

**CITY OF SANTA FE**  
**SANTA FE HOMES PROGRAM AGREEMENT**  
**for 14 SFHP Home(s) to be located at**  
**"*Dos Acequias*", Montano/Agua Fria Streets, Santa Fe, New Mexico**

This Santa Fe Homes Program Agreement ("Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between Dos Acequias, LLC (the "SFHP Developer/Successor in Interest") 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's Office of Affordable Housing 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 SFHP Developer/Successor in Interest have entered into a SFHP proposal ("Proposal") in accordance with the requirements of the SFHP. The Proposal is attached hereto and incorporated herein by reference; and

**WHEREAS**, the City and SFHP Developer/Successor in Interest now wish to satisfy the SFHP requirement for a final agreement in order to ensure SFHP compliance and a mechanism for ensuring long-term affordability.

**NOW THEREFORE**, the City and the SFHP Developer/Successor in Interest for themselves and their heirs, successors and assigns (including, without limitation, all persons who subsequently own a SFHP Home or any interest therein, or the Property or any portion thereof containing a SFHP Home, while this Agreement is in effect) hereby agree that the SFHP 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 the SFHP. In this Agreement the following words and phrases have the following meaning:

- A. "Agreement" means this SFHP Agreement.
- B. "Certificate of SFHP 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.
- C. "Certified Homebuyer" means a person determined, pursuant to the SFHP 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 SFHP Home and who has properly obtained a "Certificate of SFHP 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 SFHP Home or termination of this Agreement), taking into account the restrictions on SFHP Developer/Successor in Interest and occupancy imposed by this Agreement as if such restrictions were perpetual.

E. "SFHP Developer/Successor in Interest" means each legal and equitable SFHP Developer and/or Successor in interest to the original 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/Successor in Interest identified above, and any subsequent SFHP Developer/Successor in Interest and/or any other Successor in Interest by sale, conveyance or other transfer of any legal or beneficial interest in a SFHP Home or the Property, as set forth in Section 2.1 herein. Unless the context otherwise requires, SFHP Developer/Successor in Interest shall mean the SFHP Developer/Successor in Interest at the time in question. SFHP Developer/Successor in Interest and SFHP Developer/Successor in Interests and Successor in Interest are used interchangeably.

F. "SFHP Home" shall mean the units of housing to be constructed, marketed and/or sold by SFHP Developer/Successor in Interest at the affordable price pursuant to the SFHP and this Agreement.

G. "SFHP Lot" means housing lot(s) housings to be constructed, developed, marketed and/or sold by SFHP Developer/Successor in Interest as affordable housing.

H. "SFHP Homebuyer" shall mean any person or entity, which purchases the SFHP Home and/or SFHP Lot from the SFHP Developer/Successor in Interest and any subsequent purchasers who buy from the initial purchaser during the term of this Agreement.

I. "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.

J. "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 SFHP Home.

## 2. THE PROJECT.

2.1 Property. The SFHP Developer/Successor in Interest is or will become the owner of certain property situated in the County of Santa Fe, New Mexico, located at Montano/Agua Fria Streets and known as "Dos Acequias" which property contains more or less 12.5 acres and is more particularly described in Exhibit A attached hereto (The "Property").

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

2.3 SFHP Plan. The SFHP Developer/Successor in Interest agrees to construct a total of **68 dwelling units** of which **14 will be SFHP Homes** as indicated on the attached Exhibit B (SFHP Plan). The SFHP Plan shall include the number of bedrooms and bathrooms, the minimum square footage and the minimum household size, the income range to be served and the current SFHP Home price for each SFHP Home as set forth in Section 8.2 of the SFHP Administrative Procedures. If the development is constructed in phases, a SFHP Plan for each phase 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.

2.4 Agreement to Sell at SFHP Home Price. The SFHP Developer/Successor in Interest agrees to sell the SFHP Homes at the current SFHP Home Price or such SFHP Home Price as may be current at the time of sale by the SFHP Developer/Successor in Interest.

