

**CITY OF SANTA FE**  
**SANTA FE HOMES PROGRAM AGREEMENT**  
**for 12 SFHP Home(s) to be located at**  
**"Aleksander Estates Subdivision",**  
**Kates Way/Aleksander Way, Santa Fe, New Mexico**

This Santa Fe Homes Program Agreement ("Agreement") is entered into on this 10 day of FEBRUARY, 2022 by and between Next Generation Contracting, Inc. (the "SFHP Developer/Successor in Interest"), a New Mexico limited liability company, 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

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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 *Kates Way/Aleksander Way* and known as "*Aleksander Estates Subdivision*" which property contains more or less 8.49 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 **12 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 and 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 **does not owe** any fractional portion of a SFHP Home as calculated pursuant to SFHP to the City or its agent at the time of recording this Agreement, the annexation plat, rezoning ordinance, final subdivision plat, or final development plan as recorded with the Santa Fe County Clerk.

A. The amount due will be calculated according to the SFHP pricing schedule in place when payment is made. The full payment is due at the time of building permit application.

B. 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 application for a building permit.

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 does not request 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.

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WHEREFORE, the parties set their hands and seals this 10<sup>th</sup> day of February, 2023.

ATTEST:

  
\_\_\_\_\_  
KRISTINE MIHELIC, CITY CLERK



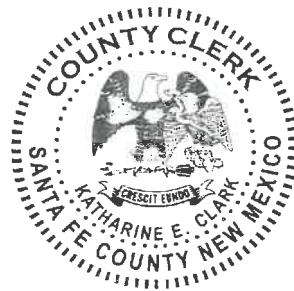
CITY OF SANTA FE:

  
\_\_\_\_\_  
JOHN W. BLAIR  
CITY MANAGER

CITY ATTORNEY'S OFFICE:

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

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SFHP DEVELOPER/SUCCESSOR IN INTEREST:

By: [Signature]  
Signature

NICHOLAS MONTAÑA  
Printed Name

Its: CEO  
Title

COUNTY OF SANTA FE ) AFFORDABLE HOUSING AGR  
STATE OF NEW MEXICO ) ss PAGES: 14

I Hereby Certify That This Instrument Was Filed for  
Record On The 3RD Day Of March, 2023 at 10:36:49 AM  
And Was Duly Recorded as Instrument # 2007511  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Katharine E. Clark  
Deputy [Signature] County Clerk, Santa Fe, NM

ACKNOWLEDGEMENTS

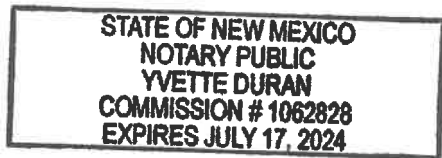
STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2023,  
by Nicholas Montaña.

[Signature]  
NOTARY PUBLIC

My Commission Expires:  
July 17, 2024

Attachments: Exhibit A: The Property  
Exhibit B: SFHP Plan



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# EXHIBIT A

**CITY OF SANTA FE APPROVALS**  
APPROVED BY THE SANTA FE PLANNING COMMISSION AT  
THEIR MEETING OF JANUARY 6, 2023.  
3222 AS CASE NO. 3023-1848 AND 3023-1849

**CITY OF SANTA FE COMMIT**  
PLANNING DIVISION UNDER AUTHORITY OF THE LAND DEVELOPMENT

PLANNING COMMISSION CHAIRPERSON \_\_\_\_\_ DATE \_\_\_\_\_  
PLANNING COMMISSION SECRETARY \_\_\_\_\_ DATE \_\_\_\_\_

CITY PLANNER \_\_\_\_\_ DATE \_\_\_\_\_  
CITY ENGINEER FOR LAND USE \_\_\_\_\_ DATE \_\_\_\_\_

REV. PATRICIA LEINER

1/8" ACCESS EASEMENT BOOK 348 PAGE 24  
18" PUBLIC ACCESS & PUBLIC UTILITY EASEMENT  
45' 00" R.O.W.  
80' EASEMENT INSTRUMENT # 193094  
27' RIGHT-OF-WAY  
52' WIDE RIGHT OF WAY EASEMENT NO. R-30056 GRANT BY STATE OF NM COMMISSIONER OF PUBLIC LANDS  
52' WIDE RIGHT OF WAY  
27' RIGHT-OF-WAY  
35' VARIANCE REAL ACQUISITION  
52' WIDE RIGHT OF WAY  
35' VARIANCE REAL ACQUISITION

