**COMPLETION GUARANTY**

This **COMPLETION GUARANTY** (“**Guaranty**”) is given as of \_\_\_\_\_\_\_, 202\_\_, by {enter name of Owner}, an Arkansas limited partnership/limited liability company (“**Owner**”), {Guarantor 2}, {Guarantor 3, etc.} (collectively, the “**Guarantors**”) to and for the benefit of the **Arkansas Development Finance Authority,** a body corporate and politic of the State of Arkansas, 1 Commerce Way, Little Rock, Arkansas 72202 (“**ADFA**”).

R E C I T A L S:

*{HOME is Title II of NAHA}*

1. The Guarantors have agreed to execute and deliver this Guaranty to ADFA in connection with a loan (the “**HOME Loan**”) made to Owner using funds from the HOME Investment Partnerships Program (**“HOME”**) received from the U.S. Department of Housing and Urban Development (“**HUD**”) under Title I of the Housing and Economic Development Act of 2008, as amended (the “**Act**”), which will serve as construction and permanent financing for a single-family residence located at [Address, City], Arkansas, to be designed and constructed by Owner (the “**Project**”).

*{HOME affordability will usually be 15 years for homeowner new construction projects}*

1. Project shall be designated as HOME-assisted and shall remain affordable for a period of fifteen (15) years from the date of Project Completion, as defined in the Declaration described below. Requirements related to maintaining compliance with the HOME program and enforcing the affordability restrictions of 24 CFR 92.252 have been set forth in a HOME Written Agreement, by and between Owner and ADFA (the “**HOME Agreement**”), and in a Declaration of Restrictive Covenants, deemed and constituting a covenant running with the land for a period of fifteen (15) years from the date of Project Completion, executed by Owner, which has been or will be recorded in the official land records of County Name, Arkansas (the “**Declaration**”), both of approximately even date herewith.
2. The HOME Loan is further evidenced by a second position Mortgage and Promissory Note of even date herewith from Owner to ADFA and all extensions, renewals, amendments, modifications, and replacements thereof and substitutions therefor.
3. In addition to HOME funds, permanent financing for the project also comes a first mortgage from {\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and a deferred Developer fee.} Construction financing will be provided by \_\_\_\_\_\_\_\_\_\_\_\_and ADFA.
4. ADFA has relied on the obligations of the Guarantors to be performed under this Guaranty and the Guarantors have determined that executing and delivering this Guaranty is in the Guarantors’ interest and to the financial benefit of the Guarantors.

1. The Guarantors acknowledge that ADFA is the intended beneficiary of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby irrevocably and unconditionally promise, covenant, guarantee, and agree as follows:

* 1. **Term and Obligations**.

1. The Guarantors do hereby unconditionally and irrevocably guarantee the due and punctual performance of all obligations for the timely completion of the construction of the Project in accordance with the Plans and Specifications, and the HOME Agreement and other Loan Documents, as defined hereafter, in a good and workmanlike manner, free of construction or similar liens (“**Guaranteed Obligations**”). This Guaranty is a continuing guaranty of performance throughout the term stated in Section 1(c). Each Guarantor unconditionally agrees that if for any reason it fails to perform the Guaranteed Obligations, then upon written demand by ADFA the Guarantors will take corrective actions to perform such obligations and further guarantees the satisfaction of any financial and other obligations necessary.
2. If Guarantors do not assume and perform such responsibilities and obligations as described herein, ADFA may then elect, without further notice to Guarantors, to take any actions it reasonably believes necessary to complete the construction of the Project in accordance with the Plans and Specifications, but with the further right to suspend or terminate such actions at any time. No such actions by ADFA will release or limit the liability of Guarantor hereunder. In such event Guarantor shall repay ADFA any amounts reasonably expended by ADFA in undertaking any actions it reasonably believes necessary to perform the Guaranteed Obligations, together with interest on all amounts expended at the rate of nine percent (9%) per annum from the date of expenditure, and all reasonable expenses actually incurred in enforcing this Guaranty, including but not limited to attorneys' fees and any expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings. Such obligation of reimbursement is in addition to Guarantors’ obligations under other provisions of this Guaranty (“**Repayment Obligation**”).
3. This Guaranty shall expire upon ADFA’s final inspection and approval of the Project’s construction.
   1. **Provisions of Guaranty**
4. If the Guarantors fail to perform any of its obligations under this Guaranty, the Guarantors shall be responsible for any and all damages resulting to ADFA from such breach.
5. This is a joint and several guarantee of performance and not of collection. The Guarantors waive any right to require that any action be brought against any other person (including a Guarantor) liable for performance or payment of any obligations or that resort first be made to any other security.
6. Prior to filing an action against the Guarantors, ADFA will give the Guarantors a reasonable period of notice with an opportunity to cure any failure to perform as required, which shall be at least 30 days except in case of emergency. If the Guarantors fail to pay any amount owing under this Guaranty, ADFA shall have all of the rights and remedies provided by law or under any other agreement relating to the HOME Loan. These rights and remedies shall be cumulative and not exclusive.
   1. **Nature of Guaranty.** The Guarantors’ liability for performance of the Guaranteed Obligations and payment of the Repayment Obligation guaranteed hereunder shall be a primary obligation and shall be absolute and unconditional. The Guarantors agree that none of the following acts, omissions, or occurrences shall diminish or impair the liability of the Guarantors in any respect (all of which acts, omissions, or occurrences may be done or occur without notice to any Guarantor):
7. Any extension, modification, indulgence, compromise, settlement or variation of any of the terms of the Guaranteed Obligations or Repayment Obligation;
8. The discharge or release of any obligations of any Guarantor or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, by reason of bankruptcy or insolvency laws or otherwise;
9. The acceptance or release by ADFA of any collateral, security, or other guaranty or any settlement, compromise, or extension with respect to any collateral, security, or other guaranty;
10. The application or allocation by ADFA of payments, collections, or credits on the Repayment Obligation;
11. The creation of any new indebtedness by Owner;
12. The making of a demand, or absence of demand, for payment of the amounts owing under the Guaranty, or giving, or failing to give, any notice of dishonor, protest, presentment, or non-payment or any other notice;
13. Any failure, omission, or delay on the part of the Guarantors or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, or anyone claiming by or through any of them, to comply with any instrument or agreement relating to any of the Guaranteed Obligations or Repayment Obligation;
14. To the extent permitted by law, any release or discharge by operation of law of the Guarantors from the performance or observance of any obligation, covenant, or agreement contained in this Guaranty;
15. Any merger or consolidation of the Guarantors, or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, into or with any other corporation or other entity or any sale, lease, or transfer of any of the assets of the Guarantors to any other person or entity; or
16. Any other occurrence or circumstance (other than payment hereunder) which might otherwise constitute a legal or equitable defense or discharge of the liabilities of a Guarantor or surety or which might otherwise limit recourse against the Guarantors.

