.22 Davis Bacon Act (40 U.S.C. 3141-3148). The project shall comply with the regulations issued under the Davis Bacon Act and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs). Grantee agrees that it shall it comply with all Davis Bacon program and reporting requirements. Any failure to comply with Davis Bacon program and reporting requirements shall constitute a default hereunder.

## Article IV

### EVENTS OF DEFAULT

Section 4.1 Events of Default: Each of the following is an “Event of Default,” as used in this Grant Agreement:

(a) **Representations.** Any representation of Grantee contained in any of the Grant Documents proves to have been false in any material respect and such misrepresentation, if left uncured for thirty (30) days after the date of notice from Grantor, will, in Grantor’s reasonable judgment, have a material adverse impact on the Project or Grantee’s ability to perform its obligations under the Grant Documents;

(c) **Covenants, Agreements or Conditions.** A failure to observe or perform any other of the covenants, agreements or conditions on the part of Grantee contained in this Grant Agreement or any of the other Grant Documents occurs and is not cured within thirty (30) days after the date of notice from Grantor of the occurrence of such failure; provided, however, that Grantee will have such additional time beyond the 30-day period as is reasonably necessary to cure any such default so long as Grantee has commenced to cure said default within such 30-day period and is diligently pursuing the cure of such default;

(d) **Insolvency, Bankruptcy, Receivership.** Grantee: (i) becomes insolvent; (ii) admits in writing its inability to pay its debts as they mature; (iii) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; (iv) becomes the subject (either voluntarily or involuntarily) of an “order for relief” within the meaning of the United States Bankruptcy Code; (v) files a petition to effect a plan or other arrangement with creditors; (vi) files an answer to a creditor’s petition, admitting the material allegations thereof, for liquidation, reorganization or to effect a plan or other arrangement with creditors; (vii) applies to a court for the appointment of a receiver for any of its assets; (viii) has a receiver appointed for any of its assets (with or without the consent of Grantee) and such receiver is not discharged within 60 days after the receiver’s appointment; or (ix) otherwise becomes the subject of any federal or state bankruptcy or insolvency proceedings; or

(e) **Sale or Transfer.** The fee simple title to all or any part of the Property becomes vested in any person other than Grantee, whether by operation of law or otherwise, without the prior written consent of Grantor other than in accordance with Article III, Section 3.14 hereof.

Section 4.2 Remedies:

Upon the occurrence of an Event of Default, Grantor may, by written notice to Grantee, do any or all of the following: terminate this Grant Agreement, demand immediate repayment by Grantee of any and all Grant Funds advanced under this Grant and said amounts shall be immediately due and payable by Grantee without further or additional notice, or pursue any other remedy available at law or in equity, including such remedies as are provided in the LURA.

Section 4.3 Payment of Costs and Expenses:

If Grantee defaults under any provisions of this Grant Agreement or any other Grant Document and Grantor employs attorneys or incurs other expenses for the collection of payments due or for the enforcement of performance or observance of any other obligation or agreement on the part of Grantee herein contained, Grantee agrees that it will on demand therefor pay to Grantor the reasonable fees of such attorneys and such other reasonable expenses so incurred by Grantor.

Section 4.4 Limitation on Waivers:

If any agreement contained in this Grant Agreement should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive the same, any other or any future breach hereunder on any other occasion. No remedy herein conferred upon or reserved to Grantor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and will be in addition to every other remedy given under this Grant Agreement or now or hereafter existing at law or in equity or by virtue of other contracts. No delay or omission to exercise any right or power occurring upon any Event of Default will impair any such right or power or will be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Article V

MISCELLANEOUS

Section 5.1 Amendments:

No modification, alteration or amendment to this Grant Agreement or any other Grant Document will be binding upon either party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

Section 5.2 Successors:

Except as limited or conditioned by the express provisions hereof, the provisions of this Grant Agreement will inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 5.3 Captions:

The captions or headings in this Grant Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Grant Agreement.