**NOTES**  
1. ALL PROPOSED CHANGES TO THE IMPROVEMENT PLAN SHALL RECEIVE PRIOR APPROVAL BY THE CITY OF SANTA FE PLANNING AND LAND USE DEPARTMENT BEFORE CONSTRUCTION.  
2. COMPLY WITH THE CURRENT GOBP WATER CONSERVATION STANDARDS.  
3. THIS DEVELOPMENT LIES WITHIN THE ROADS AND TRAILS ARCHITECTURAL REVIEW DISTRICT.  
4. ALL LOTS SHALL CONFORM TO THE CITY OF SANTA FE'S CONSERVATION WITH ACTUAL TREE AND SHAPES OF BUSHES AND TREES CONSERVED WHERE THE HORIZON CORNER SETBACKS SUBJECT TO APPLICABLE BUILDING HEIGHT REGULATIONS.  
5. BUILDUP SETBACKS SHALL APPLY TO ALL PERMITS SUBMITTED.  
6. THE REQUIRED FRONT YARD SETBACK IS 5 FEET FOR ACCESSORY STRUCTURES (DETACHED 14.44 X 20 FT OR 14.44 X 14 FT OR LESS IN HEIGHT) AND SEPARATED FROM THE FRONT SETBACKS ON THE SAME LOT BY AT LEAST 10 FEET.  
7. PROPERTY DEVELOPMENT IS REQUIRED TO COMPLY WITH APPLICABLE PROVISIONS OF CHAPTER 14-600 AND DEVELOPMENT CODE SPECIFIC AND SUBORDINATE ORDINANCES.  
8. PROPERTY DEVELOPMENT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF EACH APPLICABLE CITY OF SANTA FE ORDINANCE APPLICABLE TO THIS PROJECT. APPLICABLE ORDINANCES RECEIVED WITH THE COUNTY CLERK OR SUBMITTED FOR BUILDING PERMIT APPLICATION THAT MODIFY ANY PROVISIONS OF ORDINANCES CALLED FOR CHAPTER 14-600 AND DEVELOPMENT CODE SPECIFIC AND SUBORDINATE ORDINANCES.  
9. COMPLIANCE WITH THE ORDINANCES FEASIBLE CONFORMANCE SHALL OCCUR PRIOR TO PREPARING OPERATIONS SECTION 14-600.3 IN THIS PROJECT IS SUBJECT TO THE WATER BATTERY TRAILER TOUR CONSTRUCTION CREDIT PROGRAM PROVISIONS OF 30-20-20.14 IN DEVELOPMENT FROM 2022. ALL THE PROVISIONS OF APPLICATION ON WATER HOODS REQUIRE COMPLIANCE SHALL BE AGREED BY USE OF PROPERTY OWNERS OR THEIR REPRESENTATIVES IF APPLICABLE.  
10. PROPERTY DEVELOPMENT IS SUBJECT TO THE PROVISIONS OF SECTION 14-600.3 AS PLANT MATERIAL SPECIFICATIONS, PERIODIC MAINTENANCE AND REPORTING REQUIREMENTS.  
11. THE DEVELOPMENT SHALL BE MAINTAINED THROUGHOUT ALL DEVELOPMENT CONSTRUCTION PERIODS.  
12. FEASIBLE SHALL OR OTHER CONSTRUCTION SHALL NOT BE PLACED OR CONSTRUCTED ON THIS PROJECT FOR THE PERIOD OF 18 MONTHS FROM THE DATE OF THE CITY OF SANTA FE PERMIT AND DEVELOPMENT DIVISION TO PAY THESE USE CHARGES.  
13. PERKS AND OTHER DISPOSITIONS OF DRAINAGE UTILITY AND GAS SERVICES ARE SHOWN ON THE SUBDIVISION PLAN.  
14. PERMITS TRAFFIC CONTROL SHALL BE INSTALLED FOR APPROVED PLAN BY THE DEVELOPER.  
15. ONLY ONE TRUCK IS NOT PERMITTED.  
16. ALL TRUCKS SHALL BE USED THROUGHOUT THE DEVELOPMENT PERIOD AS OF THE BUILDING PERMIT. SEPARATION BETWEEN TRUCKS SHALL BE A MINIMUM OF 10' ON THE FIRST FLOOR AND THROUGHOUT THE FLOOR.  
17. SCHEDULED CLEARANCE OF ALL VERTICAL CLEARANCE SHALL BE MAINTAINED FOR THE FULL PERIOD OF ALL DEVELOPMENT.  
18. THE DEVELOPMENT SHALL COMPLY WITH THE MOST CURRENT REGULATIONS OF THE REGIONAL FIRE DISTRICTS (RFD) FOR ALL FIREPROTECTION APPROVEMENTS.

