

ITEM # 18-0429

CITY OF SANTA FE  
SANTA FE HOMES PROGRAM  
RENTAL AGREEMENT

*"Railyard Flats Apartments"*  
701 Camino de la Familia, Santa Fe, New Mexico

This Santa Fe Homes Program ("SFHP") Agreement ("Agreement") is made and entered into this 6<sup>th</sup> day of April, 2018 by and between the City of Santa Fe, New Mexico, a New Mexico Municipal Corporation ("City") and Railyard Flats, LLC ("SFHP Developer").

RECITALS

- A. **WHEREAS**, the City has duly adopted the Santa Fe Homes Program and administrative procedures (collectively, the "SFHP") 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.
- B. **WHEREAS**, in accordance with the requirements of the SFHP, the SFHP Developer has submitted an SFHP proposal (SFHP Proposal), which provides the procedural pre-requisite for this Agreement;
- C. **WHEREAS**, the SFHP Developer is the developer of Railyard Flats Apartments and in its SFHP Proposal, the SFHP Developer has proposed to develop the property as described in the document attached hereto as **Exhibit 1** (development plan), incorporated herein by reference, and hereinafter referred to as the "Property".
- D. **WHEREAS**, the SFHP Developer desires to develop the Property subject to and upon the terms and conditions hereinafter set forth and in compliance with Sections 14-9.6 and 26-1 *et seq.* Santa Fe City Code (SFCC) 1987.
- E. **WHEREAS**, pursuant to Ordinance 2016-09, the Governing Body approved amending the Santa Fe Homes Program requirement to allow developers of rental housing to pay a fee-in-lieu instead of seeking an alternate means of compliance if a building permit is obtained between January 1, 2016 and December 31, 2019. Incentives for SFHP developers, as set forth in subsection 14-8.11 SFCC 1987, will not be available for these projects.

F. **WHEREAS**, it is understood that all representations made herein are material to the City and that the City will rely upon these representations in permitting or approving development of the Property.

## **AGREEMENTS**

NOW, THEREFORE, in consideration of the premises, the following agreements and undertakings of the parties, the City and the SFHP Developer, for themselves and their heirs, successors and assigns, hereby agree to be bound by the following terms in order to ensure SFHP compliance, and hereby agree as follows:

### **1. DEVELOPMENT REQUEST**

A. SFHP Developer seeks final development plan approval to build 58 rental units, priced at market rates.

B. The Developer agrees to comply with the Santa Fe Homes Program ordinance through the payment of a fee, established on an “affordability gap” measure as per SFHP Administrative Procedures.

### **2. OBLIGATIONS**

A. No SFHP Homes Required. Because the project meets the criteria outlined in Ordinance 2016-09, the SFHP does not require construction of any SFHP Homes on-site.

B. Fee Agreement. The SFHP Developer agrees to make a payment of **\$57,733**, as calculated pursuant to SFHP. The payment shall be made to the City of Santa Fe Affordable Housing Trust Fund (AHTF). The fee revenues will be used to provide tenant based, scattered site rental assistance to income-qualified renters or to provide capital support for an off-site affordable rental housing project.

C. Payment Deadline. The amount set forth in paragraph 2.B above shall be fully paid to the City’s Office of Affordable Housing at the time this agreement and the annexation plat, rezoning ordinance, final subdivision plat, or final development plan are recorded at the Santa Fe County Clerk. If none of the previous documents are required, a copy of this agreement and a receipt that the fee has been paid shall be included with the submittal for a building permit.

### 3. ENFORCEMENT

A. Remedies. Failure to make the full payment required under this agreement within 180 calendar days of the date of the SFHP Developer's execution of this Agreement will result in any or all of the following sanctions, depending upon which the Office of Affordable Housing judges to be the most effective and appropriate given the circumstances:

- a) Withholding the recording of plats or plans,
- b) Withholding or revoking building permits,
- c) Issuing stop work orders, and
- d) Withholding or revoking certificates of occupancy.

B. Other Remedies Available. It is understood and agreed by the SFHP Developer that the remedies provided under Section 3(A) of this Agreement are non-exclusive. This agreement shall not restrict the City's recourse to any remedy available under the law including, but not limited to, liens and litigation.

C. Notice. The City agrees to provide written notice pursuant to the SFHP of any violation or alleged violation of the terms and conditions of this Agreement. The SFHP Developer will give the City written notice of any violation or alleged violation of the terms and conditions of this Agreement. Both parties will give the other at least thirty days to cure any violation or alleged violation of this Agreement.

City of Santa Fe:

Office of Affordable Housing

PO Box 909

Santa Fe, NM 87504-0909

Contractor:

Railyard Flats, LLC

130 Grant Ave

Santa Fe, NM 87501

### 5. SUCCESSORS IN TITLE/COVENANTS TO RUN

SFHP Developer agrees to develop the Property consistent with this Agreement. In the event that SFHP Developer sells, assigns, leases, conveys, or mortgages or encumbers the Property to any third party, the third party shall be provided with a copy of this Agreement and shall be required to comply with this Agreement. The terms and conditions of this Agreement run with the land and are binding upon all heirs, successors and assigns.