Section 5.4 Counterparts:

This Grant Agreement may be signed in any number of counterparts, all of which will constitute one and the same instrument and each of which will be deemed to be an original.

Section 5.5 Notice: All notices will be written and personally delivered or mailed by certified or registered mail, postage prepaid, with return receipt requested, to Grantee at:

**GRANTEE**

and to Grantor at:

New Mexico Mortgage Finance Authority  
Attn: Director of Housing Development  
344 Fourth Street SW  
Albuquerque, NM 87102

or to any other address or addresses as either party entitled to receive notice under this Grant Agreement will designate, from time to time, to the other in the manner provided in this paragraph for the service of Notices.

Grantor will endeavor to give to Grantee's limited partner(s) or investor member(s) or other parties as set forth below, as applicable, copies of any notice given to Grantee and cure rights that run concurrently with those of the Grantee, at the following address(es) and will accept a timely cure by such limited partner(s) or investor member(s), as applicable. However, failure of Grantor to give notice to Grantee's limited partner(s) or investor member(s), or other parties as set forth below, as applicable, will not delay or prejudice Grantee's rights to exercise any of its rights or remedies under the Grant Documents.

[Click here to enter text.](#)  
[Click here to enter text.](#)

Notice served by mail is effective on the date on which the notice is deposited in the mail. Grantee or Grantor may change its address at any time by giving the other ten (10) days' notice.

Section 5.6 Severability:

If any provision of this Grant Agreement is held to be unenforceable, and if the essential purposes of this Grant Agreement are not frustrated by amending or severing the unenforceable provision, then it is the intention of the parties that the provision will be deemed amended to the extent required to render the provision valid and enforceable, or, if such amendment is not possible, that the provision in question be deleted and that the remainder of the Grant Agreement remain in force.

Section 5.7 Choice of Law:

This Grant Agreement will be governed by the laws of the state of New Mexico.

Section 5.8 Waiver of Jury Trial; Jurisdiction; Venue; Forum:

GRANTEE AND GRANTOR WAIVE THEIR RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, TO A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GRANT AGREEMENT OR ANY OF THE OTHER GRANT DOCUMENTS. All actions or proceedings with respect to the Grant Documents may be instituted in any state court sitting in Bernalillo County, New Mexico, or in the county in which the Real Property is located, in the discretion of Grantor. By execution and delivery of this Grant Agreement, Grantee irrevocably and unconditionally submits to the jurisdiction of such court and irrevocably and unconditionally waives: (a) any objection that Grantee may now or hereafter have to the laying of venue in such court; and (b) any claim that any action or proceeding brought in any such court has been

brought in an inconvenient forum. This provision is not intended to, nor will it be construed to, waive any rights of Grantor existing under Section 58-18-23 NMSA 1978, as and if amended.

Section 5.9 Publicity. Grantee agrees to the following:

(a) Signage. Grantor will, at Grantor's expense, provide Grantee with a sign that complies with local code requirements and indicates that Grantor is providing financing for the Project and a sign that informs of and identifies Grantor's fraud hotline phone number. Grantee will, at Grantee's expense, erect the sign on the Project site at a location designated by Grantor, and Grantee will be responsible, at Grantee's expense, for obtaining any licenses or permits necessary for the erection of the sign.

(b) News Releases. Grantee authorizes Grantor to prepare and furnish news releases to the news media or any publications selected by Grantor stating that financing for the Project was obtained from Grantor, and the details of such financing. However, Grantee will retain the right to approve any such press releases in advance, and will deliver such approval or corrections, if any, no more than 24 hours subsequent to receipt of any draft press release. In addition, Grantor will have the right to share equally with Grantee in any announcement or publicity regarding the source of financing for the Project.

Section 5.10 Inspections.

Grantee will fully cooperate with Grantor in reasonable periodic monitoring of the Project site and Grantee's records to verify compliance with the requirements of this Grant Agreement.

Section 5.11 Indemnity.