A. The affordable home price shall be reduced in order to limit the impact on SFHP home buyers of fees assessed by condominium, common area, or homeowner associations. The affordable home price shall be reduced so that the buyer's mortgage or manufactured home loan principal amount and, accordingly, the buyer's monthly mortgage payments, are reduced by an amount equal to the assessed fee in excess of seventy-five dollars (\$75.00). Additionally, the SFHP Developer/Successor in Interest agrees that the association's bylaws will identify limits to annual fee increases for the owners of affordable units so that increases do not exceed 5% annually or 10% over any three-year time frame.

B. The affordable home price may be increased at the request of the SFHP home buyer by the price of allowable option upgrades, not to exceed the maximum option upgrade allowance, as established pursuant to administrative procedures.

C. The affordable home price may be increased by the amount of the approved energy efficiency adjustment pursuant to administrative procedures.

2.5 Agreement for Payments for Fraction Portions of a SFHP Home. SFHP Developer/Successor in Interest opts to round up and construct 14 SFHP Homes and **does not owe** any fractional portion of a SFHP Home as calculated pursuant to SFHP to the City or its agent prior to recording this Agreement.

2.6 Marketing Sequence. The SFHP Homes 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-SFHP Homes being marketed for sale during a given phase of development.

2.7 Development Incentives. The City agrees to the following incentives: Development review and building permit fees shall be waived or reduced proportionately to the number of SFHP Homes and capital impact fees and utility expansion charges shall be waived or reduced as set forth in section 13.1 of the Administrative Procedures. SFHP Developer/Successor in Interest also requests a 15% density bonus as set forth in section 13.2 of the Administrative Procedures.

2.8 Agreements Regarding Transfers of Non-SFHP Homes on the Property. SFHP Developer/Successor in Interest acknowledges and hereby agrees that compliance with this Agreement shall be a precondition for any releases or express termination of SFHP Developer/Successor in Interest's SFHP 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. SFHP LIEN.

3.1 Creation of SFHP Lien. The SFHP Developer/Successor in Interest/Successor in Interest hereby creates a lien upon each SFHP 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 SFHP and this Agreement and for the purpose of retaining long-term affordability of SFHP Homes.

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 SFHP 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 SFHP 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 SFHP Homebuyer or a related entity of the SFHP 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.

In no event shall the SFHP Developer/Successor in Interest or any of its officers, principals, or representatives, or employees, or affiliated entities, contract to purchase, purchase, accept or otherwise have transferred to it an SFHP Homebuyer's or Repurchaser's statutory right of redemption of the SFHP Home or SFHP Lot, and in no event shall the aforementioned persons exercise any right of redemption or foreclosure for that SFHP Home or SFHP Lot.

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 SFHP Home price at the time of closing and 95% of the Fair Market Value as determined by a certified appraiser. The Lien amount shall be calculated after construction of the SFHP Home but prior to purchase by the SFHP Homebuyer. SFHP Developer/Successor in Interest agrees to execute such additional documents as are necessary to record the SFHP Lien with the Lien amount.

3.4 Term of Lien. The Lien shall run from the date of purchase of the SFHP Home by the SFHP Homebuyer or SFHP Developer/Successor in Interest until such time as the City exercises its right of first refusal or purchase under this Agreement. During this term, so long as the SFHP Homebuyer or SFHP Developer/Successor in Interest complies with SFHP and the terms of this Agreement, no payments will be due on this Lien.

3.5 Transfers of Lien. The Lien may be assumed by subsequent SFHP Homebuyers of the SFHP Home, including those acquiring the SFHP Home through testate or intestate succession so long as a Notice of Intent to Sell is received by the City 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 SFHP Homebuyers or SFHP Developer/Successor in Interest shall also obtain a "Certificate of SFHP 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.

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 SFHP HOMES.

4.1 Certification of Homebuyer. SFHP Developer/Successor in Interest agrees to sell the SFHP Homes only to Certified Homebuyers who qualify for the purchase of a SFHP Home under the SFHP. The City hereby represents and warrants that Santa Fe Community Housing Trust or Homewise are its authorized agents under the most current agreements between the City and Santa Fe Community Housing Trust or Homewise, for the purpose of qualifying buyers under this Agreement and issuing Certificates of SFHP Homebuyer Eligibility.

