

Amendment to City of Santa Fe Inclusionary
Zoning Housing Opportunity Program Agreement and HOP Home Lien

This Amendment to City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien is made this 7th day of March 2019, by and between the City of Santa Fe, a New Mexico municipal corporation (the "City"), and White Bear Properties, LLC, a New Mexico limited liability company ("White Bear").

Recitals:

1. The City and High Summit Corporation, a New Mexico corporation (the "Original Developer") entered into that certain agreement entitled "City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien, dated June 15, 2005, and recorded in the records of the Santa Fe County Clerk on June 24, 2005, as Instrument No. 1385911 (the "HOP Agreement");

2. The HOP Agreement covered and applied to the subdivision known as High Summit III, Phase 1, 2, 3, 4, and 5, as shown and described on that certain Master Plan recorded on June 24, 2005, in the records of the Santa Fe County Clerk as Document No. 1385908, at Plat Book 591, Pages 19 -25 (the Master Plan being located as page 25) and as depicted in the Amended Master Plan and Final Development Plan for High Summit III Subdivision, recorded in the records of the Santa Fe County Clerk on December 31, 2008, as Document No. 1548065, Plat Book 696, Page 018 (the "Original Development");

3. The Original Developer of the Original Development only recorded a final subdivision plat for Phase 1 of the Original Development, which final plat was recorded on June 24, 2005, in the records of the Santa Fe County Clerk as Document No. 1385908, at Plat Book 591, Pages 19 -25;

4. After the development of Phase 1 of the Original Development, the Original Developer declared bankruptcy and did not develop Phases 2, 3, 4, or 5 of the Original Development;

5. OREO, LLC, a New Mexico limited liability company, purchased Phase 2 of the Original Development, and pursuant to the approval for the Original Development, OREO, LLC, recorded the final subdivision plat for said Phase 2 in the records of the Santa Fe County Clerk on December 29, 2016, as Document No. 1831676, at Plat Book 812, Pages 4, 5 and 6;

6. White Bear purchased and owns the property formerly known as Phases 3, 4, and 5 that were part of the Original Development (the "Former Phases 3, 4, and 5");

7. All of the approvals for the Former Phases 3, 4 and 5 of the Original Development expired or lapsed on December 31, 2016;

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8. White Bear has obtained from the County of Santa Fe new land use entitlements for Former Phases 3, 4 and 5, which new entitlements are embodied in that certain Conceptual Plan approved on December 13, 2016, by the Santa Fe County Board of County Commissioners as reflected in the final order recorded in the records of the Santa Fe County Clerk on February 1, 2017, as Instrument No. 1816456, and White Bear recorded the Conceptual Plan, Preliminary Development Plan and Final Plat (for Phase 3) in the records of the Santa Fe County Clerk on August 3, 2017, as Instrument No. 1832890, at Plat Book 822, Pages 46 through 49;

9. As part of said Conceptual Plan approval, White Bear entered into that certain Affordable Housing Agreement dated December 11, 2018, with the County of Santa Fe, which Affordable Housing Agreement was recorded in the records of the Santa Fe County on March 22, 2019, as Instrument No. 1881780 (the "Santa Fe County Affordable Housing Agreement");

10. The City no longer has planning or platting jurisdiction over Former Phases 3, 4 and 5, and the enforcement of the provisions of the HOP Agreement have been impractical because, among other things, the City no longer can withhold permits for the development of the Former Phases 3, 4, and 5 or homes within said Former Phases as originally contemplated;

11. The County of Santa Fe currently has planning and plotting jurisdiction over the development, and has the ability to enforce the terms of the Santa Fe County Affordable Housing Agreement; and

12. In light of the circumstances recited above, the City is willing to release the Former Phases 3, 4, and 5 of the Original Development from the requirements of the HOP Agreement as to said Former Phases 3, 4, and 5 upon verification that White Bear has fulfilled its obligations under the Santa Fe County Affordable Housing Agreement;