6. **RECORDATION**

The SFHP Developer shall record this Agreement with the Santa Fe County Clerk.

7. **CAPTIONS**

The captions and paragraph headings of this Agreement are not necessarily descriptive or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

8. **FURTHER ASSURANCES**

The parties agree to execute such documents as may be required to show the satisfactory compliance with SFHP Ordinance and this Agreement.

9. **SEVERABILITY**

If any provision of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

10. **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.

11. **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.

12. **GOVERNING LAW**

This Agreement shall be interpreted and governed by and under the laws of the state of New Mexico.

13. **SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understandings

between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not relieve the SFHP Developer from complying with present or future City ordinances, duly adopted resolutions or regulations applicable to the development.

**14. AMENDMENTS**

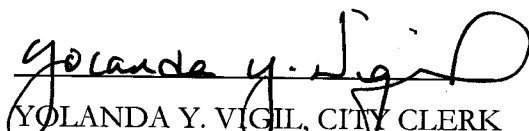
This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. Any amendments to this Agreement shall be reviewed by the Office of Affordable Housing and sent, if applicable, to the appropriate review body as set forth in the SFHP Ordinance and then to the City Manager for approval.

**15. TERMINATION**


This Agreement shall terminate upon the verification by the City that the initial rental of the units has been in compliance with this Agreement or 20 years from the date first above written, whichever occurs first.

WHEREFORE, the parties set their hands and seals this 25<sup>th</sup> day of April, 2018.

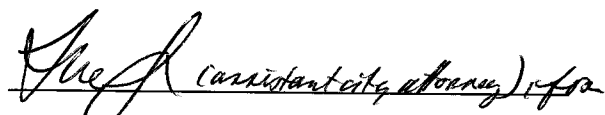
ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
MANAGER *yyp* *all*

CITY OF SANTA FE:

  
BRIAN K. SNYDER, CITY MANAGER  
*01/10/2018*

APPROVED AS TO FORM:

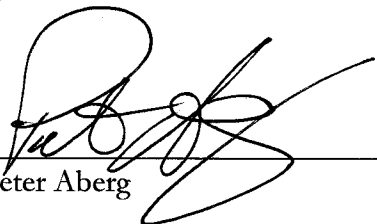
  
KELLEY A. BRENNAN, CITY ATTORNEY

CITY OF SANTA FE:

  
ADAM K. JOHNSON,  
FINANCE DIRECTOR *W* *SM*

SFHP DEVELOPER/SUCCESSOR IN INTEREST:

Railyard Flats, LLC.

By:   
Peter Aberg

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

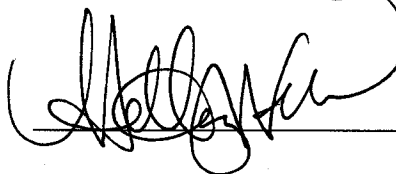
ACKNOWLEDGEMENTS

STATE OF NEW MEXICO    )

) ss.

COUNTY OF SANTA FE    )

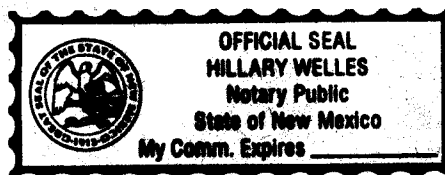
The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April,  
2018, by Peter Aberg.

  
\_\_\_\_\_

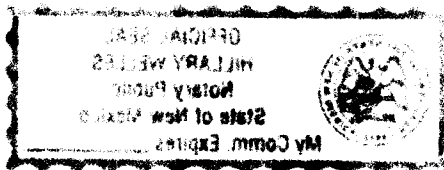
NOTARY PUBLIC

My Commission Expires:

