



Agenda

CITY CLERK'S OFFICE

DATE 10/14/15 TIME 2:08 p.m.
SERVED BY Margaret Ambrosino
RECEIVED BY [Signature]

COMMUNITY DEVELOPMENT COMMISSION MEETING

Wednesday, October 21, 2015

3:30-5:00 p.m.

500 Market Street, Suite 200

Roundhouse Conference Room

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Approval of Minutes: August 19, 2015 CDC
5. Introduction of new Community Development Commissioner (Margaret Ambrosino)
6. Proposal for Alternate Compliance for Zocalo Phase 5 (Alexandra Ladd)
7. Items from the Commission
8. Items from the Floor
9. Adjournment

PERSONS WITH DISABILITIES IN NEED OF ACCOMMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 955-6520, FIVE (5) WORKING DAYS PRIOR TO MEETING DATE.

INDEX OF
CITY OF SANTA FE
COMMUNITY DEVELOPMENT COMMISSION
MEETING
October 21, 2015

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APPROVAL OF MINUTES: August 19, 2015 CDC	Approved [as amended]	2
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PROPOSAL FOR ALTERNATE COMPLIANCE FOR ZOCALO PHASE 5	Tabled [following discussion]	2-7
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ADJOURNMENT	Adjourned at 4:55 p.m.	8

MINUTES OF THE
CITY OF SANTA FE
COMMUNITY DEVELOPMENT COMMISSION MEETING
Santa Fe, New Mexico

October 21, 2015

A meeting of the City of Santa Fe Community Development Commission was called to order by John Padilla, Acting Chair on this date at 3:38 p.m. in the Market Station Offices, 500 Market Street, Suite 200, Roundhouse Conference Room, Santa Fe, New Mexico.

Members Present:

John Padilla, Acting Chair
Paul Goblet
Ken Hughes, newly appointed member
Carla Lopez
Silas Peterson

Member(s) Absent:

Councilor Ron Trujillo, Chair, excused
Rusty Tambascio, Vice Chair, excused
Toby Bott-Lyons, resigned

Staff Present:

Margaret Ambrosino, Senior Housing Planner
Richard Macpherson, Senior Planner

Others Present:

Eric Garcia, President, Zocalo Association
Jennifer Jenkins
Josh Rogers, Rincon Investments, Inc.
Jo Ann G. Valdez, Stenographer

APPROVAL OF AGENDA

**Commissioner Lopez moved to approve the agenda as published.
Commissioner Goblet seconded the motion. The motion passed unanimously by voice vote.**

APPROVAL OF MINUTES: August 19, 2015 CDC

Ms. Ambrosino made the following changes to the Minutes of the August 19, 2015 meeting:

Page 1, Alexandra Ladd was present.

[*Stenographer's note: Ms. Ladd arrived when the meeting was being adjourned.]

Page 3, 4th paragraph, 2nd sentence was changed to read: *"A press release announcing the vacancy went out after Ms. Ambrosino was told of Mr. Lyon's intent to step down."*

Commissioner Peterson moved to approve the Minutes of the August 19, 2015 meeting as amended. Commissioner Lopez seconded the motion. The motion passed unanimously by voice vote.

INTRODUCTION OF NEW COMMUNITY DEVELOPMENT COMMISSIONER

Ms. Ambrosino introduced newly appointed Commissioner, Ken Hughes. Mr. Hughes will be replacing Toby Bott-Lyons who stepped down in August. Ms. Ambrosino noted that he was appointed on October 14th. She said he has extensive experience with the City. He is presently on the Climate Action Task Force and has worked with the Department of Finance and Administration, the Local Government Division, administering the Community Development Block Grants at the state level.

Commissioner Hughes noted that he also served on the Planning Commission for six years.

PROPOSAL FOR ALTERNATE COMPLIANCE FOR ZOCALO PHASE 5 (Rincon Investments)

Ms. Ambrosino referred to the Memo from Alexandra Ladd that was included in the Commissioners' packets. A copy is hereby incorporated to these Minutes as Exhibit "A".

Staff requested a decision from the Commission regarding the request from Rincon Investments for an alternate means of compliance (providing units in previous phases) instead of providing the five homes currently owed for Phase 5 under the Housing Opportunity Program agreement dated November 15, 2001 between the City of Santa Fe and Foothills, LLC.

Zocalo Condominiums was approved as a Type C development under the Housing Opportunity Program, meaning that 11% of the built units were required to be delivered to an income-qualified homebuyer, with an average income of 65% of the area median income. The original developer proposed 323 homes, of which 191 have been constructed. Final development projections have been updated to revise the total home count to 301.

In April of 2014, the Commission heard a previous request from Rincon Investments for alternate compliance which was granted. The request allowed Rincon to pay a fee-in-lieu for three of the units owed for the last half of Phase 4 and to convert an existing market rate unit into an affordable unit and sell it to an income-qualified homebuyer. The fee was paid in full and the unit is almost ready to be put on the market.

Rincon Investments proposes another alternate means of compliance for Phase 5, for which the developer expects to break ground in mid-2016. Instead of delivering the six affordable units within the phase, Rincon will purchase market rate units located in prior phases when they come up for sale and convert them to be sold to income-qualified homebuyers. The units will be priced to maintain the 65% AMI affordability levels, as averaged out across all units. Rincon is confident that market trends regarding sales of existing units will support the delivery of one affordable unit per every nine units constructed in Phase 5. Copies of the letter from Rincon Investments requesting the Alternate Compliance were included with Exhibit "A".

Staff recommends the following conditions of approval:

- 1) Attention is paid to the distribution of the converted units to ensure that they are not overly concentrated in any one section or building group;
- 2) Rincon Investments provides an annual report to the City of Santa Fe documenting the conversion of existing market-rate units to affordable units, by location, sales price, income level of the homebuyer and "effective" sales price.

Josh Rogers said he represents Rincon Investments, LLC, the developer for Phase 4B and Phase 5 of Zocalo. He noted that Zocalo had some troubles and went through foreclosure. Foothills Estate, LLC was the original developer for the project. Zocalo was started by Foothills Estates, LLC in 1999 and went into foreclosure in 2009 without starting Phase 5 and leaving Phase 4 halfway constructed. Rincon Investments, LLC purchased the remaining rights to the development in 2012. Since then, they have broken ground on Phase 4b and are moving into Phase 5.

Mr. Rogers said the reason they are here today is to talk about an alternate means of compliance for the affordable housing requirement. He noted that Phase 4B which is 54 units is currently under construction and will be complete in early 2016. He said as they started to go through this process, they realized that they were going to be building on a mountain side and therefore they have major challenges with topography and drainage. They received bids back to complete the project and realized quickly that the price to deliver one affordable unit was very high. Their best estimate at this point is around \$410,000 to deliver one affordable unit.

Mr. Rogers said they want to fulfill their requirement with regards to the affordable housing and instead of delivering the six affordable units within the phase, Rincon will purchase market rate units located in prior phases when they come up for sale and convert them to be sold to income-qualified homebuyers.

Mr. Rogers said Eric Garcia, who is the President of the HOA at Zocalo can talk about the market out there, if the Commission is interested. He said basically, they know that they can purchase existing units between \$200,000 to \$300,000, which is significantly less than what it will cost them to build a unit.

Commissioner Padilla asked if there were any questions.

Questions/Discussion

Commissioner Peterson asked what kind of timeline they would put on purchasing and turning over the six units.

Mr. Rogers said they have six units that they have to deliver and that is basically one for every nine units that gets delivered. He said they would buy a unit before those nine actually come on the market and convert the units before those nine units are put on the market.