4.2 SFHP Developer/Successor in Interest's or SFHP Homebuyer's Notice of Intent to Sell or Transfer the Property. Any time the SFHP Developer/Successor in Interest or any subsequent SFHP Homebuyer who is subject to this Lien intends to sell or otherwise transfer the Property or any interest in the SFHP 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 SFHP Home. (The "Notice of Intent to Sell").

4.3 Notice to Prospective SFHP Homebuyer of Lien. The SFHP Developer/Successor in Interest agrees to provide actual notice to any prospective purchaser of the covenants, conditions, and encumbrances, which are or will be placed upon the SFHP Homes to be sold by SFHP Developer/Successor in Interest to the Certified SFHP 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 26-1.18 SFCC 1987. The notice shall, at a minimum, state:

A. The SFHP Home and/or SFHP Lot is subject to a Lien which is intended to retain the long-term affordability of the SFHP Home.

B. The Lien may limit the ability of the SFHP 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 repurchase of the SFHP Home and/or SFHP Lot at the fair market value less the amount of the lien.

D. The Right of First Refusal granted to the City can be assigned by the City to an agent or third party Certified SFHP Homebuyer.

E. The Lien will limit the SFHP Homebuyer's ability to sell the SFHP Home in the future and shall require the City or its agents to agree to any additional use of the SFHP Home as collateral or security.

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

4.4 Escrow Instructions Regarding Initial SFHP Compliance. SFHP Developer/Successor in Interest agrees to sell the SFHP Homes through an escrow agent. The escrow agent shall be required by SFHP Developer/Successor in Interest as a precondition for closing to certify to the City that:

A. The SFHP 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 SFHP Home Price plus such transactional costs of closing as are usual and customary.

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

4.5 SFHP Developer/Successor in Interest to Reference Agreement and Lien. The SFHP Developer/Successor in Interest shall include a reference to this Agreement in any and all deeds or other instruments conveying any interest in the SFHP Home and/or SFHP Lot 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 SFHP Home as affordable the City and its agents shall have, and SFHP Developer/Successor in Interest, its heirs, successors and assigns, hereby grant the City and its agent the right (but without obligation) to purchase the SFHP Home and SFHP Lot in any of the following circumstances (the "Rights of First Refusal"):

A. The SFHP Developer/Successor in Interest has given the City Notice of Intent to Sell; or

B. The SFHP Home is no longer the principal residence of any person purchasing the SFHP Home from the SFHP Developer/Successor in Interest or any subsequent SFHP Homebuyer, their heirs, successors or assigns whose occupancy does not comply with the covenant to maintain the SFHP 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 SFHP Homebuyer of the SFHP Home has been given written notice identifying the violations and has failed to cure them; or

C. Any legal or beneficial interest in the SFHP Home and/or SFHP Lot 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 SFHP Home and/or SFHP Lot or of a civil action or equivalent proceeding for unpaid condominium common expenses; or

E. The City has notice that the SFHP Home and/or SFHP Lot is being taken for unpaid taxes; or

F. The SFHP Homebuyer made material misrepresentations in applying to acquire the SFHP Home and/or SFHP Lot; or

G. The SFHP Homebuyer has failed to observe and perform the SFHP 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 SFHP Homebuyer has failed to observe and perform the SFHP 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 SFHP 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 SFHP Home under subsection (A.), the City's right to buy the SFHP 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 SFHP Home and the SFHP Homebuyer shall not list the SFHP Home with a realtor or any other selling agent.

5.3 Duration of Right of First Refusal. The City and the SFHP Homebuyer intend that the Right of First Refusal are for the purpose of promoting and enforcing this Agreement in its goal of ensuring continuance of the SFHP 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 SFHP Home and/or SFHP Lot 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 SFHP of any violation or alleged violation of the terms and conditions of this Agreement and further agrees to give SFHP Developer/Successor in Interest 30 days to cure and violation under this Agreement. SFHP Developer/Successor in Interest agrees to provide the City with notice and 30 days opportunity to cure any violation of this Agreement.