The obligations of the Guarantors set forth in this Guaranty constitute full recourse obligations of the Guarantors, enforceable against the Guarantors to the full extent of the Guarantors’ assets and properties. The Guarantors’ liability under this Guaranty is independent of the Guarantors’ liability under any other guaranty previously or subsequently executed by the Guarantors as to all or any part of the Guaranteed Obligations or the Repayment Obligation and may be enforced for the full amount of this Guaranty regardless of the Guarantors’ liability under any other guaranty.

* 1. **Sufficient Consideration**. The Guarantors acknowledge that the Guarantors have received good, valuable, and sufficient consideration for the making of this Guaranty and expressly agree that recourse may be had against the Guarantors’ properties and assets for all obligations hereunder and further agree that any and all of the Guarantors’ properties and assets shall be subject to execution for a judgment rendered against the Guarantors on this Guaranty by a court of competent jurisdiction.
  2. **Evidence of Financial Capacity**. The Guarantors acknowledge that they have presented to ADFA (1) a copy of their most recent audit and (2) a copy of the previous two years’ financial statements in connection with ADFA’s provision of the HOME Loan and that such statements accurately and correctly present the financial condition of the Guarantors as of the date thereof and that no material events have occurred which make the statements inaccurate or which jeopardize the ability of the Guarantors to provide the financial support anticipated hereunder. The Guarantors shall have an ongoing obligation to provide updated financial information to ADFA throughout the term of this Guaranty. At the request of ADFA, each Guarantor shall provide to ADFA compiled or audited financial statements within 120 days of the close of its fiscal year. All such financial statements shall be prepared in accordance with generally accepted accounting principles.
  3. **Waiver of Rights**. The Guarantors agree to waive:
  4. Notice of acceptance of this Guaranty;
  5. Any and all other notices to which the Guarantors might otherwise be entitled except as this document requires;
  6. Any and all defenses arising by reason of any disability of the Guarantors or any defense of any other person;
  7. Any and all rights to extension, composition, or election with respect to any collateral under any provision of the Federal Bankruptcy Code, as now existing or hereafter amended from time to time, or any other debtor’s or guarantor’s remedy thereunder or under any other federal or state law affecting creditors’ rights;
  8. Diligence in any attempt to enforce the obligations guaranteed under this Guaranty, to realize upon any other security, or to collect from anyone any amount, the payment of which is guaranteed under this Guaranty, and any right to require that any action be brought against any other person or to require that resort first be had to any such security;
  9. Protection of any such security for the payment of the obligations guaranteed under this Guaranty;
  10. The observance of any and all formalities that might otherwise be required to charge any Guarantor with liability under this Guaranty;
  11. Any right of subrogation to the rights of ADFA against Owner; and
  12. Any notice or demand, any action that ADFA takes regarding Owner, anyone else, any collateral, or any Guaranteed Obligations or Repayment Obligation, which the Guarantors might be entitled to by law or under any other agreement.

ADFA may waive or delay enforcing any of its rights without losing those rights.