Mr. Garcia said he has been involved with the project with the previous developer, Foothills Estate, LLC since 2003 and until they foreclosed in 2012. He said he knows the Zocalo market well and is a qualified broker as well. He is also with the Homeowners Association and has a very good relationship with the residents at Zocalo.

He said to answer the question as far as the units on the market, every year, in the last five years, there are about 15 units sold on the resale market at Zocalo and at an average, there are about four units a month that are for sale. He thinks there will be an inventory need on the resale market at Zocalo and he does not see any issues or concerns with achieving the affordable housing requirements.

Commissioner Padilla asked what the timetable is for breaking ground and completion of this Phase.

Mr. Rogers said these will be built on a series of sub-phases and they hope to break ground in June of next year. They are presently in design to do the drawings for the simple grading plan, which will be done this upcoming month.

Commissioner Hughes asked if they agree with staff's conditions, which suggests that the converted units are not all located in one place; and that Rincon Investments will provide an annual report to the City of Santa Fe documenting the conversion of existing market-rate units to affordable units, by location, sales price income level of the homebuyer and "effective" sales price.

Mr. Rogers said yes, there is no problem with that. He said Mr. Garcia can talk about the fact that these units are spread out.

Mr. Garcia said as he indicated earlier, he worked for the original developer, Foothills Estates LLC and Mr. Tishman took pride in building the affordable housing units

the same way as the market rate homes. He did not want people to drive through the development and know which homes were affordable units and which were not. He noted that he remembers meeting with the City staff person at that time (Ron Pacheco) and mapping out exactly which units would be affordable and ensuring that they would not all be concentrated in one area.

Commissioner Hughes mentioned that the State has a program where builders can receive \$650 per square foot for energy efficient units.

Commissioner Lopez asked if the units will have different prices.

Mr. Garcia said yes, they have different floor plans.

Commissioner Lopez said the Ordinance requires that there be two and three bedroom units. She asked if they will take this into consideration.

Mr. Rogers said the original HOP Agreement or Plan that was agreed to in this particular development was never followed. There has been a wide variety of mixture of homes, 1-bedrooms; 2-bedrooms and 3-bedrooms based on what the affordable housing market really wanted. He noted that he spoke with Sharon Welsh about this and basically 2-bedroom homes are in the highest demand right now but they would like to have the flexibility for buyers to choose.

Commissioner Goblet asked how many homes they have under construction now.

Mr. Rogers said 54.

Commissioner Goblet said he senses that these will be congregated in the middle of the development.

Mr. Garcia said the affordable units are all scattered.

Mr. Rogers added that there has been a wide variety of floor plans that have been delivered in each of the five phases to date.

Ms. Ambrosino asked Mr. Rogers if a 3-bedroom came up and there is an income-qualified family that needed a 3-bedroom, would they be able to sell it to them at the AMI price that they qualified for.

Mr. Rogers said yes, which is around \$150,000.

Commissioner Hughes moved to approve the request from Rincon Investments LLC for alternate means of compliance for Zocalo Phase 5. Commissioner Peterson seconded the motion.

Discussion

Commissioner Padilla asked if they would be accepting staff's recommendations.

Mr. Rogers said yes, (after he reviewed staff's recommendations).

Commissioner Goblet said he knows that Zocalo is trying to be in compliance here and this is their best option. He asked if it would be acceptable and a simpler thing for this entity to prepare a fee-in-lieu of proposal to just contribute \$100,000 in cash- if the purchase price is going to be \$250,000 and if indeed AMI suggests that it has to be \$150,000. This could put back \$500,000 in new monies that could be allocated.

Commissioner Padilla said this is an interesting point but that is not what is being proposed. He asked Ms. Ambrosino if this is considered, would this proposal be tabled and they would have to come back.

Ms. Ambrosino said if that is something that would substantially affect the bottom line or financing, and they want to take this back to review, it would have be brought back to the Commission for review and consideration. She said the proposal to purchase existing units as they that become available to resell to income-qualified buyers was a condition.

Commissioner Padilla said that is what has been noticed and published and what the Commission is acting on. He reminded the Commissioners that there is a motion on the floor.

Commissioner Lopez said she would support the motion the way it is because we actually need residences and places for people to live. She thinks this is a great proposal and thanks Zocalo for coming up with this idea.

Commissioner Padilla agreed with Commissioner Lopez and said this could be a missed opportunity to have affordable homes.

Mr. Rogers said if the Commission feels that the money would be better spent by them coming up with the cash, they are definitely open to that idea.

Commissioner Padilla explained that the Commission is not here to propose an alternate means of compliance for Zocalo. They are here to deliberate and review what has been presented by this entity. He said the question on the table is the staff's conditions and if they are in agreement with these, the Commission will move forward on the motion. He asked Zocalo representatives if they would like to take some time now to discuss Commissioner's Goblet suggestion.

A short break was taken and the representatives from Zocalo stepped out of the room to discuss this option.

Commissioner Goblet asked if they could deploy \$500,000 in such a way to create other housing. He said this is only an idea and he did not know if this is acceptable.

Ms. Ambrosino said in staff's point of view, this proposal delivers houses that are needed now, as opposed to having money sitting in an affordable housing fund.

Representatives from Zocalo came back into the room.

Mr. Rogers said in light of the fee-in-lieu suggestion, they would like to come back with a proposal for a fee-in-lieu of option and table this proposal for now.

Commissioner Peterson asked if the HOP Ordinance discusses specific rules for a fee-in-lieu of, or is that simply something for this Commission to determine on a case-by-case basis.

Commissioner Lopez noted that the Ordinance has a formula for the fee-in-lieu of and she did not think that this is \$100,000 but more like \$29,000.

Commissioner Hughes said he read the proposal and he thought that staff addressed the fee-in-lieu of as one of the topics and he thinks that Alexandra Ladd would have brought this up as an option if it was a benefit for the City. This was not the recommendation and he thinks Ms. Ladd's recommendation is a fine recommendation and he is prepared to vote on this. He did not see anything wrong with what is being proposed.

Commissioner Padilla thinks what is being proposed is a very good option and gives us units to fulfill as they move forward with their development.

Mr. Rogers said they could come back with a new proposal on a fee-in-lieu of on a subsidy that is significantly more than \$29,000 per unit, if the Commission is open to this.

Commissioner Padilla asked Mr. Rogers if he is asking the Commission to table this item.

Mr. Rogers said yes.

Commissioner Hughes temporarily withdrew his motion until the next Commission meeting in November. Commissioner Peterson (who seconded the motion) was in agreement to withdraw the motion.

Commissioner Hughes moved to table the action on this agenda item until the November meeting. Commissioner Goblet seconded the motion. The motion passed unanimously by voice vote.

Commissioner Padilla asked Ms. Ambrosino to have Alexandra Ladd brief the Commission on the HOP Ordinance requirements and the Fee-in-Lieu of formula at the next meeting.

ITEMS FROM THE COMMISSION

Commissioner Lopez asked if the Commission is going to try and change the meeting dates and times so that the Chair can attend the meetings. She noted that Councilor Trujillo has a full-time job and cannot attend the meetings during the day.

Ms. Ambrosino said she talked to the Clerk's office and there is nothing in the Ordinance that states that they cannot move the meeting but we need to keep in mind whether or not they will have an available Stenographer and they would like to keep the outstanding Stenographer that the Commission has had for years.

The Commission discussed the fact that there has not been a representative from the Governing Body to attend these meetings and they feel it is important to have a representative from the Governing Body.