Grantee will indemnify, defend and hold Grantor harmless from and against any loss, cost or expense (including interest, penalties, reasonable attorneys' fees and amounts paid in settlement) arising out of or based upon the Grant Documents or the Grant, provided that, to the extent, if at all, Section 56-7-1 NMSA 1978 applies, such indemnity will not extend to any loss, cost or expense arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents.

Section 5.12 Assignment:

Grantor is not obligated or liable under this Grant Agreement or any of the other Grant Documents to any party other than Grantee. Grantee will not assign any of the rights, benefits, obligations or duties under this Grant Agreement or any of the other Grant Documents without the prior written consent of Grantor.

Section 5.13 Exhibits:

Grantee and Grantor agree that the following exhibits are attached to and made a part of this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Statement of Assurances
- Exhibit C1: Development Cost Budget
- Exhibit C2: Sources of Funds and Financing Commitments

- Exhibit C3: Disbursement Schedule (Guaranty/No Guaranty Options)
- Exhibit D: Completion Schedule
- Exhibit E: Compliance Certificate
- Exhibit F: Fair Lease/Grievance Procedures
- Exhibit G: Section 3 Recipient Compliance Form

SIGNATURE(S) APPEAR NEXT PAGE(S)

DRAFT



GRANTOR:

NEW MEXICO MORTGAGE FINANCE AUTHORITY

By: \_\_\_\_\_  
[NAME]  
Its: [TITLE]

Date: \_\_\_\_\_

GRANTEE:

[Click here to enter text.](#)

By: [Click here to enter text.](#)  
a New Mexico [Choose an item.](#)  
Its: [Click here to enter text.](#)

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

[Click here to enter text.](#)  
Its: [Click here to enter text.](#)

