

**CITY OF SANTA FE
SANTA FE HOMES PROGRAM
RENTAL AGREEMENT**

"Capitol Flats"

Lots 1, 2, 3, and 4 Slade Subdivision, Santa Fe, New Mexico

This Santa Fe Homes Program ("SFHP") Agreement ("Agreement") is made and entered into this 8th day of March, 2019 by and between the City of Santa Fe, New Mexico, a New Mexico Municipal Corporation ("City") and Capitol Flats, LLC, a New Mexico limited liability company ("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 prerequisite for this Agreement;
- C. **WHEREAS**, the SFHP Developer is the developer of Capitol Flats, and in its SFHP Proposal, the SFHP Developer proposed to develop the property as described in the document attached hereto as Exhibit 1 (site 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 is in the process of received final development plan approval to build 139 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 **\$134,946** (the SFHP Payment), as calculated pursuant to the SFHP and as described in **Exhibit 2**. The payment shall be made payable to the City of Santa Fe and dedicated to the 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 made 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 is recorded at the Santa Fe County Clerk. If none of the previous documents is 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 4.1 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 party 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:

Aberg Property Company

2929 Carlisle St. SUITE 365

Dallas, TX 75204

4 SUCCESSORS IN TITLE/COVENANTS TO RUN

In the event that SFHP Developer sells, assigns, leases, conveys, 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.

5. RECORDATION

The SFHP Developer agrees to put into escrow a check payable to the Santa Fe County Clerk's office to pay for recording this Agreement in the amount of \$25.00. The City will record the Agreement within ten days after the date of the last signature obtained unless the SFHP Developer pays in full the required SFHP Payment. If paid in full, the City will not record the Agreement and will return the check. .

6. 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 SFHP 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 SFHP Developer as a sufficient but additional basis for this Agreement.

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 (SFCC 26-1) 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; VENUE; INTERPRETATION

SFHP Developer shall abide by all applicable federal and state laws and regulations, and all ordinances, rules, and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the SFHP Developer agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

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.

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. TERM

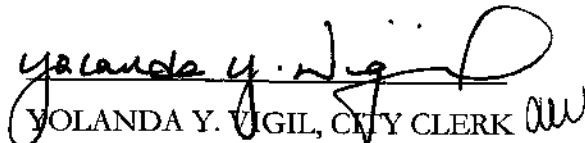
This Agreement shall remain in force until the full payment of the SFHP Payment obligation set forth herein.

16. PUBLIC PURPOSE


The City declares, and the SFHP Developer acknowledges, that this Agreement as well as all restrictions contained in this Agreement are for public purposes.

WHEREFORE, the parties set their hands and seals this 9th day of March, 2019.

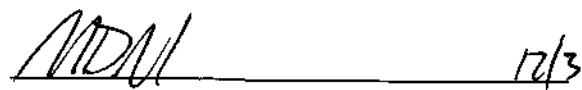
ATTEST:


YOLANDA Y. VIGIL, CITY CLERK *aw*

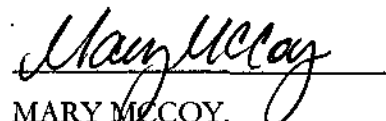
CITY OF SANTA FE:


ERIK LITZENBERG, CITY MANAGER

APPROVED AS TO FORM:



ERIN K. MCSHERRY, CITY ATTORNEY *12/3*

CITY OF SANTA FE:


MARY MCCOY,
FINANCE DIRECTOR
21501. 4 30253

SFHP DEVELOPER/SUCCESSOR IN INTEREST:

Capitol Flats, LLC

By: 
Peter Aberg

Its: Manager
Title

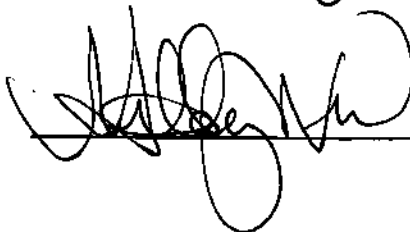
ACKNOWLEDGEMENTS

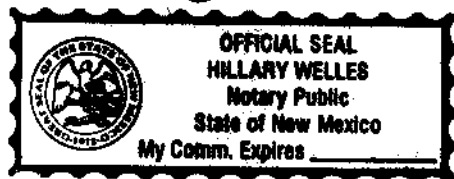
STATE OF NEW MEXICO)

) ss.

COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 21st day of February,
2019, by Peter Aberg