Following discussion, there was consensus to keep the meeting dates and times as is. The 2016 meeting schedule was briefly reviewed.

The next meeting is scheduled for November 18, 2015 at 3:30 p.m.

ITEMS FROM THE FLOOR

There were no items from the floor.

ADJOURNMENT

Its business being completed, Commissioner Peterson moved to adjourn the meeting, second by Commissioner Padilla, the meeting adjourned at 4:55 p.m.

Approved by:


John Padilla, Acting Chair


Respectfully submitted by:

Jo Ann G. Valdez, Stenographer

City of Santa Fe, New

memo

EXHIBIT

tabbles

A

DATE: October 15, 2015

TO: Members of the Community Development Commission

VIA: Kate Noble, Acting Director
Housing and Community Development Department

FROM: Alexandra Ladd, Special Projects Manager *all*
Housing and Community Development Department

RE: Request for alternate compliance – Rincon Investments (Zocalo Phase V)

ACTION REQUIRED

Provide a decision regarding the request from Rincon Investments for an alternate means of compliance (providing units in previous phases) instead of providing the (5) five homes currently owed for Phase V under the Housing Opportunity Program (HOP) agreement dated November 15, 2001 between the City of Santa Fe and Foothills, LLC.

BACKGROUND

The Housing Opportunity Program (HOP) ordinance was adopted in 1998 as part of the City's zoning code. It established that all proposed residential development provide a percentage of affordably-priced homes. The percentage varied from 11 - 16%, depending on the market price of the proposed development - the more expensive the homes, the higher the requirement.

Zocalo Condominiums was approved as a Type C development under HOP, meaning that 11% of the built units were required to be delivered to an income-qualified homebuyer, with an average income of 65% of the area median income (AMI). The original developer proposed 323 homes, of which 191 have been constructed. Final development projections have been updated to revise the total home count to 301.

Although HOP is technically not the City's current regulation, several agreements were outstanding at the time Santa Fe Homes Program (SFHP) was adopted and they remain in effect, including the agreement governing the Zocalo Condominium community (Attachment B). As per the HOP Administrative Procedures, the Community Development Commission is charged with granting approval for requests for alternate compliance. The regulation allows for developers to request an alternate form of compliance. See Attachment C for the relative excerpts from the HOP Administrative Procedures.

In April of 2014, the Commission heard a previous request from Rincon Investments for alternate compliance which was granted. The request allowed Rincon to pay a fee-in-lieu for three of the units owed for the last half of Phase IV and to convert an existing market rate unit into an affordable unit and sell it to an income-qualified homebuyer. The fee was paid in full and the unit is almost ready to be put on the market.

ITEM AND ISSUE

Rincon Investments proposes another alternate means of compliance for Phase V, for which the developer expects to break ground in mid-2016. Instead of delivering the six (6) affordable units within the phase, Rincon will purchase market rate units located in prior phases when they come up for sale and convert them to be sold to income-qualified homebuyers. The units will be priced to maintain the 65% AMI affordability levels, as averaged out across all units. Rincon is confident that market trends regarding sales of existing units will support the delivery of one affordable unit per every nine (9) units constructed in Phase V. See Attachment A: Letter Requesting Alternate Compliance from Rincon Investments.

RECOMMENDATION

Staff recommends this form of alternate compliance based on the following:

- The economic rationale provided in Rincon's letter that Phase V will incur higher than expected infrastructure costs because of the challenging terrain is substantiated to staff's satisfaction;
- Likewise, is the premise that subsidizing the six affordable units by increasing the sales price of the market rate units undercuts the overall financial feasibility of building out the phase;
- The market demand of Zocalo affordable homebuyers is possibly better met through the conversion of existing units because there a variety of unit sizes, given that Rincon proposes to build all 3-bedroom units in Phase V.

✧ Staff recommends the following condition of approval:

- Attention is paid to the distribution of the converted units to ensure that they are not overly concentrated in any one section or building group;
- Rincon Investments provides an annual report to the City of Santa Fe documenting the conversion of existing market-rate units to affordable units, by location, sales price, income level of the homebuyer and "effective" sales price.

Attachments:

- A: Letter Requesting Alternate Compliance from Rincon Investments.
- B: Zocalo Condominium HOP Agreement with Foothills, LLC
- C: Excerpted Sections from Administrative Procedures from Housing Opportunity Program

its goal of ensuring continuance of the HOP Home as affordable housing as permitted under New Mexico law and accordingly are intended to be exercisable throughout the term of this Agreement (or such shorter period as is the longest permitted under law).

5.4 Purchase Price. The purchase price of the HOP Home under the Right of First Refusal shall be equal to the appraised price at the time of sale less the Lien amount. In the event that there is a dispute as to the purchase price, the seller shall be entitled, at its own expense, to have a separate appraisal performed and if the seller and City or its agent still can not agree as to the purchase price, the seller and City shall resolve the matter through binding arbitration.

6. MONITORING AND ENFORCEMENT.

6.1 Notice. The City agrees to provide notice pursuant to the HOP of any violation or alleged violation of the terms and conditions of this Agreement and further agrees to give HOP Developer 30 days to cure and violation under this Agreement. HOP Developer agrees to provide the City with notice and 30 days opportunity to cure any violation of this Agreement.

6.2 Term. This Agreement shall be effective until all HOP Homes on the Property covered by this Agreement have been sold. Thereafter, this Agreement shall terminate. HOP Developer may request and the City agrees not to unreasonably withhold an express termination of this Agreement upon compliance with this Agreement. Nothing herein shall be deemed a waiver by the City or its agents or assigns of any right, title or interest to pursue or make claim for damages, penalties or remedies available to the City, its agents or assigns, for a breach of this Agreement or the HOP whether or not the breach occurs during the term of this Agreement.

6.3 Enforcement. It is understood and agreed by HOP Developer that the remedies provided under this Agreement are additional remedies, not exclusive of any remedy under the law.

6.4 Release by City. City hereby agrees to release HOP Developer from this Agreement upon fulfillment of all terms of this Agreement and to issue upon request a certificate of termination within a reasonable time of receipt of written request. The City will issue the certificate in recordable form stating (if such be the case) that this Agreement has been terminated, and any such certificate, when recorded with the Santa Fe County Clerk, shall be binding and conclusive on the City and all persons relying thereon.

7. MISCELLANEOUS PROVISIONS.

7.1 Recordation. HOP Developer agrees to record this Agreement and thus the Lien as set forth in Section 14-96.6 SFCC 1987 and prior to closing the sale of the HOP Home so as to legally attach, run with the land and ensure that the purpose of the HOP are met.

B. The HOP Home is no longer the principal residence of any person purchasing the HOP Home from the HOP Developer or any subsequent HOP Homebuyer, their heirs, successors or assigns whose occupancy does not comply with the covenant to maintain the HOP Home only as a principle residence and not as a trade or business, as an investment property, (income/rental property) or as a recreational second home, or non-principal residence so long as said HOP Homebuyer of the HOP Home has been given written notice identifying the violations and has failed to cure them; or

C. Any legal or beneficial interest in the HOP Home is conveyed or otherwise transferred (for example, by inheritance) without both Notice of Intent to Sell and Second Notice of Intent to Sell as required in this Section having been given, unless the City has waived the Right of First Refusal in writing; or

D. The City has notice of a pending mortgage or other lien foreclosure or similar proceeding (for instance, a sheriff's sale) against the HOP Home or of a civil action or equivalent proceeding for unpaid condominium common expenses; or

E. The City has notice that the HOP Home is being taken for unpaid taxes; or

F. The HOP Homebuyer made material misrepresentations in applying to acquire the HOP Home; or

G. The HOP Homebuyer has failed to observe and perform the HOP Homebuyer's obligations under this Agreement (other than as stated in (H.) below), has been given written notice identifying the violations and has failed to cure them; or

H. The HOP Homebuyer has failed to observe and perform the HOP Homebuyer's obligations under this Covenant in a manner, which constitutes criminal conduct, or in the City's judgment constitutes other willful, egregious and continuing violation of such obligations.