Date: \_\_\_\_\_

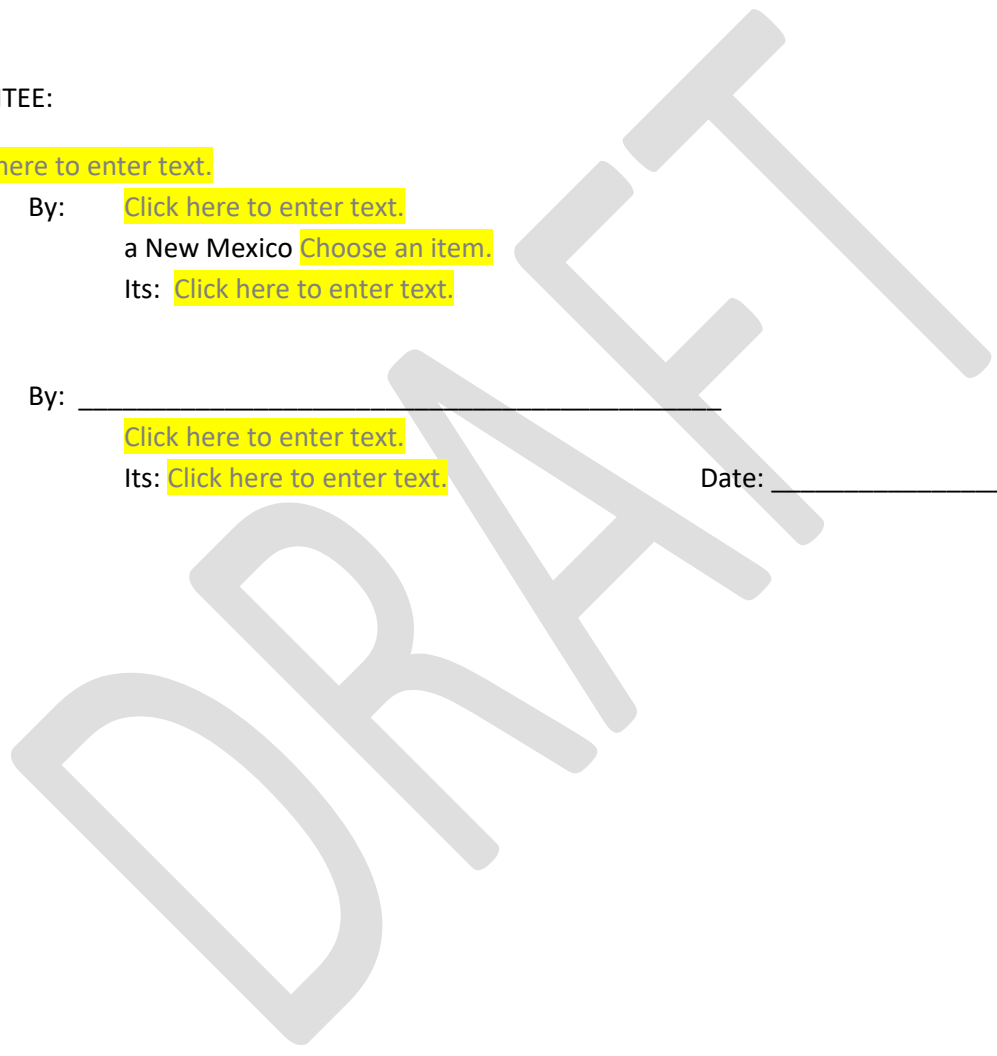


EXHIBIT A

LEGAL DESCRIPTION

That certain real property located in [Choose an item](#) County, New Mexico and more particularly described as follows:

DRAFT

## EXHIBIT B

## STATEMENT OF ASSURANCES

**HOME-ARP Multifamily Program**

Grantee hereby assures and certifies that:

(A) LEGAL AUTHORITY

It possesses legal authority to apply for the Grant and to execute the proposed program.

(B) OFFICIAL RESOLUTION

Its governing body has duly adopted or passed as an official act, a resolution, motion or similar action authorizing the signing of the Grant Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Grantee to act in connection with the Grant Agreement and to provide such additional information as may be required.

(C) ACCESS TO INFORMATION

It will provide citizens with reasonable access to records regarding its HOME-ARP-assisted activities and management.

(D) PROGRAM COMPLIANCE

It will comply with all applicable program requirements described in the HOME Regulations set forth in 24 CFR Part 92 and any amendments hereafter, and final regulations for the program. The housing program described in the Grant Agreement will benefit primarily individuals and families who are Homeless and At Risk of Homelessness.

(E) ADMINISTRATIVE AND FINANCIAL REQUIREMENTS

It will comply with the applicable requirements and policies of 24 CFR Part 92 Subpart I.

(F) PROJECT REQUIREMENTS

It will comply with all HOME-ARP Program Project requirements in HOME Regulations set forth in 24 CFR Part 92.

(G) ARCHITECTURAL BARRIERS

It will comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et. seq.).

(H) CIVIL RIGHTS Grantee will comply with:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) and the regulations issued pursuant thereto (24 CFR Part 1).

FAIR HOUSING

- (2) Title VIII of the Civil Rights Act of 1968, as amended by Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.) and implementing regulations at 24 CFR Part 100. Executive Order 12892 and the regulations contained in 24 CFR Part 107

EQUAL OPPORTUNITY

- (3) Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309) and the regulations issued pursuant thereto (24 CFR Part 92.602).

AGE

- (4) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and the implementing regulations at 24 CFR Part 146.

Disabled Persons

- (5) Section 504 of the Rehabilitation Act of 1973, 24 CFR Part 8 and HUD implementing regulations at 24 CFR Part 100 subpart D.
- (6) Executive Order 11246, Equal Opportunity in Federal Employment, as amended by Executive Order 12086 and 13279, and the regulations issued pursuant thereto (41 CFR Chapter 60).
- (7) Executive Order 11625, October 13, 1971 and Executive Order 12432, which prescribe additional arrangements for developing and coordinating a national program for Minority Business Enterprise; and 2 CFR Part 200.321, which describes actions to be taken to assure that minority business enterprises are used when possible in the procurement of property and services.
- (8) Executive Order 12138, as amended, which creates a National Women's Business Enterprise Policy; and 2 CFR Part 200.321.

