

**CITY OF SANTA FE
SANTA FE HOMES PROGRAM
AGREEMENT FOR PAYMENT OF FRACTIONAL UNIT FEE ONLY**

for
"Alma Dura Subdivision"
Tract A, Vallecita Drive
Santa Fe, New Mexico

This Santa Fe Homes Program Agreement ("this Agreement") is entered into on this 10th day of June, 2019 by and between **Vallecita LLC** ("the SFHP Developer") and the City of Santa Fe, New Mexico, a municipal corporation, ("the City").

WHEREAS, the City has duly adopted the Santa Fe Homes Program and administrative procedures (collectively "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; and

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

WHEREAS, because of the size of the development, the SFHP Developer is not required to provide any housing units but is required to pay a fractional unit fee under the terms of the SFHP; and

NOW THEREFORE, 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 long-term affordability in 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 the SFHP. In this Agreement the following words and phrases have the following meaning:

- A. "Agreement" means this SFHP Agreement.
- B. "Fractional Unit Fee" means the fee charged to developers where to satisfy the required housing obligation in the event that the formulas provided in the SFHP result in a fraction or the proposed development will result in ten (10) or fewer homes.
- C. "SFHP Developer" means each legal and equitable SFHP Developer of all or any portion of a SFHP Home on the Property during the term of this Agreement, including without limitation the SFHP Developer identified above, and any subsequent SFHP Developer by sale, conveyance or other transfer of any legal or beneficial interest in a SFHP Home or the Property. Unless the context otherwise requires, SFHP Developer shall mean the SFHP Developer at the time in question. SFHP Developer and SFHP Developers are used interchangeably.

D. "SFHP Home" shall mean the units of housings to be marketed and sold by SFHP Developer at the affordable price pursuant to the SFHP and this Agreement.

2. The Project.

2.1 Property. The SFHP Developer is the owner of certain property situated in the County of Santa Fe, New Mexico, located at **Tract A, Vallecita Drive, Santa Fe, New Mexico** and known as "**Alma Dura Subdivision**" which property contains more or less 10.731 acres and is more particularly described in Exhibit A attached hereto ("the Property").

2.2. Number of Units. The Property is to be developed and the units thereon marketed as for sale housing. There will be a total of **NINE (9)** units available for sale/or rent.

2.3. Development Incentives. SFHP Developer/Successor in Interest requests a 15% density bonus as set forth in section 13.2 of the Administrative Procedures and subsection 14-8.11 SFCC 1987.

3. Obligations.

3.1 No SFHP Homes Required. Because the development is comprised of ten (10) or fewer units, the SFHP does not require construction of any SFHP Homes.

3.2 Fractional Unit Fee Agreement. The SFHP Developer agrees to make a payment of **\$37,500** for the fractional portion of a SFHP Home, as calculated pursuant to SFHP. The payment shall be made to the City of Santa Fe Affordable Housing Trust Fund (AHTF) for affordable housing.

3.3 Payment Deadline. The amount set forth in paragraph 3.2 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 is 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. .

4. Enforcement.

4.1 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:

- 4.1.1 Withholding the recording of plats or plans,
- 4.1.2 Withholding or revoking building permits,
- 4.1.3 Issuing stop work orders, and
- 4.1.4 Withholding or revoking certificates of occupancy.

4.2 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.

4.3 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 thirty days to cure any violation or alleged violation of this Agreement.

5. Miscellaneous Provisions.

5.1 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 the fractional fee in full. If paid in full, the City will not record the Agreement and will return the check.

5.2 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 or this Agreement, who by their acceptance of any interest in the Property or this Agreement shall be deemed to have agreed to perform and observe all the SFHP Developer's obligations under, and to be bound by all the terms and conditions of, this Agreement.

5.3 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.

5.4 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 SFHP 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.

5.5 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.

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

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

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


5.13 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.

WHEREFORE, the parties set their hands and seals this 10th day of June, 2019.

ATTEST:


YOLANDA Y. MIGIL, CITY CLERK *aw*

CITY OF SANTA FE:


ERIK LITZENBERG
CITY MANAGER

APPROVED AS TO FORM:

EMM for
ERIN MCSHERRY, CITY ATTORNEY

SFHP DEVELOPER:

Vallecita, LLC

[Signature]
Signature

Ruskin Blankenship

(NAME)

President

Title

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)

) ss.

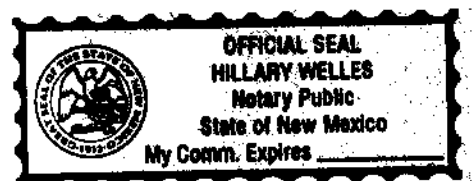
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 30th day of May, 2019,
by Ruskin Blankenship.

[Signature]
NOTARY PUBLIC

My Commission Expires:

10/26/2019



Attachments: Exhibit A: The Property
Exhibit B: SFHP Fee Schedule and Calculation Worksheet

SMALL PROJECT FEE SCHEDULE - 2019

Projects of 2 – 10 Units

# of units in development	2	3	4	5	6	7	8	9	10
Unit Fraction	0.4	0.6	0.8	1	1.2	1.4	1.6	1.8	2
Fractional Fee	\$ 8,340	\$12,510	\$16,680	\$20,850	\$25,020	\$29,190	\$33,360	\$37,530	\$41,700
Rounded Fee	\$ 8,300	\$12,500	\$16,700	\$20,900	\$25,000	\$29,200	\$33,400	\$37,500	\$41,700

Formula

= \$69,500* X unit fraction X 0.3 (70% fee reduction made permanent in 2014)

*½ Effective home sales price for Tier 2, 3 BR home, rounded to nearest \$100

Calculation

= \$69,500 X 1.8 =

= 125,100 X 0.3 = 37,530

= \$37,500 fee

For 11 or more units

If the calculation results in a fraction, the whole number resulting from the formula shall be the number of SFHP units required to be constructed or created and the remaining fraction may be satisfied with the fractional unit fee. The fee shall be the base fractional fee multiplied by remaining fraction. The base fractional fee shall be half of the Affordable Home Price of a 3 Bedroom Unit in Income Range 2 (\$139,000). **Fees are not reduced.** Refer to Section 8.9 of the Administrative Procedures.

Example: Project proposes 23 for-sale units
 = 23 X .2 = 4.6 units
 = 4 units are constructed and fractional fee is paid for 0.6 units
 = Base fractional fee* X unit fraction
 = 69,500* X 0.6 = \$41,700
 *½ Effective home sales price for Tier 2, 3 BR home

NOTE: The home prices and fractional fee schedule are 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 Home is made available for sale or the fractional fees are paid, determines the actual SFHP Home Price and/or amount of fractional fee. The prices are updated annually.