The City shall be obligated to give notice and an opportunity to cure only for events under subsections (B.) or (G.); and for those events, the HOP Homebuyer and any holder of a Senior Lien shall have a reasonable time to cure which shall not exceed six months. In all cases other than sale or other transfer of the HOP Home under subsection (A.), the City's right to buy the HOP Home shall continue only while the event giving rise to exercise of the Right of First Refusal continues un-remedied.

5.2 City's Exercise of Right of First Refusal. In the event that the City has received a Notice of Intent to Sell pursuant to this Agreement, the City shall have 30 days in which to exercise its Right of First Refusal. During this 30-day period, the City and its agent shall have the exclusive right to market the HOP Home and the HOP Homebuyer shall not list the HOP Home with a realtor or any other selling agent.

5.3 Duration of Right of First Refusal. The City and the HOP Homebuyer intend that the Right of First Refusal are for the purpose of promoting and enforcing this Agreement in

F. The Lien will reduce the total amount payable to the HOP Homebuyer upon resale by the lien amount if the HOP Home is sold or transferred during the 30 year Lien term.

G. The Lien will be renewed for an additional 30-year period if the HOP Home is sold to a Certified HOP Homebuyer or the right of first refusal exercised during the initial term of the Lien.

4.4 Escrow Instructions Regarding Initial HOP Compliance. HOP Developer agrees to sell the HOP Home through an escrow agent. The escrow agent shall be required by HOP Developer as a precondition for closing to certify to the City that:

A. The HOP Homebuyer has been notified of and has indicated their understanding of the Lien and its affect.

B. The total sales price at closing does not exceed the HOP Home Price plus such transactional costs of closing as are usual and customary.

C. The HOP Home is being sold to a buyer who has agreed that the HOP Home shall be their principal residence and who has provided the escrow agent with a Certificate of HOP Homebuyer Eligibility.

4.5 Agreement to Pay Appraisal Costs. The HOP Developer agrees to pay a flat fee of \$250.00 to the City or its agent at closing of the sale of each HOP Home. This fee is expressly and solely for the purposes of obtaining a Fair Market Value appraisal in order to determine the appropriate amount of the Lien.

4.6 HOP Developer to Reference Agreement and Lien. The HOP Developer shall include a reference to this Agreement in any and all deeds or other instruments conveying any interest in the HOP Home or any part thereof or interest therein, although neither the validity nor enforceability of this Agreement shall be affected in any manner by failure to do so.

5. RIGHT OF FIRST REFUSAL OR PURCHASE.

5.1 Grant of Right of First Refusal. To maintain the HOP Home as affordable housing throughout the 30 year term of this Agreement, the City and its agents shall have, and HOP Developer, its heirs, successors and assigns, hereby grant the City and its agent the right (but without obligation) to purchase the HOP Home in any of the following circumstances (the "Rights of First Refusal"):

A. The HOP Developer or a successor has given the City Notice of Intent to Sell; or

In the event of a foreclosure on the Senior Lien the City hereby agrees to accept a note for any deficiency in the Lien amount and to forgive, release and forgo collection upon the Lien.

4. CLOSING SALES AND CONVEYANCES OF THE HOP HOMES.

4.1 Certification of Homebuyer. HOP Developer agrees to sell the HOP Home only to a Certified Homebuyer who qualifies for the purchase of a HOP Home under the HOP. The City hereby represents and warrants that Santa Fe Community Housing Trust is its authorized agent under the most current agreement between the City and Santa Fe Community Housing Trust, for purpose of qualifying buyers under this Agreement and issuing Certificates of HOP Homebuyer Eligibility.

4.2 HOP Developer's or HOP Homebuyer's Notice of Intent to Sell or Transfer the Property. Any time the HOP Developer or any subsequent HOP Homebuyer who is subject to this Lien intends to sell or otherwise transfer the Property or any interest in the HOP Home, whether by deed, real estate contract, intestacy, testate succession or otherwise, said transferor shall give written notice to the City which shall state the transferor's intention to sell or otherwise transfer said Property or interest in the HOP Home. (The "Notice of Intent to Sell").

4.3 Notice to Prospective HOP Homebuyer of Lien. The HOP Developer agrees to provide actual notice to any prospective purchaser of the covenants, conditions, and encumbrances, which are or will be placed upon the HOP Home to be sold by HOP Developer to the Certified HOP Homebuyer. Any purchase agreement containing the foregoing language or accompanied by a signed disclosure statement containing the foregoing language shall be deemed acceptable to the City pursuant to Section 26-1.19 (D) SFCC1987. The notice shall, at a minimum, state:

- A. The unit is subject to a 30 year, renewable, lien (the "Lien") which is intended to retain the long-term affordability of the HOP Home.
- B. The Lien may limit the ability of the HOP Homebuyer to get subsequent mortgage or equity loans.
- C. The Lien gives the City and its agents a right to exercise its right of first refusal and purchase the HOP Home at a price, which may be less than the fair market value of the HOP Home.
- D. The Right of First Refusal granted to the City can be assigned by the City to an agent or third party Certified HOP Homebuyer.
- E. The Lien will limit the HOP Homebuyer's ability to sell the HOP Home in the future and shall require the City or its agents to agree to any additional use of the HOP Home as collateral or security.

The Lien and/or deed restriction must be shown on Schedule B-II of the lender's title policy as a subordinate item(s) to the first mortgage that is to be sold to Fannie Mae.

Notwithstanding any terms to the contrary, herein, the City and its agent's rights to collect and apply the insurance proceeds of hazard or property insurance or other insurance proceeds shall be subject and subordinate to the rights of the Senior Lien holder to collect and apply such proceeds in accordance with the Senior Lien. Likewise, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the property subject to the Lien, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Senior Lien holder, subject to the terms of the Senior Lien.

3.3 Lien Amount. The Lien amount shall be the difference between the current HOP Home price at the time of closing and the Fair Market Value as determined by a certified appraiser selected by the City or its agent. The lien amount shall be calculated after construction of the HOP Home but prior to purchase by the HOP Homebuyer. HOP Developer agrees to execute such additional documents as are necessary to record the HOP Lien with the Lien amount.

3.4 Term of Lien. The Lien shall run for 30 years or until such time as the City exercises its right of first refusal or purchase under this Agreement. During this term, so long as the HOP Homebuyer complies with HOP and the terms of this Agreement, no payments will be due on this Lien. However, if HOP Homebuyer remains in the HOP Home for a full 30-year term without transferring the HOP Home, failing to comply with HOP, or otherwise violating the terms of this Agreement, the Lien shall terminate.

3.5 Transfers of Lien. The Lien may be assumed by subsequent HOP Homebuyers of the HOP Home, including those acquiring the HOP Home through testate or intestate succession so long as the City receives a Notice of Intent to Sell and the City gives written approval of the assumption of the Lien. The Lien shall not be assigned by the City or its agent without the Senior Lien holder's prior written consent so long as the Senior Lien remains outstanding and the obligation to make payment on the mortgage note has not been satisfied. Subsequent HOP Homebuyers shall also obtain a "Certificate of HOP Homebuyer Eligibility".