6.2 Term. This Agreement shall become effective when signed by the SFHP Developer/Successor in Interest and the City, and shall remain in effect: (1) as to the SFHP Developer/Successor in Interest, until all SFHP Homes on the Property covered by this Agreement have been sold and all other obligations on the part of the SFHP Developer/Successor in Interest under this Agreement have been satisfactorily discharged; and (2) as to the terms and conditions which apply to the

SFHP Homebuyers, for as long as the Lien on the SFHP Home remains in effect under this Agreement, including any renewals.

6.3 Enforcement. It is understood and agreed by SFHP Developer/Successor in Interest 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 SFHP Developer/Successor in Interest 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. SFHP Developer/Successor in Interest agrees to record this Agreement and thus the Lien prior to closing the sale of the SFHP Home so as to legally attach, run with the land and ensure that the purposes of the SFHP are met.

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, SFHP Home or this Agreement, who by their acceptance of any interest in the Property, SFHP Home or this Agreement shall be deemed to have agreed to perform and observe all the SFHP Developer/Successor in Interest'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 SFHP 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. SFHP Developer/Successor in Interest agrees to sign an affidavit declaring that the sale price did not exceed the amount specified in this Agreement.

B. SFHP Developer/Successor in Interest agrees to provide such information and documentation as the City may reasonably require in order to ensure that the actual sale was in compliance with this Agreement.

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

D. SFHP Developer/Successor in Interest agrees to grant access to the City, or its agent, to inspect the records of SFHP Developer/Successor in Interest for the SFHP Home in order to determine compliance with the SFHP 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 SFHP and this Agreement. The City may certify current compliance with the SFHP on a unit by unit basis as may be reasonably requested by SFHP Developer/Successor in Interest, escrow agents, realtors, lenders or any other interested party.



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

7.6 Survival of Enforcement Rights. Notwithstanding the definition of SFHP Developer/Successor in Interest contained in this Agreement, the rights of enforcement for violations of this Agreement shall survive any subsequent sale or transfer of the SFHP 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 SFHP Developer/Successor in Interest 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/Successor in Interest 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 SFHP Developer/Successor in Interest 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 SFHP Developer/Successor in Interests shall be sufficiently given if addressed to or given at the SFHP Home.

7.9 Public Purpose. The City declares, and the SFHP Developer/Successor in Interest and each other person, including mortgagees, hereafter holding any interest in the Property or a SFHP 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 SFHP 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 SFHP Developer/Successor in Interest 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 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 15 day of Sept, 2021.

ATTEST:

See Attached  
~~YOLANDA Y. VIGIL, CITY CLERK~~

CITY OF SANTA FE:

J Hill  
JAREL LAPAN HILL  
INTERIM CITY MANAGER

CITY ATTORNEY'S OFFICE:

MDM 1/8/20  
SENIOR ASSISTANT CITY ATTORNEY

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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 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 \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

  
\_\_\_\_\_  
KRISTINE MIHELICIC, CITY CLERK

CITY OF SANTA FE:

\_\_\_\_\_  
JAREL LAPAN HILL  
CITY MANAGER

CITY ATTORNEY'S OFFICE:

\_\_\_\_\_  
SENIOR ASSISTANT CITY ATTORNEY



FINAL PLAT APPROVED BY PLANNING COMMISSION AS CASE # 2019-55 ON AUGUST 15, 2019

**THE FOLLOWING CONDITIONS OF APPROVAL AS ADAPTED BY THE COUNTY SET FORTH IN THE**

1. A GATE WITH A PADLOCK OR KNOX LOCK SHALL BE PERMANENTLY INSTALLED AT THE SOUTHWEST CORNER OF THE PROPOSED DOS ACEQUIAS SUBDIVISION WHERE THE SUBDIVISION WOULD CONNECT TO MONTANA STREET IN ORDER TO RESTRICT VEHICULAR INGRESS AND EGRESS TO AND FROM THE SUBDIVISION AT SUCH LOCATION TO EMERGENCY VEHICLES ONLY. SUCH GATE SHALL BE INSTALLED BY THE DEVELOPER OF DOS ACEQUIAS SUBDIVISIONS EXPENSE.
2. THE WIDTH OF THE ALLEY ALONG THE WESTERN-MOST BORDER OF THE DOS ACEQUIAS SUBDIVISION, WHICH ALLEY RUNS PARALLEL TO AND IS APPROXIMATELY THE SAME LENGTH AS NICOLE PLACE, SHALL BE REDUCED TO SEVENTEEN (17) FEET TO CREATE A BUFFER THAT IS FIVE FEET WIDE BETWEEN THE LOTS ON NICOLE PLACE AND THE CURB AND GUTTER TO BE INSTALLED ALONG THE WESTERN EDGE OF SAID ALLEY. SAID BUFFER AREA SHALL BE SHOWN AS OPEN SPACE ON THE FINAL RECORDED VERSION OF THE SUBDIVISION PLAT. THIS CONDITION IS SUBJECT TO FIRE MARSHAL APPROVAL.
3. THE RESIDENCES (INCLUDING WITH THEIR GARAGES) LOCATED ALONG THE WESTERN-MOST STREET OF THE SUBDIVISION, WHICH STREET RUNS PARALLEL TO AND IS APPROXIMATELY THE SAME LENGTH AS NICOLE PLACE, SHALL BE LIMITED TO ONE STORY.
4. THE RESIDENCES (INCLUDING THEIR GARAGES) LOCATED ALONG THE WESTERN-MOST STREET OF THE SUBDIVISION, WHICH STREET RUNS PARALLEL TO AND IS APPROXIMATELY THE SAME LENGTH AS NICOLE PLACE, SHALL BE SET BACK AT LEAST THIRTY-SEVEN (37) FEET FROM THE EASTERN BOUNDARY OF THE LOTS ON NICOLE PLACE. SAID 37-FOOT SET BACK AREA SHALL BE SHOWN ON THE FINAL RECORDED VERSION OF THE SUBDIVISION PLAT.
5. RAIN BARRELS SHALL BE INSTALLED ON EACH LOT, AND RAINWATER CATCHMENT SYSTEM IN THE MEDIANS AS SHOWN ON THE ATTACHED DRAWING SHALL BE INSTALLED IN THE SUBDIVISION.
6. ANY AMENDMENT TO THE FOREGOING FOUR (4) CONDITIONS OF APPROVAL SHALL CONSTITUTE AN AMENDMENT TO THE CONDITIONS OF PRELIMINARY AND FINAL SUBDIVISION PLAT APPROVAL FOR THE DOS ACEQUIAS SUBDIVISION AND SHALL REQUIRE A PUBLIC HEARING BEFORE THE PLANNING COMMISSION WITH NOTIFICATION TO BE PROVIDED IN THE SAME MANNER THAT WAS REQUIRED FOR THE ORIGINAL SUBDIVISION APPLICATION SUBMITTED FOR DOS ACEQUIAS SUBDIVISION.

**CITY CONDITIONS**

1. IF 150 FEET DRIVEWAY REQUIREMENT AND/OR EMERGENCY TURN-AROUND REQUIREMENTS SHALL BE MET DURING ALL PHASES OF PROJECT.
2. AN AGREEMENT FOR METERED SERVICED ON AN AGREEMENT TO CONSTRUCT AND DEDICATE (ACD) FROM THE WATER DIVISION MAY BE REQUIRED FOR THIS DEVELOPMENT. A WATER PLAN MUST BE SUBMITTED DIRECTLY TO THE WATER DIVISION AND APPROVED PRIOR TO OBTAINING AN ACD.
3. A "NO PARKING PRIVATE DRIVEWAY" SIGN SHALL BE PLACED AT THE DRIVEWAY ENTRY TO LOT G-1.

**SITE DATA**

TOTAL AREA: 12.49 AC±  
 TOTAL LOTS: 68  
 CURRENT ZONING: R-5, MEDIUM DENSITY RESIDENTIAL 5 DU/AC  
 TOTAL COMMON OPEN SPACE PROVIDED: 2.05 AC±

**LEGEND**

- DRAINAGE BASIN OR COMMON OPEN SPACE TO BE MAINTAINED BY DOS ACEQUIAS HOMEOWNERS ASSOCIATION.
- RECOMMENDED DESIGNATED AFFORDABLE LOT TO COMPLY WITH SANTA FE HOMES PROPOSAL.