* 1. **Representations and Warranties.** The Guarantors represent and warrant to ADFA as follows:

1. The execution and delivery of this Guaranty, and the performance of the obligations imposed under this Guaranty, do not violate any law and do not conflict with any agreement by which the Guarantors are bound, and no consent or approval of any governmental authority or any third party is required in connection with the execution or delivery of this Guaranty and the performance of the obligations imposed under this Guaranty, and this Guaranty is a valid and binding agreement, enforceable according to its terms.
2. There are no actions, suits or proceedings, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau or other administrative agency, pending or, to the best knowledge of the Guarantors, threatened against or affecting the Guarantors, or any properties or rights of the Guarantors, which, if adversely determined, could have a materially adverse effect upon the financial condition of the Guarantors.
3. The Guarantors assume full responsibility for obtaining any further information concerning the status of the Guaranteed Obligations or Repayment Obligation or any other matter which the Guarantors may deem necessary or appropriate (now or later). The Guarantors waive any duty on the part of ADFA, and agree that the Guarantors are not relying upon nor expecting ADFA to disclose to the Guarantors any fact now or later known by ADFA, whether relating to the operations or condition of Owner as owner of the Project, the existence or the occurrence of any default with respect to the Guaranteed Obligations or Repayment Obligation, or otherwise, notwithstanding any effect such fact may have upon the undersigned’s risk under this Guaranty.
4. The Guarantors are satisfied with the means that the Guarantors have for obtaining from Owner, on a continuing basis, financial and other information pertaining to its condition as owner of the Project.
   1. **Reinstatement.** This Guaranty shall continue to be effective, or shall be automatically reinstated, as the case may be, if at any time performance or payment of all or any part of the Guaranteed Obligations or Repayment Obligation, as the case may be, is rescinded or must otherwise be restored or returned by ADFA upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of Owner, or upon, or as a result of, the appointment of a custodian, receiver, trustee, or other officer with similar powers with respect to Owner or any substantial part of Owner’s property, or for any other reason, all as though such payments had not been made. If an event permitting the acceleration of any of the Guaranteed Obligations or Repayment Obligation shall at any time have occurred and be continuing and such acceleration of the obligations shall at such time be prevented by reason of the pendency against Owner of a case or proceeding under a bankruptcy or insolvency law, the Guarantors agree that, for purposes of this Guaranty and the Guarantors’ obligations under this Guaranty, the Guaranteed Obligations or Repayment Obligation shall be deemed to have been declared in default and accelerated with the same effect as if the obligations had been declared in default and accelerated in accordance with the terms thereof, and the Guarantors shall immediately pay the amounts specified by ADFA to be paid in accordance with the documents evidencing the Guaranteed Obligations or Repayment Obligation.
   2. **Notice**. Notices due to the Guarantors hereunder shall be deemed delivered two (2) days after being placed in the United States mail, postage prepaid, addressed to the Guarantors as follows:

{Owner}

{Address}

{City, State Zip}

Attention: {Contact}

And

{Guarantor 2}

{Address}

{City, State Zip}

Attention: {Contact}

And

{Guarantor 3

{Address}

{City, State Zip}

Attention: {Contact}

Notices due ADFA shall be in writing and must be personally delivered or placed in the United States mail. Notices to ADFA delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of an ADFA representative. Notices to ADFA should be addressed as follows:

Arkansas Development Finance Authority

1 Commerce Way, Suite 602

Little Rock, Arkansas 72202

Attn: HOME Department

* 1. **Miscellaneous.**

1. This Guaranty shall be construed in accordance with the laws of the State of Arkansas.
2. For all purposes in respect to this Guaranty, the Guarantors agree to submit to the jurisdiction of the state and federal courts located in Pulaski County, Arkansas.
3. This Guaranty shall be binding on the successors and assigns, legal representatives, and other transferees of the Guarantors. This Guaranty shall not be assignable or transferable by the Guarantors without the prior written consent of ADFA. This Guaranty shall inure to the benefit of ADFA’s successors, assigns, and legal representatives. ADFA specifically reserves the right to assign and transfer this Guaranty to HUD.
4. Any amendment of this Guaranty shall be in writing and shall require the signature of the Guarantors and ADFA.
5. The invalidity or unenforceability of any provision of this Guaranty shall not affect the validity or enforceability of the remaining provisions of this Guaranty.
6. Any reference in this Guaranty to attorneys’ fees shall refer to reasonable attorneys’ fees, charges, costs, and expenses of in-house and outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative, or probate proceeding, in consultation with counsel, or otherwise.
7. The descriptive headings of this Guaranty are for convenience only and shall not be deemed to affect the meaning of any provision.
8. As used herein, the term “person” includes a human being, a public or private corporation, an unincorporated association or organization, a partnership or any other for-profit or non-profit entity.
9. As used herein, the term “Loan Documents” includes the HOME Agreement, the Promissory Note, the Mortgage, the Deed Restriction, and this Completion Guaranty.
10. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.
    1. **WAIVER OF JURY TRIAL.** THE GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. THE GUARANTOR, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantors have caused this Guaranty to be duly executed as of the

date noted above.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**

**an Arkansas \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By:

Date \_\_\_\_\_\_\_\_\_\_\_\_\_

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

**STATE OF ARKANSAS,**

**COUNTY OF COUNTYNAME, TO-WIT:**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by NAME, General Partner/Managing Member of OWNER, on behalf of said limited partnership/limited liability company.

My commission expires

NOTARY PUBLIC