3.6 Collection of the Lien Amount. The City and its agent agree that they will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the Senior Lien holder at least 60 days prior written notice. The subordinate lien holder (the City or its agent) will give the Senior Lien holder written notice of default and prior written notice of any acceleration under the subordinate mortgage (the Lien). However, it is understood that the subordinate lien holder is only holding the Lien for purposes of retaining long-term affordability and, therefore, will not accelerate the payment of the Lien amount.

2.7 Marketing Sequence. The HOP Home shall be marketed at the same time as all other units on the Property or at a time, and in a proportion, equal to the number of non-HOP Homes being marketed for sale during a given phase of development.

2.8 Development Incentives. The City agrees to waive building permits for the 35 HOP Homes.

2.9 Agreements Regarding Transfers of Non-HOP Homes on the Property. HOP Developer acknowledges and hereby agrees that compliance with this Agreement shall be a precondition for any releases or express termination of HOP Developer's HOP Agreements and all future City approvals of building permits, certificates of occupancy and utility connections, and such other development approvals regarding the Property as may be required by law for development, construction, occupation and use of the Property.

3. HOP LIEN.

3.1 Creation of HOP Lien. The HOP Developer hereby creates a lien upon each HOP Home for the benefit of the City, its agents, heirs, successors and assigns (the "Lien"). The Lien shall be for the sole purpose of complying with the HOP and this Agreement and for the purpose of retaining long-term affordability of HOP Home.

3.2 Subordination. The Lien shall be subject and subordinate in all respects to liens, terms, covenants and conditions of a Senior Lien including all sums advanced for the purpose of (a) protecting or further securing the lien of the Senior Lien, curing defaults by the HOP Homebuyer, its successors and assigns under the Senior Lien or for any other purpose expressly permitted by the Senior Lien or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the Senior Lien are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the Senior Lien, any provisions wherein or in any other collateral agreement restricting the use of the Property to income eligible households or otherwise restricting the HOP Homebuyer, its successor's or assign's ability to sell the Property, shall have no effect on subsequent purchasers of the Property. Any purchaser following foreclosure, including his successors or assigns (other than the HOP Homebuyer or a related entity of the HOP Homebuyer), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the Senior Lien shall receive the title to the Property free and clear from such restrictions.

Further, if the holder of the Senior Lien acquires title to the Property pursuant to a deed in lieu of foreclosure, this lien shall automatically terminate upon acquisition of the title by the holder of the Senior Lien, provided that (a) the City has been given written notice of default under the Senior Lien and (b) the City shall not have cured the default under the Senior Lien, or diligently pursued curing the default as determined by the holder of the Senior Lien, within the 60-day period provided in such notice sent to the City.

2.2. Intended Conveyance of Interest. The Property is to be developed and the units thereon marketed as for sale housing.

2.3 Sales Price of Non HOP Homes. The anticipated sales price of the non-HOP Homes developed on the Property qualifies the project as a type C development under HOP.

2.4 HOP Plan. The HOP Developer agrees to construct a total of ___ HOP Home(s) as indicated on the attached Exhibit B. (HOP Plan). The HOP Plan shall include the number of bedrooms and bathrooms, the minimum square footage and the minimum household size, the percentage (%) of area median income to be served and the current HOP Home price for each HOP home as set forth in Section 8.2 of the HOP Administrative Procedures. If the development is not constructed in phases, the HOP Plan shall also include the legal description of the HOP Homes. If the development is constructed in phases, a HOP Plan for each phase designating the legal descriptions of the HOP Homes shall be reviewed and approved by the City and recorded at the County Clerk's office prior to issuance of a building permit by the City for that phase.

2.5 Agreement to Sell at HOP Home Price. The HOP Developer agrees to sell the HOP Home at the current HOP Home Price or such HOP Home Price as may be current at the time of sale by the HOP Developer. This subsection shall apply only for the eighteen-month period following the HOP Home being made available for sale. Any dispute as to the actual date on which a HOP Home is made available for sale shall be resolved by reference to the notice of intent to sell provided by HOP Developer pursuant to subsection 4.2 of this Agreement, the date of which shall be presumed to be the date on which the HOP Home became available. If the HOP Home has not sold for the HOP Home Price in the first six months, it shall be available for sale to any buyer whether or not they are certified pursuant to subsection 4.1. The HOP Home shall be salable at a revised price equal to the HOP Home Price plus ten percent during the second sixth month period. If the HOP Home has not sold for the revised price in the second six months, it shall be salable at a final revised price equal to the HOP Home Price plus twenty percent during the third sixth month period. If after eighteen months the HOP Home has not been sold it may be sold by HOP Developer at any price HOP Developer deems appropriate. However, notwithstanding any of the foregoing, the time periods described in this subsection shall be tolled during any suspension of marketing or any other period which has the effect of failing to make the HOP Home readily available for sale to a certified purchaser.

2.6 Agreement for Payments for Fraction Portions of a HOP Home. HOP Developer agrees to make a payment of \$9,548 for the fractional portion of a HOP Home as calculated pursuant to HOP, to the City or its agent prior to recording this Agreement. The payment shall be made to the Santa Fe Community Housing Trust for the benefit of the Santa Fe Affordable Housing Trust Fund, the proceeds of which are allocated to affordable housing projects in Santa Fe by the Santa Fe Affordable Housing Roundtable.

C. "Certified Homebuyer" means a person determined, pursuant to the HOP and such other criteria as the City or its agents may deem appropriate, to be qualified on the basis of need and preference for the purchase of a HOP Home and who has properly obtained a "Certificate of HOP Homebuyer Eligibility".

D. "Fair Market Value", unless otherwise stated, means fair market value as of the day of the event in question (for example, purchase of the HOP Home or termination of this Agreement), taking into account the restrictions on HOP Developer and occupancy imposed by this Agreement as if such restrictions were perpetual.

E. "HOP Developer" means each legal and equitable HOP Developer of all or any portion of a HOP Home or the Property during the term of this Agreement, including without limitation the HOP Developer identified above, and any subsequent HOP Developer by sale, conveyance or other transfer of any legal or beneficial interest in a HOP Home or the Property. Unless the context otherwise requires, HOP Developer shall mean the HOP Developer at the time in question. HOP Developer and HOP Developers are used interchangeably.

F. "HOP Home" shall mean the unit of housing to be marketed and sold by HOP Developer at the affordable price pursuant to the HOP and this Agreement.

G. "HOP Homebuyer" shall mean any person or entity, which purchases the HOP Home from the HOP Developer and any subsequent purchasers who buy from the initial purchaser during the term of this Agreement.

H. "Repurchaser" means the City or the City's Assignee. A general delegation of authority by the City to another person as Repurchaser shall transfer those rights, powers and obligations assigned to the Repurchaser in this Agreement or the Lien. Transfer of any rights, powers and obligations assigned to the City in this Agreement shall be effective only to the extent such rights, powers and obligations are specifically enumerated in the delegation of authority.

I. "Senior Lien" means a mortgage with respect to the Property from the Purchaser, as mortgagor, to any lender or its agent or assigns, as mortgagee which loan is solely used to purchase the HOP Home.