**PHASING**

PHASE I: LOTS 1-9  
 PHASE II: LOTS 10-35  
 PHASE III: LOTS 36-68  
 TOTAL: 68 LOTS

**AFFORDABLE HOUSING BY PHASE**

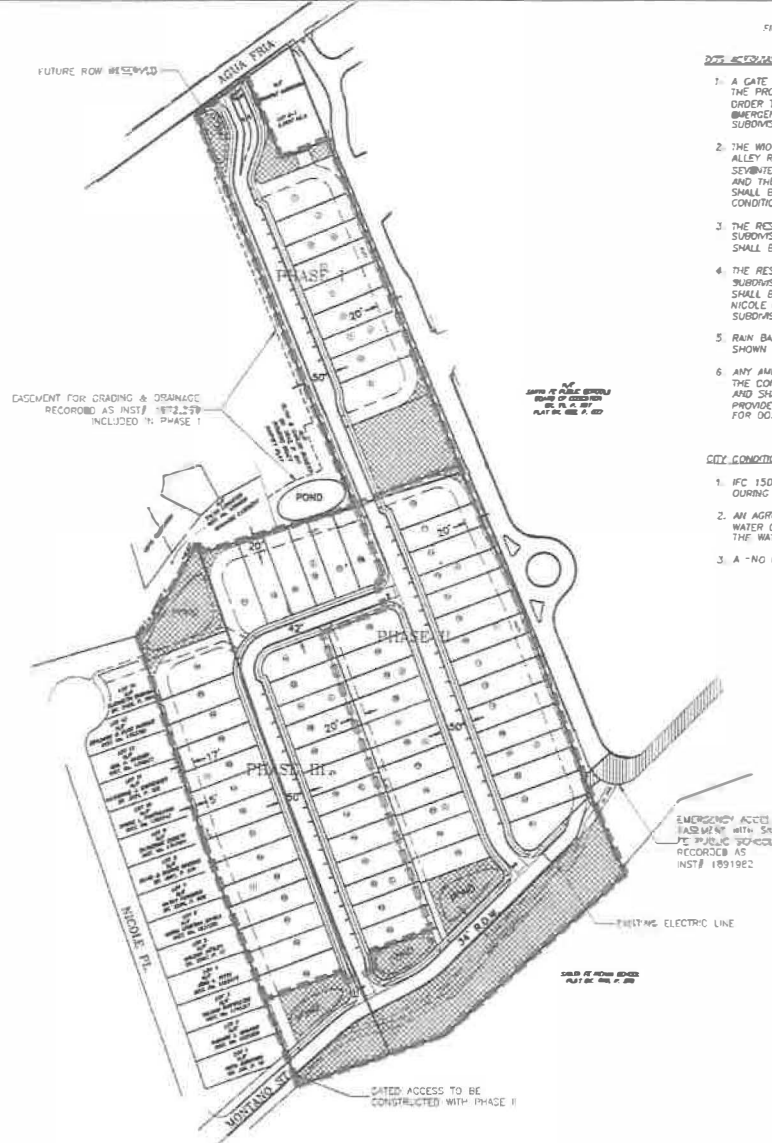
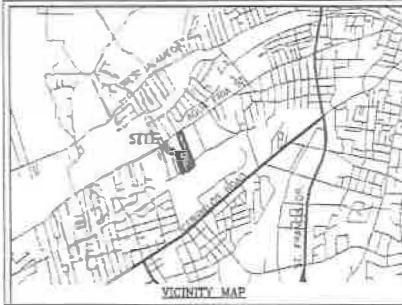
PHASE I: 2 UNITS  
 PHASE II: 6 UNITS  
 PHASE III: 6 UNITS  
 TOTAL: 14 UNITS