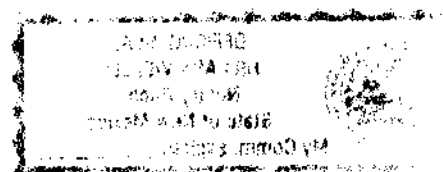


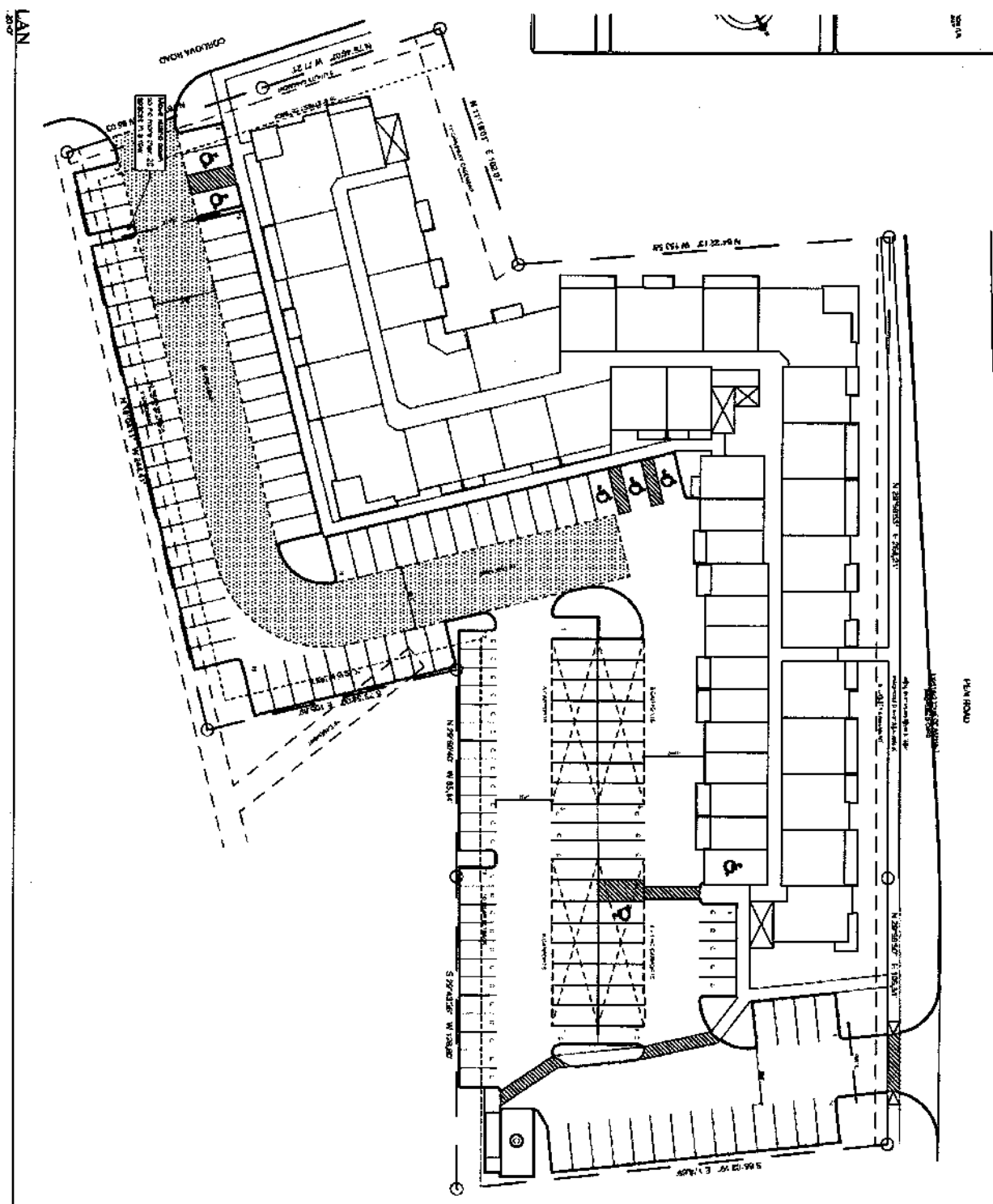
NOTARY PUBLIC

My Commission Expires:

10/26/2019

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





SITE PLAN A1-00	PROJECT 18133	DATE 07-08-18	BGO BROOKHOLD GROUP, INC. 18133 Canyon Road, Suite 100 Santa Fe, NM 87505 Tel: 505.825.1111	DESIGN DEVELOPMENT SET SHEET NO. 01 OF 10	CAPITAL FLATS 139 APARTMENTS IN SANTA FE, NEW MEXICO FOR: LEGACY CAPITAL COMPANY	

SFHP RENTAL UNIT CALCULATION WORKSHEET

The project is in a C-2 zoning district, permitting (no maximum) units per acre. The project has an area of approximately 2.348 acres. The project is proposing 139 rental homes; 20 studio, 90 one-bedroom units, 29 two-bedroom units, and 0 three-bedroom units. There are not additional land use requirements for this site.

The SFHP requirement is calculated below:

$$= \underline{139} \text{ total units} \times 0.15 = \underline{20.85} \text{ SFHP unit(s) is/are required.}$$

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.

2018 Affordability Gap Voucher

	HUD FMR	SFHP Avg	Fee/Unit	Voucher
Studio	\$ 774	\$ 587	\$ 187	\$ 4,488
1 BR	\$ 854	\$ 587	\$ 267	\$ 6,408
2 BR	\$ 1,006	\$ 671	\$ 335	\$ 8,040
3 BR	\$ 1,334	\$ 755	\$ 579	\$13,896
4 BR	\$ 1,449	\$ 837	\$ 612	\$14,688

Proposed Project

Unit Type	% of Total	# of Units
Studio	14.39%	20
1 BR	64.75%	90
2 BR	20.86%	29
3 BR	0%	0
	100%	139

Steps for Calculation

1. enter # of each unit type
2. multiply # of units by 15%
3. multiply # of affordable units by fee/unit/month
4. multiply fee/month by 24 (months) = Project Fee
5. Sum Project Fee to get Total Project Fee

2018 Affordability Gap Voucher Calculation

Bedrooms	# Units	Aff'd Units	Fee/Unit	Fee/Mo	Project Fee
Studio	20	3.0	\$ 187	\$561.00	\$13,464.00
1	90	13.5	\$ 267	\$3,604.50	\$86,508.00
2	29	4.35	\$ 335	\$1,457.25	\$34,974.00
3	0	0	\$ 579	\$0.00	\$0.00
TOTAL	139	20.85		\$5,622.75	\$134,946.00

Total Fee = \$134,946.00

Fee per market rate unit = \$971

NOTE: The rental fee schedule is modified by the City according to Section 8.7.3 of the SFHP Administrative Procedures to reflect annual changes in the median income levels. The current SFHP prices that are in effect at the time the SFHP fees are paid determines the actual amount of the fee. The prices are updated annually.