2. THE PROJECT.

2.1 Property. The HOP Developer is the owner of certain property situated in the County of Santa Fe, New Mexico, known as Tract 8B, Section 12, Township 17 North, Range 9 East and known as "Foothill Estates LLC (aka) ZOCALO LLC" which property contains more or less 46.43 acres and is more particularly described in Exhibit A attached hereto. (The "Property")

2075421

**CITY OF SANTA FE
INCLUSIONARY ZONING
HOUSING OPPORTUNITY PROGRAM AGREEMENT AND HOP HOME LIEN
for 32 HOP Home(s) to be located at "ZOCALO Development", located east of Camino
Francisca, south of NM 599, and west of US 285, Santa Fe, New Mexico**

This Housing Opportunity Program Agreement ("Agreement") is entered into on this 15th day of November, 2001, by and between Foothills, LLC, (the "HOP Developer") and the City of Santa Fe, New Mexico, a municipal corporation, (the "City").

WHEREAS, the City has duly adopted a Housing Opportunity Program, inclusionary zoning ordinance, and administrative procedures (collectively "HOP") and other regulatory structures in order to ensure that private development bears its fair share of the burden of housing affordability in the Santa Fe community; and

WHEREAS, the City's Community Services Department has determined that upon individualized assessment, the Agreement will provide, at a minimum, the amount of affordable housing necessary to offset impacts on the affordable housing market in the region of the project; and

WHEREAS, the City and the HOP Developer have entered into a HOP proposal in accordance with the requirements of the HOP; and

WHEREAS, The City and HOP Developer now wish to satisfy the HOP requirement for a final agreement in order to ensure HOP compliance and a mechanism for ensuring long-term affordability.

NOW THEREFORE, the City and the HOP Developer for themselves and their heirs, successors and assigns (including, without limitation, all persons who subsequently own a HOP Home or any interest therein, or the Property or any portion thereof containing a HOP Home, while this Agreement is in effect) hereby agree that the HOP Home shall be subject to the following Agreements and restrictions for the benefit of the City.

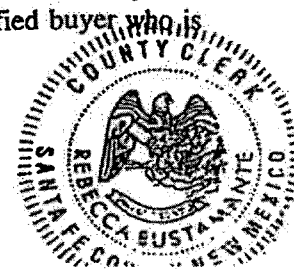
1. Definitions. All terms capitalized herein shall have the meanings given to them in this Agreement or the meanings as defined in the Santa Fe City Code sections regarding inclusionary zoning and the HOP. In this Agreement the following words and phrases have the following meaning:

A. "Agreement" means this HOP Agreement.

B. "Certificate of HOP Homebuyer Eligibility" means a certificate issued by the City or the City's assignee or agent, which certifies that the buyer is a qualified buyer who is income eligible.

COUNTY OF SANTA FE
STATE OF NEW MEXICO

I hereby certify that the instrument was filed for record on the 23 day of Feb A.D. 2002 at 1:47 P.M. and was duly recorded in book 411-437 of the records of Santa Fe County. Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.
[Signature]



three year build out, and provide a tangible boost to Santa Fe's economy. The City of Santa Fe would also benefit from an estimated gross receipts tax of \$1,600,000 based on \$19,800,000 in hard construction costs and general contractor fees. There are also permitting and water conservations fees of \$200,000. The total benefit to the City of Santa Fe is 200 construction jobs and \$1,800,000.

We very much appreciate the consideration for an Alternate Means of Compliance. We strongly feel that it is in the best interest of the existing 191 Zocalo residents who contribute to the Zocalo COA to finish phase 5 of the project as soon as possible. We think the added flexibility of converting existing market rate units will allow the project to be completed and bring a significant boost to Santa Fe's economy and job market.

Please call me to clarify any of the conditions outlined in this letter. Thank you for all your help.

Sincerely,

A handwritten signature in black ink, appearing to read 'JR B', followed by a long horizontal line extending to the right.

Josh Rogers
Director of Multi-Family
Rincon Investments, LLC

RINCON INVESTMENTS, LLC

October 7, 2015

Alexandra Ladd
Housing Special Projects Manager
City of Santa Fe

Re: Zocalo affordable housing requirements

Alexandra,

This letter will outline our plan to meet the affordable housing requirements for Zocalo Phase 5, the final phase of Zocalo, and provide a summary of the affordable housing status. As stated in earlier discussions, Zocalo is an unfinished project approved for 301 condominiums with only 191 condominiums built to date. Phase 4B which is 54 units is currently under construction and will be complete in early 2016.

Zocalo was started by Foothills Estates, LLC in 1999 and went into foreclosure in 2009 without starting Phase 5 and leaving Phase 4 halfway constructed. Zocalo is operated and maintained by the Zocalo Condominium Owners Association (COA) which urgently needs the entire balance of all the planned units in order to operate efficiently and effectively. Due to the extended period of time it has taken to finish all of the units at Zocalo, the current residents have experienced substantial increases in COA fees to help cover the maintenance and upkeep of the property.

Rincon Investments, LLC purchased Zocalo out of foreclosure at the height of the recession with the intention of completing Phase 4B and Phase 5. Phase 5 is currently finishing the design work and is about to begin the permitting process, and we anticipate being able to break ground on Phase 5 by mid-2016. Phase 5 is the most challenging phase of construction with major challenges with topography and drainage.

The Zocalo development under Foothills Estates, LLC, the original owner of the development, entered into a Housing Opportunity Program Agreement and Home HOP Lien with the City of Santa Fe on November 15, 2001. The agreement established Zocalo as a Type C development, which according to the Housing Opportunity Program Ordinance (Ord. #1998-3, §3) requires 11% of the development to be affordable based on the following formula taken from the HOP Ordinance.

Where T=total units, N=non-HOP units; and H=HOP units

$$T = N + H$$

$$H = N \times 0.11$$

$$T = (N \times 1) + (N \times 0.11)$$

$$T = N \times 1.11$$

$$N = T/1.11$$

Phases 1 through 5 of Zocalo will have a total of 301 units. According to the formula above the required number of HOP homes is:

Where T = 301 units

$$301/1.11 = N = 271.17$$

$$301 = 271.17 + H$$

H = 29.83 units required up on complete build out.

Zocalo has a long standing history of providing affordable units above the required minimal standards and has delivered the same exceptional high quality as the market rate units. Zocalo has wanted to maintain a cohesive and comprehensive look throughout the property so the affordable units would appear no differently than the market rate units.

Based on the list of affordable units sold to date at Zocalo provided by M. Nellie Martinez, the Deputy Director of The Housing Trust on December 2, 2013, the City of Santa Fe has recorded 20 affordable units sold at Zocalo. Rincon Investments, LLC, the current owner of the remaining reserve development rights for Zocalo, is currently under construction on phase 4B with the completion anticipated to be in April 2016. Rincon Investments, LLC paid a fee-in-lieu for 3 of units which was approved by Community Development Commission, and is going to convert a 2 bedroom/2bath unit it owns to the affordable housing program prior to the final Certificate of Occupancy on phase 4B. This will bring the total number of affordable units delivered at Zocalo to 24.

Phase 5 for Zocalo is 56 units and we will be required to deliver 6 affordable units upon full build-out. Rincon Investments is seeking flexibility in the delivery of the 6 units to accommodate the financial hardship of completing the project. Phase 5 has the most challenging topography of all the phases of Zocalo, and is going to require an extensive network of retaining walls, new roads, and miles of new utilities for the development to be completed. Phase 5 will have the highest infrastructure costs per unit resulting in an incredibly high cost to deliver a single unit. The original developer, Foothills Estates, could have been more proactive in delivering extra affordable units in the earlier phases due to the lower infrastructure costs per unit in order to adequately prepare for Phase 5.