(I) EMPLOYMENT

It will comply with Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701 (u)) requiring that to the greatest extent feasible opportunities for training and employment be given to low- and very-low-income residents and contracts for work in connection with the Project be awarded to eligible business concerns and with Grantor's Section 3 requirements outlined in Section 3.21 of this Agreement.

(J) DISPLACEMENT

It certifies that it has developed and adopted a residential anti-displacement and relocation assistance plan in accordance with 24 CFR Part 92.

(K) ACQUISITION/RELOCATION

It will comply with the Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970, as amended by 42 U.S.C. 4601 et seq., and the regulations at 49 CFR Part 24, Subpart B that apply to the acquisition of real property for an activity assisted with HOME-ARP Funds and to the displacement of any household, individual, business, nonprofit organization or farm that results from such acquisition; and

It will comply with Section 104(d) of the Housing and Community Development Act of 1974, as amended; and

(L) LABOR STANDARDS

It will comply with the following regulations issued under the following Acts and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable:

- (1) The Davis-Bacon Act (40 U.S.C. 3141-3148).
- (2) Contract Work Hours & Safety Standards Act (40 U.S.C. 3701 et seq.).
- (3) Copeland “Anti-kickback” Act (41 U.S.C. Chapter 87).
- (4) 29 CFR Parts 1, 3, 5, 6, and 7.

The Davis-Bacon and Related Acts (DBRA) are applicable to projects funded by HOME-ARP that *assist* 8 units or more. Although the threshold is only applicable to HOME-ARP-funded units, DBRA regulations apply to the entire Project, including portions of the Project not funded by HOME-ARP.

All bids and contracts related to the HOME-ARP-funded Project must include the following:

- Federal Labor Standards Provisions outlined in form HUD-4010;
- Wage determination for the county in which the Project is located, and a clause that states the wage determination is “for informational purposes only,” as wage determinations may change prior to the award date, which locks-in the current wage determination. Grantee will obtain the correct wage determination from Grantor’s Labor Standards Officer;
- Certified Payroll Form, WH-347.

Grantee will provide Grantor with a copy of all contracts (with the general contractor and all sub-contractors) that include the above items, as well as proof that the contractors are not ineligible (Excluded Parties List System website: <http://www.epls.gov>).

If the federal wage determination does not include all work classifications that will be used on the Project (roofer, soft floor layer, etc.), Grantee will contact Grantor’s Labor Standards Officer (LSO) as soon as possible so that the LSO may request additional work classifications from HUD and DOL. This process can take 6-8 weeks. If construction begins before the proposed work classifications and wage rates are approved, the contractor(s) will be required to pay these workers the highest wage rate from the federal wage determination.

(M) ENVIRONMENTAL CLEARANCE

Grantee will comply with the environmental laws and authorities at 24 CFR Parts 50 and 58 and will (i) supply Grantor with information necessary for it to perform any necessary environmental review of each property; (ii) carry out mitigating measures required by Grantor or select alternate eligible property; and (iii) not acquire or otherwise carry out any program activities with respect to any eligible property until Grantor approval is received.

(N) CONFLICT OF INTEREST

It will comply with the conflict of interest provisions in 24 CFR § 92 and 2 CFR §200.112, as applicable; and will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

No employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving HOME-ARP funds who exercises or has exercised any functions or responsibilities with respect to HOME-ARP activities assisted under pursuant to this contract or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(O) LEAD BASED PAINT

It will comply with Title IV of the Lead Base Paint Poisoning Prevention Act, as amended, (42 U.S.C. 4821 et seq.) and the regulations issued pursuant thereto (24 CFR Part 35).

(P) ENERGY CONSERVATION

It will comply with the minimum housing quality standards in the current edition of the International Energy Conservation Code, published by the International Code Council.