**ON STREET PARKING BY PHASE**

PHASE I: 13 SPACES  
 PHASE II: 23 SPACES  
 PHASE III: 20 SPACES  
 TOTAL: 56 SPACES

**EXHIBIT 1**

<b>JAMES W. SIEBERT</b> 4000 UNIVERSITY BLVD. SUITE 100 SAN ANTONIO, TEXAS 78249 (214) 343-1111 www.jwsurvey.com	<b>DOS ACEQUIAS</b>		SHEET NO. 101 DATE: OCTOBER 2019	
	<b>PHASING PLAN</b>		CHECKED BY: JWS DATE: 10/15/19	SCALE: AS SHOWN SHEET NO.: 4-1



**APPROVED**  
 THIRD CLASS DEPARTMENT

DATE: \_\_\_\_\_

**AFFIDAVIT**

ALL THAT APPEARS ON THESE PLANS ARE MADE WITH FREE CONSCIOUSNESS AND IN ACCORDANCE WITH THE INTENT AND DESIRES OF THE OWNER, OWNERS.

NICHOLAS LEROUX, CLERK OF COURTS, COUNTY OF SANTA FE, STATE OF NEW MEXICO

THE FOREGOING INSTRUMENT WAS SWORN, ACKNOWLEDGED AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019

COUNTY OF SANTA FE, STATE OF NEW MEXICO  
 I, HEAVY (TYPE) THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE DAY \_\_\_\_\_ OF \_\_\_\_\_, 2019, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ AND WAS EXACTLY RECORDED IN BOOK \_\_\_\_\_ PAGE(S) \_\_\_\_\_ OF THE RECORDS OF SANTA FE COUNTY. WITNESSE BY HAND AND SEAL OF OFFICE: VALERIE ESPINOZA, COUNTY CLERK, SANTA FE COUNTY, N.M.

## SANTA FE HOMES PROGRAM SFHP PLAN AND HOME SALES PRICING SCHEDULE

Effective 2019\*

(without green code adjustment pricing, unless noted)

<i>Income Range</i>	<i>Two Bedrooms 1-2 person HH (900 sq min)</i>	<i>Three Bedrooms 3-4 person HH (1,150 sq ft min)</i>	<i>Four Bedrooms 4-5 person HH (1,250 sq ft min)</i>
<b>2 (50-65%AMI)</b>	Max. Price \$123,500 1 Units	Max. Price \$139,000 2 Units	Max. Price \$154,500 0 Units
<b>3 (65-80%AMI)</b>	Max. Price \$160,500 3 Units	Max. Price \$180,750 4 Units	Max. Price \$200,750 0 Units
<b>4 (80-100%AMI)</b>	Max. Price \$197,500 2 Units	Max. Price \$222,500 2 Units	Max. Price \$247,000 0 Units

Prices reflect April 2019 HUD Area Median Incomes for Santa Fe. Refer to Section 26-1.16 (B) and the SFHP Administrative Procedures. For specific requirements contact The Office of Affordable Housing.

### PHASING PLAN

Phase 1 Affordable Lot #s: 3, 7  
Phase 2 Affordable Lot #s: 13, 16, 21, 27, 30, 33  
Phase 3 Affordable Lot #s: 38, 44, 49, 52, 59, 64

### AFFORDABILITY CALCULATION

#### Single Family/Condo Building Lots

The project has an area of approximately 12.5 acres, zoned R-5, permitting 5 dwelling homes per acre. The required number of SFHP units is 20% of the total units, 5% each in Income Ranges 2 and 4 and 10% in Income Range 2. The project proposes 68 total lots for development as single family/condo homes.

#### **CALCULATION for the SFHP requirement:**

= Total number of units multiplied by (0.2) = # of Units Required  
 = **68 X 0.2 = 13.6 SFHP unit(s)** are required

#### **CALCULATION for the fractional fee\*:**

= ½ price of 3 BR, Tier 2 Home (\$139,000) X Unit Fraction  
 = \$69,500 X 0.6 = \$41,700

**\*Developer proposes rounding up the fractional unit in lieu of paying the fractional fee = 14 affordable lots/units delivered and a fractional fee paid for 0.0 units**

**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 SFHP Home prices shown in this SFHP Agreement are the prices in effect at the time this Agreement is made. 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.