We have received bids to complete the project, and the estimated costs to build one unit to completion is approximately \$412,000. The sales price for the affordable unit will be around \$150,000, resulting in a \$262,000 loss. The total loss on the six affordable units will be \$1,572,000. This amount will have to be subsidized across the 50 market rate units, resulting in a \$31,400 per market rate unit subsidy. The estimated subsidy per market rate unit is extremely high and will create a required price above market, limiting the financial feasibility of the overall project.

Rincon Investments is requesting an Alternate Means of Compliance to allow for the purchase of existing market rate units within Zocalo and converting them to the affordable housing program in lieu of delivering the newly constructed units. This will allow Rincon the flexibility to purchase existing market rate units. The existing market rate units are still recovering from the recession and are priced below the costs to deliver a new unit. Purchasing existing units and converting them to affordable housing is equivalent to Foothills Hills Estates being proactive on delivering extra affordable units in the earlier phases of Zocalo.

Phase 5 will be built in a series of mini-phases and will deliver 1 affordable unit per every 9 units that are built. If granted the approval to convert existing market rate units, Rincon will convert an affordable unit per every 9 market rate units prior to the final certificate of occupancy of any market rate units. This will ensure that an affordable unit is delivered to the housing trust prior to the completion of any market rate units.

During our discussions, it is understood that the original requirement from the 2001 HOP Agreement for Zocalo for the unit mix and AMI requirements are no longer applicable since the unit mix and types of units have changed over the years. The original plan has never been followed, and we are seeking flexibility to deliver any type of existing unit into the affordable housing program. There is currently a wide mix of units at Zocalo, and we will likely purchase a mixture of 1, 2, and 3 bedroom units to convert depending on what is available.

Without an alternate means of compliance, we fear that phase 5 will never happen. This is not in the best interest of the current residents, especially our affordable homeowners who also pay the COA fees. Without more units across which spread these fees, the fees will continue to escalate. However, there are also community-wide benefits to be realized if the build out is to proceed. Zocalo Phase 5 is set to create 300 jobs over the course of a

7.2 Successors and Assigns; Covenants to Run. This Agreement shall be legally binding on, as the obligations of, the parties and their respective successors and assigns, including without limitation, successors in title or interest to the Property, HOP Home or this Agreement, who by their acceptance of any interest in the Property, HOP Home or this Agreement shall be deemed to have agreed to perform and observe all the HOP Developer's obligations under, and to be bound by all the terms and conditions of, this Agreement. Furthermore, all the agreements, rights and restrictions set forth in this Agreement shall run with the Property for the purpose of maintaining the HOP Home as affordable housing throughout the term of this Agreement and the Liens entered into pursuant to this Agreement.

7.3 Reporting and Verification.

A. HOP Developer agrees to sign an affidavit declaring that the sale price did not exceed the amount specified in this Agreement.

B. HOP Developer agrees to provide such information and documentation as the City may reasonably require in order to insure that the actual sale was in compliance with this Agreement.

C. HOP Developer agrees to provide income verification in selling the HOP Home for certification by the City or its agent as complying with the HOP Ordinance.

~~D. HOP Developer agrees to grant access to the City, or its agent, to inspect the records of HOP Developer for the HOP Home in order to determine compliance with the HOP Ordinance and this Agreement.~~

7.4 Further Assurances. The parties agree to execute such documents as may be required to show the satisfactory compliance with HOP and this Agreement. The City may certify current compliance with the HOP on a unit by unit basis as may be reasonably requested by HOP Developer, escrow agents, realtors, lenders or any other interested party.

7.5 City's Right to Enter. Each HOP Developer hereby grants to the City the right to enter upon the HOP Home upon reasonable notice for the purpose of inspection and enforcement of the HOP, the Santa Fe City Code and this Agreement.

7.6 Survival of Enforcement Rights. Notwithstanding the definition of HOP Developer contained in this Agreement, the rights of enforcement for violations of this Agreement shall survive any subsequent sale or transfer of the HOP Home.

7.7 City's Zoning Authority Unimpaired. The City's rights to enforce any and all provisions of the Santa Fe City Code shall be the same as its rights generally to enforce any other ordinance, which shall in no way be diminished by this Agreement. The HOP Developer acknowledges that this Agreement is included within the zoning authority and charter authority of the City, which is, and is hereby, accepted by the HOP Developer as a sufficient but additional basis for this Agreement.

7.8 Notices. Any demand, notice or request by either party to the other shall be sufficiently given if in writing delivered to the party intended to receive the same, or if mailed by certified mail, return receipt requested, or delivered to a recognized national

courier, or if given in a manner sufficient for legal process. Each notice to the HOP Developer named above shall be addressed to such party, or to such other address as may be stated in a notice given as herein provided. Each notice to subsequent HOP Developers shall be sufficiently given if addressed to or given at the HOP Home.

7.9 Public Purpose. The City declares, and the HOP Developer and each other person, including mortgagees, hereafter holding any interest in the Property or a HOP Home acknowledges, that the Lien and this Agreement as well as all restrictions contained in this Agreement are for public purposes.

7.10 Sanctions. The City has the right to impose sanctions or take other actions as set forth in the HOP Ordinance after notice of violation has been given and not complied with.

7.11 Headings Not Part of Agreement. Section headings have been inserted for convenient reference only and are not to be construed as part of this Agreement.

7.12 Severability. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

7.13 Interpretation. This Agreement shall be enforceable according to its terms and New Mexico law. This Agreement is subject to the general principles of equity, fairness and reasonableness irrespective of whether such enforcement or interpretation is considered in a proceeding at equity or in law and shall be construed according to its purpose of fostering and preserving affordable housing. Any benefit to private parties arising under this Agreement is purely incidental to the purpose of creating affordable housing.

7.14 No Additional Payments. Nothing herein shall be deemed a requirement to pay to the City or its agent additional payments for amounts already paid to the Senior Lien holder. The borrower shall not be obligated to make such payments of funds to the City or its agent to the extent that the borrower under the Senior Lien makes such payments to the Senior Lien holder in accordance with the Senior Lien.

7.15 No Waiver. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

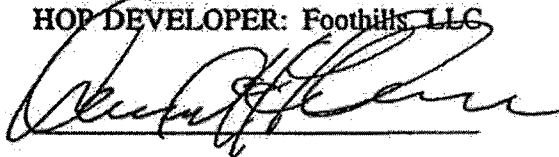
7.16 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

7.17 Agreement. This Agreement states the entire agreement of the parties. This Agreement shall not relieve HOP Developer from complying with present or future City ordinances, duly adopted resolutions or regulations applicable to the development.

7.18 Amendments. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. Any amendments to this Agreement shall be reviewed by the Community Services Department and sent, if applicable, to the appropriate review body as set forth in the HOP Ordinance and then to the City Manager for approval.

WHEREFORE, the parties set their hands and seals this 15th day of November, 2001.

HOP DEVELOPER: Foothills LLC



By: Donald H. Tishman

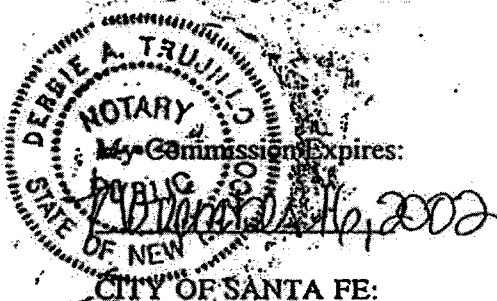
Its: Managing Member

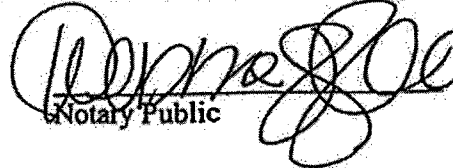
ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 15th day of

October, 2001, by Donald Tishman.