(Q) LOBBYING

No federally-appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal Grant, the making of any federal Grant, the making of any federal Grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, Grant, Grant, or cooperative agreement, in accordance with 24 CFR Part 87.

If any funds other than federally-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an



officer or employee or Congress, or an employee of a member of Congress in connection with this federal contract, Grant, Grant, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form of Lobbying Activities," in accordance with its instructions.

The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subGrants and contracts under Grants, Grants and cooperative agreement) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### (R) VAWA REQUIREMENTS

It will comply with the Violence Against Women Act ("VAWA") requirements as set forth in 24 CFR part 5 which applies to all rental housing assisted with HOME-ARP Funds.

#### CERTIFICATIONS

(AA) The Grant Agreement does not request any more HOME-ARP Funds in combination with other federal assistance than are necessary to provide affordable housing.

(BB) Grantee will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 et seq.) and the implementing regulations at 2 CFR §182.635.

(CC) Neither Grantee nor its Principals, nor the Principals of its Principals, if any, are debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from covered transactions (see 24 CFR § 24.1) by any federal department or agency. It will include the certification contained in the immediately preceding sentence in any and all subcontracts hereunder and will require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

(DD) Grantee may provide HOME-ARP Funds to religious or faith-based organizations, on the same basis as any other organization. Organizations that are directly funded under the HOME-ARP Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the activities funded by HOME-ARP Funds under this Grant Agreement. If an organization conducts such activities, the activities must be offered separately, in time or location, from the activities funded by HOME-ARP Funds under this Grant Agreement, and participation must be voluntary for the beneficiaries of the assistance provided.

(EE) It has made reasonable efforts to maximize participation by the private sector in the development of the housing program described in the Grant Agreement.

GRANTOR:

NEW MEXICO MORTGAGE FINANCE AUTHORITY

By: \_\_\_\_\_  
[NAME]  
Its: [TITLE]

Date: \_\_\_\_\_

GRANTEE:

Click here to enter text.

By: Click here to enter text.  
a New Mexico Choose an item.  
Its: Click here to enter text.

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

Click here to enter text.  
Its: Click here to enter text.