Now, therefore, in light of before going considerations and recitals, the City and White Bear hereby agree as follows:

A. Contingent Agreement to Release. The parties agree that the HOP Agreement is hereby amended to include the following provisions:

1. Upon receipt by the City of written notice from the Santa Fe County Land Use Administrator, or the Administrator's designee, that White Bear has fulfilled all of its obligations under the Santa Fe County Affordable Housing Agreement, the City agrees that it shall release all of the residential lots within Former Phases 3, 4 and 5 of the Original Development from any obligations under the HOP Agreement, and within ten (10) working days of the date of the receipt of said written notice from the County of Santa Fe Land Use Administrator, or the Administrator's designee, the City agrees to execute and record the

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Notice of Release of City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien (the "Notice of Release").

2. Until such time as the Notice of Release is recorded, the HOP Agreement shall remain in full force and effect as to Former Phases 3, 4 and 5 of the Original Development.

B. This Amendment modifies the 2005 HOP agreement and understanding the parties hereto; this Amendment may only be modified in a writing signed by the parties to this agreement or their successors and assigns.

C. Except as modified hereby the HOP Agreement shall remain in full force and effect. This Amendment shall be forthwith recorded in the records of the Santa Fe County Clerk.

City of Santa Fe

By: 

Erik Litzenberg, City Manager

Date: 3/7/19

Approved as to form:

By: 

Erin K. McSherry, City Attorney

Attested by:

By: 

Yolanda Y. Vigil, City Clerk

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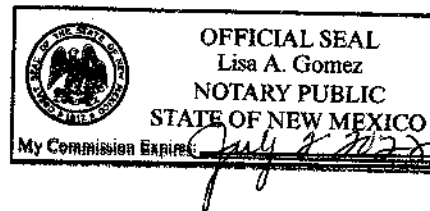
WHITE BEAR PROPERTIES LLC,
A New Mexico limited liability company

By: [Signature]
John Jay Grab, Manager

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)

The foregoing Amendment was acknowledged before me on this 11th day of March by
John Jay Grab, as Manager of White Bear Properties, LLC, a New Mexico limited liability company, on
behalf of the company.

[Signature]
Notary Public
State of New Mexico
My commission expires: July 2, 2022



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EXHIBIT A

Notice of Release of City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien

Pursuant to that certain Amendment to City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien Notice recorded in the records of the Santa Fe County Clerk on March __, 2019, as Instrument No. _____, notice is hereby given by the City of Santa Fe that the real property shown and depicted as High Summit III, Phase 3, 4, and 5, as shown and described on that certain Master Plan recorded on June 24, 2005, in the records of the Santa Fe County Clerk as Document No. 1385908, at Plat Book 591, Pages 19 -25 (the Master Plan being located as page 25) and as depicted in the Amended Master Plan and Final Development Plan for High Summit III Subdivision, recorded in the records of the Santa Fe County Clerk on December 31, 2008, as Document No. 1548065, Plat Book 696, Page 018, are hereby released from any obligations or lien created by that certain agreement entitled "City of Santa Fe Inclusionary Zoning Housing Opportunity Program Agreement and HOP Home Lien, dated June 15, 2005, and recorded in the records of the Santa Fe County Clerk on June 24, 2005, as Instrument No. 1385911, and the owners of said lots are forever released from any obligation under said Agreement.

City of Santa Fe

By: _____
Erik Litzenberg, City Manager

Approved as to form:

Erin K. McSherry, City Attorney

Attested to by:

Yolanda Y. Vigil, City Clerk

By: _____

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

AMENDMENT
PAGES: 5

I Hereby Certify That This Instrument Was Filed for
Record On The 22ND Day Of March, 2019 at 03:03:47 PM
And Was Duly Recorded as Instrument # 1881781
Of The Records Of Santa Fe County

Deputy *[Signature]* Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM



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