Notary Public

CITY OF SANTA FE:

ATTEST:


Jim Romero
City Manager


Yolanda Y. Yig
City Clerk

APPROVED AS TO FORM:

2075434



Peter A. Dwyer, City Attorney

Attachments: Exhibit A (the Property)
Exhibit B (the HOP Plan)
Exhibit C (HOP Plan Phase 1)

RECEIVED NOV 13 2001

**ZOCALO
HOP PLAN
32 HOP Units**

FOR-SALE UNIT TYPES	MAXIMUM HOP HOME PRICE (50% of median income)	MAXIMUM HOP HOME PRICE (55% of median income)	MAXIMUM HOP HOME PRICE (60% of median income)	MAXIMUM HOP HOME PRICE (65% of median income)	MAXIMUM HOP HOME PRICE (70% of median income)	MAXIMUM HOP HOME PRICE (75% of median income)
2 Bedrooms, 1 bath 900 sq ft min. (3 person household)	\$66,237 4 units	\$74,485 4 units	\$82,733 3 units	\$90,981 3 units	\$99,229 3 units	\$107,477 4 units
3 Bedrooms, 1.5 baths 1100 sq ft min. (4 person household)	\$70,086 2 units	\$79,255 2 units	\$88,425 2 units	\$97,595 1 unit	\$106,764 2 units	\$115,934 2 units

Exhibit B

Specific units will be determined at each phase of development.

Prices for 2 bedroom units reflect \$112 monthly homeowners' dues (assuming 1022 sq ft unit at \$1.32 per sq ft per year).

Prices for 3 bedroom units reflect \$149 monthly homeowners' dues (assuming 1350 sq ft unit at \$1.32 per sq ft per year).

Prices reflect 4/10/01 median incomes and 7.67% interest.

The incomes served and subsequent home prices may be modified by the City according to Section 8.4.5 of the HOP Administrative

Procedures to reflect actual incomes to be served. Total prices shall be based upon an assumed 65% of median income. The HOP

home prices shown in this HOP Plan are the prices in effect at the time this Plan is made. The current HOP prices, which are in effect

at the time the HOP Home is made available for sale, determines the actual HOP Home price. The prices are updated annually by the

City's Community Services Department.

2075436

11-15-01
M. Twoy

**ZOCALO
HOP PLAN
Phase 1
4 HOP Units**

(Units 301, 302, 305, 309, of the Zocalo Condominiums)

FOR-SALE UNIT TYPES	MAXIMUM HOP HOME PRICE (50% of median income)	MAXIMUM HOP HOME PRICE (55% of median income)	MAXIMUM HOP HOME PRICE (60% of median income)	MAXIMUM HOP HOME PRICE (65% of median income)	MAXIMUM HOP HOME PRICE (70% of median income)	MAXIMUM HOP HOME PRICE (75% of median income)
2 Bedrooms, 1 bath 900 sq ft min. (3 person household)	\$66,237 2 units	\$74,485 1 unit	NA	NA	NA	NA
3 Bedrooms, 1.5 baths 1100 sq ft min. (4 person household)	NA	NA	NA	NA	\$106,764 1 unit	NA

Prices for 2 bedroom units reflect \$112 monthly homeowners' dues (assuming 1022 sq ft unit at \$1.32 per sq ft per year).

Prices for 3 bedroom units reflect \$149 monthly homeowners' dues (assuming 1350 sq ft unit at \$1.32 per sq ft per year).

Prices reflect 4/10/01 median incomes and 7.67% interest.

The incomes served and subsequent home prices may be modified by the City according to Section 8.4.5 of the HOP Administrative Procedures to reflect actual incomes to be served. Total prices shall be based upon an assumed 65% of median income. The HOP home prices shown in this HOP Plan are the prices in effect at the time this Plan is made. The current HOP prices, which are in effect at the time the HOP Home is made available for sale, determines the actual HOP Home price. The prices are updated annually by the City's Community Services Department.

2075437

Excerpted Sections:
**ADMINISTRATIVE PROCEDURES
FOR THE CITY OF SANTA FE
HOUSING OPPORTUNITY PROGRAM (HOP)**

As described in Section 4 "Responsibility for Administration" of the HOP Administrative Procedures:

- 4.8 Community Development Commission** - This city board shall be responsible for considering and acting upon requests for alternate means of compliance and upon appeals of decisions of the Office of Affordable Housing as described herein.

As defined in Section 6 "Definitions" of the HOP Administrative Procedures:

Development Types:

- A. Development Type "A" means a residential development in which the average price of 70% of the dwelling units for sale or for rent are affordable to households with incomes at or below 80 percent of the area median income, using a four person household for home buyers and a three person household for renters.
- B. Development Type "B" means a residential development in which all units for sale or for rent are affordable to a three person household with an income under 120 percent of the area median income unless the development is defined as a development type "A."
- C. Development Type "C" means a residential development in which (a) one or more units for sale or for rent are provided to be affordable to a three person household with an income above 120 percent of the area median income; and (b) the average price does not exceed a price affordable to a three person household with an income at 200 percent of the area median income.
- D. Development Type "D" means a residential development in which units for sale or rent are, on average, affordable to a three person household with an income over 200 percent of the area median income.

Extreme Hardship - A condition occurring as a direct consequence of the HOP ordinance which a) deprives a property owner of all economically viable use of the subject property taken as a whole or b) would require the property owner to lose money on the development taken as a whole and the property owner can demonstrate to the Community Development Commission's satisfaction that said loss will be an unavoidable consequence of the HOP requirement for construction of affordable housing.

11. ALTERNATE MEANS OF COMPLIANCE

11.1 Criteria for Allowing Alternate Approaches

HOP requires that applicants provide HOP units on the property proposed for development. However, it is recognized that at times this approach may be infeasible due to extreme hardship as defined. **In this event, the applicant may seek permission from the Community Development Commission to use an alternate means of compliance {Emphasis added}.**

11.2 Allowable Alternate Means of Compliance

Contributions of cash or in-kind resources for affordable housing may be considered acceptable by the City as an alternate means of compliance. The Developer may provide cash, land, labor, materials or another in-kind contribution(s) acceptable to the City. The fair market value of the contribution(s) shall be equal to the In-Lieu Contribution Value for each affordable unit, which is not provided directly, as described in Section 12.

12. DETERMINATION OF IN-LIEU CONTRIBUTION VALUES – Use the In-lieu fee calculations/requirements from SF Homes?

The In-Lieu Contribution Value for each HOP unit which is not provided directly shall be determined as follows:

- 12.1** Contribution values for a particular development shall be the values in Appendix D, "HOP In-Lieu Contribution Values," which correspond to the type of development proposed.
- 12.2** The methodology for initially determining contribution values is contained in a 1995 report by The Enterprise Foundation, *Findings and Recommendations Regarding Housing Affordability Issues in the Proposed Housing Opportunities Program*. The recommended contribution values in that report were adopted as the initial values for calendar year 1995.
- 12.3** The initial 1995 values shall be adjusted annually at the beginning of each calendar year by a factor equal to the Consumer Price Index for New Mexico Urban Areas, or at the discretion of the Office of Affordable Housing Director, the values may be recalculated using another method, so long as the methodology is sound and described in detail in a written report available to the public.
- 12.4** The required In-Lieu Contribution Value for any contribution (including a staged contribution) shall be the amount in effect at the time that each contribution is due.
- 12.5** A 2% processing fee to the city shall be added to all fees in lieu of contributions for administrative costs.