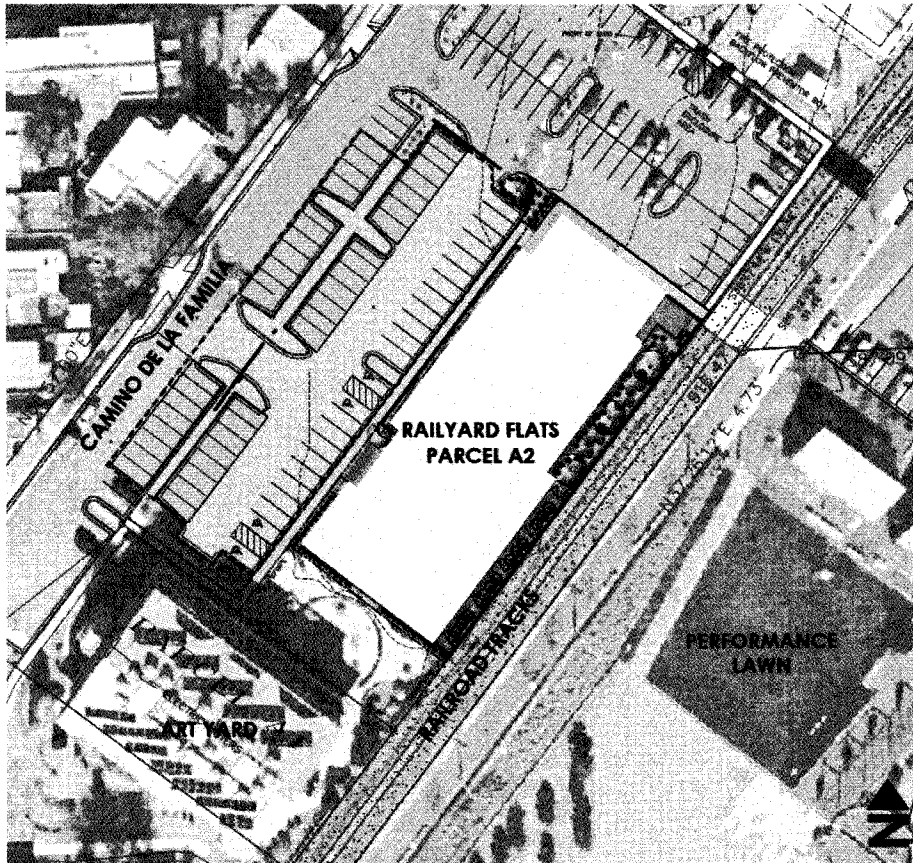
10/26/2019



Attach:       Exhibit 1 - Development plan  
              Exhibit 2 – SFHP Pricing & Rental schedule



# SITE PLAN & PROJECT DATA



**SITE AREA:** 0.5044 ACRE (21,974 SF)

**PARKING:** 65 SPACES

UNIT TYPES:	QTY:	AREA:
STUDIO	25	460 - 570 SF
1 BEDROOM	26	619 - 681 SF
2 BEDROOM	7	901-1,063 SF
<b>TOTAL</b>	<b>58 UNITS</b>	<b>640 AVG SF</b>

STUDIOS	43% OF BLDG
1 BEDROOMS	45% OF BLDG
2 BEDROOMS	12% OF BLDG

<b>BUILDING AREA:</b>	
1ST FLOOR	15,173 SF
2ND FLOOR	15,104 SF
3RD FLOOR	14,230 SF
<b>TOTAL</b>	<b>44,507 SF</b>

-  **NEW BUILDING**
-  **NEW LANDSCAPE AREA**
-  **NEW PATIO/SIDEWALK**
-  **NEW VEHICULAR SECURITY GATE**
-  **DEDICATED PARKING AREA**
-  **POSSIBLE COVERED PARKING SPACES - 41 SPACES**

*NOTE: unit mix is updated as per Exhibit 2*

**SANTA FE HOMES PROGRAM  
PRICING & RENTAL SCHEDULE  
"RAILYARD FLATS"**

The project is in a BCD zoning district, with no density limitation. The project has an area of approximately 0.5 acres. The project is proposing 58 rental homes; 25 studio, 26 one-bedroom units, 7 two-bedroom units. There are not additional land use requirements for this site.

**The SFHP requirement is calculated below:**

Total number of units multiplied by (0.15) = the number of SFHP rental units required

58 total units x 0.15 = 8.7 SFHP unit(s) is/are required.

**In lieu of providing affordable rental units, the Developer proposes to comply with SFHP through the payment of a fee as per Ordinance 2016-09.**

**2017 Affordability Gap Voucher Calculation**

- 1) Use the "affordability gap" which is based is based on subtracting the subsidized rent (SFHP Avg) from the HUD Fair Market Rent (HUD FMR) as illustrated below to determine a "fee per unit":

	<b>2017 HUD FMR</b>	<b>SFHP Avg</b>	<b>Fee/Unit</b>
Studio	\$ 806	\$ 538	\$ 268
1 BR	\$ 878	\$ 615	\$ 263
2 BR	\$ 1,048	\$ 691	\$ 357
3 BR	\$ 1,392	\$ 768	\$ 624
4 BR	\$ 1,477	\$ 830	\$ 647

- 2) Enter how many market rate units are in each bedroom size; multiply by 15% to get the number of affordables; multiply the # of affordables by the Fee/Unit to get the Fee/Month; and then multiply that amount by 24 (to represent two years of assistance for the tenant who would otherwise live in that unit):

<b>BR Size</b>	<b># Units</b>	<b>Aff'd Units</b>	<b>Fee/Unit</b>	<b>Fee/Mo</b>	<b>Project Fee</b>
Studio	25	3.75	\$ 268	\$ 1,005	\$ 24,120
1	26	3.9	\$ 263	\$ 1,026	\$ 24,617
2	7	1.05	\$ 357	\$ 375	\$ 8,996
<b>TOTAL</b>	<b>58</b>	<b>8.7</b>		<b>\$ 2,406</b>	<b>\$ 57,733</b>