Date: \_\_\_\_\_

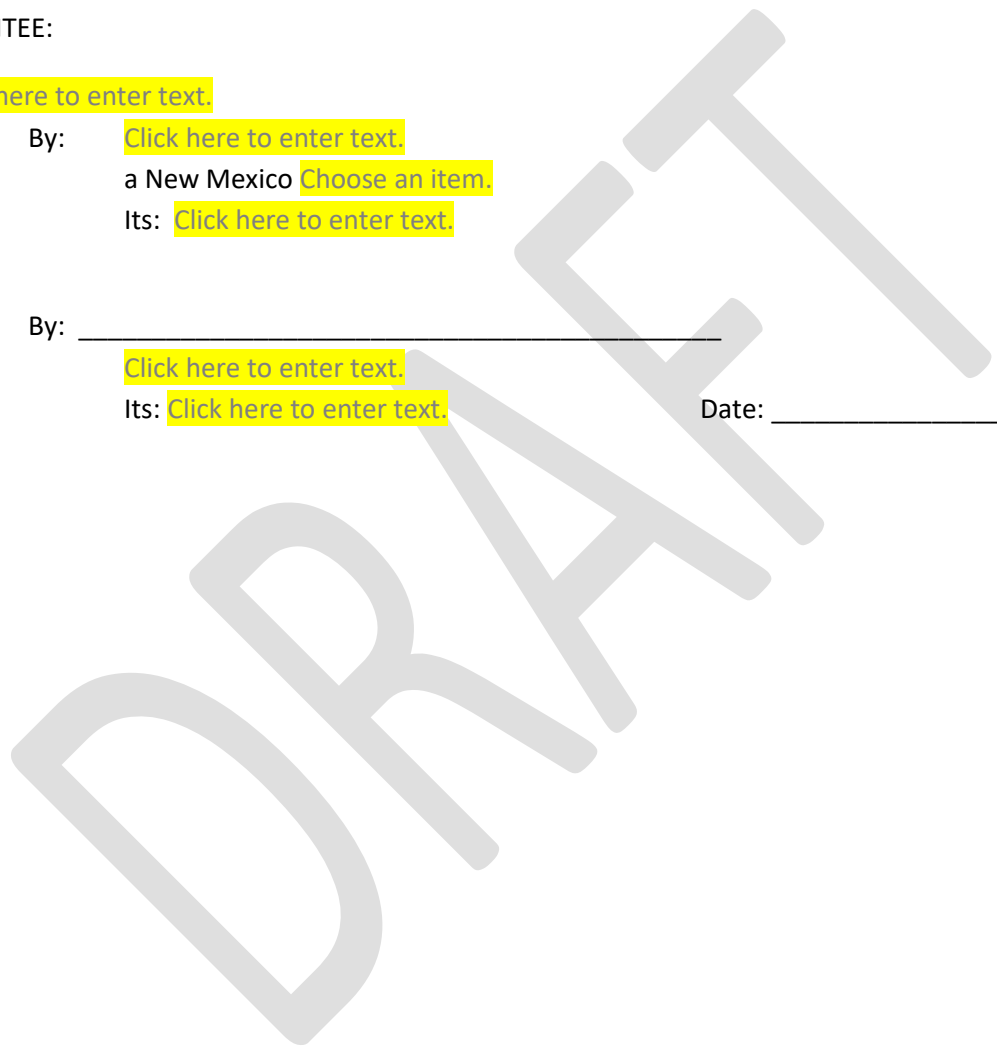


EXHIBIT C1

DEVELOPMENT COST BUDGET

DRAFT

EXHIBIT C2

SOURCES OF FUNDS AND FINANCING COMMITMENTS

DRAFT

EXHIBIT C3  
DISBURSEMENT SCHEDULE

DRAFT

EXHIBIT D  
COMPLETION SCHEDULE

DRAFT

EXHIBIT E

COMPLIANCE CERTIFICATE

**GRANTEE NAME**

Witnesseth that on this \_\_\_\_\_20\_\_\_\_ the undersigned, having been granted funds from New Mexico Mortgage Finance Authority (“Grantor”) for the purpose of acquiring land for a multifamily housing development (“Project”), does hereby certify that (i) during the preceding year, the Project was continually in compliance with the Grant Agreement and the Land Use Restriction Agreement, (ii) on the last day of such year \_\_\_\_% of the units in the Project were actually occupied by Low- and Moderate-Income Persons or Households (80.0%, or below, of the Median Area Income as determined by HUD), (iii) on the last day of such year the Project complied with **Section 3(b)** \_\_\_\_\_ of the Land Use Restriction Agreement, (iv) on the last day of such year \_\_\_\_\_ % of the units in the Project were actually occupied by Low- and Moderate-Income Persons or Households Tenants, and (v) representations set forth herein are true and correct to the best of the undersigned’s knowledge and belief.

**GRANTEE,**  
a New Mexico **limited partnership, limited liability company, etc.**

**By: NAME OF GENERAL PARTNER, MANAGER, MEMBER, ETC.,**  
a New Mexico **corporation, limited liability company, etc.,**  
**Its: General Partner, Manager, Member, etc.**

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

Its: \_\_\_\_\_

EXHIBIT F

FAIR LEASE/GRIEVANCE PROCEDURES

**OWNER DISCLOSURE  
AND  
GRIEVANCE PROCEDURE  
for**

\_\_\_\_\_

The name, address and telephone number of the person authorized to manage the property and to receive notices and service of process for the owner is as identified below:

- 1. Please contact the property Management office on site at:

Property Manager's Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**NOTE:** You may contact the office in writing or by telephone. However, prior to resolving any issue, a signed, written statement must be received in the office.

- 2. Please make an appointment to speak with the Property Manager or office staff person regarding the issue. This will include maintenance requests, resident complaints, and general reports concerning property and/or resident activity.
- 3. If an issue is overlooked by Management and not remedied in a satisfactory manner within three (3) to five (5) business days, a written grievance or complaint may be submitted to the Management Agent's office at the address given below. A telephone number is also provided below for your use. However, an issue may not be given priority attention until a signed, written statement is received by the Management Agent's office.

Property Management Name: \_\_\_\_\_

Property Management Address: \_\_\_\_\_

Property Management City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_



## EXHIBIT G

## SECTION 3 RECIPIENT COMPLIANCE FORM

## Section 3 Recipient Compliance

**\*This form must be completed and submitted to MFA by Grantee and all of its subcontractors with contracted amounts over \$200,000 for construction/rehabilitation; and/or \$100,000 for Lead Hazard Control and Healthy Homes Grants**

From: \_\_\_\_\_ For: \_\_\_\_\_  
 Name of Grantee Name of Project

**What is Section 3?**

Under Section 3 of the Housing and Urban Development Act of 1968, whenever HUD financial assistance is given for housing or community development, to the greatest extent feasible, economic opportunities will be given to low and very low income workers, targeted section 3 workers, and section 3 business concerns in that area. The project being awarded has funding which is subject to Section 3 requirements. **\*Covered projects contractors and subcontractors are required to show a good faith effort to:**

- Provide employment and training opportunities for **Section 3 Workers** (minimum of 25% total labor hours).
- Provide employment and training opportunities for **Targeted Section 3 Workers** (minimum of 5% total labor hours).
- Provide opportunities for **Section 3 Business Concerns** for service contracts.

**I. OVERALL REPORTING:****A. Confirmation of hiring and training Section 3 Workers and Targeted Workers:**

The total number of labor hours for the covered contract \_\_\_\_\_  
 Labor hours for Section 3 workers \_\_\_\_\_  
 Labor hours Section 3 targeted workers \_\_\_\_\_

**B. Confirmation for contracting with Section 3 Business Concerns:**

- ( ) Awarded \_\_\_\_\_ contracts in connection with these project activities. (attach subaward contract)
- 1) The total estimated dollar of these contracts \$ \_\_\_\_\_.
  - 2) Of these contracts \_\_\_\_\_ awarded to Section 3 business concerns.
  - 3) The total estimated dollar of contracts awarded to Section 3 business concerns \$ \_\_\_\_\_.
- ( ) Section 3 Business is registered on HUD opportunity portal (provide screen print out)

**II. ADDITIONAL REQUIREMENT REPORTING:**

Select additional requirement option contractually agreed to by parties:

- ( ) Implement contractor and subcontractor bid procurement procedures that give preference to Section 3 business concerns (See Section II.A); or  
 ( ) Conduct Section 3 worker outreach and development activities (See Section II.B).

**A. Section 3 Procurement Preference**

Provide bid documentation for contractors and subcontractors showing required Section 3 business concerns preference.

**B. Section 3 Outreach and Development Activities**

Recruit, advertise, and train by posting 5 day notices to include number of positions; job titles; section 3 preference; name and locations of where to apply; anticipated work begin date (attach copy of notice).

Recruit by conducting advertised monthly job fairs (attach copy of advertisement and also each sign in sheet for attendees).

Utilize the services provided by New Mexico Department of Workforce Solutions (attach a print out of posting and referral list).

Utilize the services of local YouthBuild program participant (attach program contact documentation).

Utilize the services HUD opportunity portal (<https://hudapps.hud.gov/OpportunityPortal/>) (attach copy of Section 3 Resume)

Recruit via Section 3 Business Concern (<https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome>) (provide print out of Section 3 business registry result)

***I certify that to the greatest extent feasible Section 3 Workers, Targeted Workers, and Business Concerns were sought and utilized for labor, services, and construction subcontracts to comply with Section 3 requirements. I certify no violations of HUD regulations. I certify the information and documentation provided is true and correct.***

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Signature

Date