**STORMWATER AGREEMENT**  
PROPERTY OWNERS HEREBY AGREE THAT ALL STORMWATER DISCHARGES AND ANY OTHER DRAINAGE IMPROVEMENTS ON THIS PROPERTY SHALL BE MAINTAINED AND KEPT FULLY FUNCTIONAL AND ORIGINALLY DESIGNED AND CONSTRUCTED WITH PRIVATE PROPERTY BOUNDARIES BY THE CITY AND THE RURAL FIRE DEPT. OF DRAINAGE FACILITY MAINTENANCE DISTRICT AND AFTER THE 180 DAY SETBACK PERIOD TO THE RESPECTIVE PROPERTY OWNER TO ENTER AND RESUME FULL LEGAL RESPONSIBILITY OF THE DRAINAGE IMPROVEMENTS AND TO SIGN THE PROPERTY FOR BOTH PERMIT AND REPORTING DURING PROPOSED PERIODS OF 180 DAYS. BY SIGNING APPLIED TO THIS AGREEMENT, THE PROPERTY OWNERS APPROVE AND AGREE THAT THIS AGREEMENT IS BINDING CONTRACTUALLY, REVERSIBLE WITH THE LAND OR PRESENT AND FUTURE OWNERS, HEIRS AND ASSIGNS.

**HOLGAS HERRERA NEVO CONSTRUCTION CONTRACTING INC. CEO**  
THE FOREMAN FMS SPORN, ACKNOWLEDGED AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

**STORMWATER AGREEMENT**  
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NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

LOT ADDRESS	LOT ADDRESS
1 2848 KATES HWY	29 3207 ALEXANDER HWY
2 2848 KATES HWY	30 3207 ALEXANDER HWY
3 2848 KATES HWY	31 2848 ALEXANDER HWY
4 2848 KATES HWY	32 2848 ALEXANDER HWY
5 2848 KATES HWY	33 2848 ALEXANDER HWY
6 2848 KATES HWY	34 2848 ALEXANDER HWY
7 2848 KATES HWY	35 2848 ALEXANDER HWY
8 2848 KATES HWY	36 2848 ALEXANDER HWY
9 2848 KATES HWY	37 2848 ALEXANDER HWY
10 2848 KATES HWY	38 2848 ALEXANDER HWY
11 2848 KATES HWY	39 2848 ALEXANDER HWY
12 2848 KATES HWY	40 2848 ALEXANDER HWY
13 2848 KATES HWY	41 2848 ALEXANDER HWY
14 2848 KATES HWY	42 2848 ALEXANDER HWY
15 2848 KATES HWY	43 2848 ALEXANDER HWY
16 2848 KATES HWY	44 2848 ALEXANDER HWY
17 2848 KATES HWY	45 2848 ALEXANDER HWY
18 2848 KATES HWY	46 2848 ALEXANDER HWY
19 2848 KATES HWY	47 2848 ALEXANDER HWY
20 2848 KATES HWY	48 2848 ALEXANDER HWY
21 2848 KATES HWY	49 2848 ALEXANDER HWY
22 2848 KATES HWY	50 2848 ALEXANDER HWY
23 2848 KATES HWY	51 2848 ALEXANDER HWY
24 2848 KATES HWY	52 2848 ALEXANDER HWY
25 2848 KATES HWY	53 2848 ALEXANDER HWY
26 2848 KATES HWY	54 2848 ALEXANDER HWY
27 2848 KATES HWY	55 2848 ALEXANDER HWY
28 2848 KATES HWY	56 2848 ALEXANDER HWY
29 2848 KATES HWY	57 2848 ALEXANDER HWY
30 2848 KATES HWY	58 2848 ALEXANDER HWY
31 2848 KATES HWY	59 2848 ALEXANDER HWY
32 2848 KATES HWY	60 2848 ALEXANDER HWY
33 2848 KATES HWY	61 2848 ALEXANDER HWY
34 2848 KATES HWY	62 2848 ALEXANDER HWY
35 2848 KATES HWY	63 2848 ALEXANDER HWY
36 2848 KATES HWY	64 2848 ALEXANDER HWY
37 2848 KATES HWY	65 2848 ALEXANDER HWY
38 2848 KATES HWY	66 2848 ALEXANDER HWY
39 2848 KATES HWY	67 2848 ALEXANDER HWY
40 2848 KATES HWY	68 2848 ALEXANDER HWY
41 2848 KATES HWY	69 2848 ALEXANDER HWY
42 2848 KATES HWY	70 2848 ALEXANDER HWY
43 2848 KATES HWY	71 2848 ALEXANDER HWY
44 2848 KATES HWY	72 2848 ALEXANDER HWY
45 2848 KATES HWY	73 2848 ALEXANDER HWY
46 2848 KATES HWY	74 2848 ALEXANDER HWY
47 2848 KATES HWY	75 2848 ALEXANDER HWY
48 2848 KATES HWY	76 2848 ALEXANDER HWY
49 2848 KATES HWY	77 2848 ALEXANDER HWY
50 2848 KATES HWY	78 2848 ALEXANDER HWY
51 2848 KATES HWY	79 2848 ALEXANDER HWY
52 2848 KATES HWY	80 2848 ALEXANDER HWY

**PROJECT DATA**  
SIZE OF TRACT: 0.666 Acre  
NUMBER OF LOTS: 18 AND 2 OTHER BRIDGE LOTS

**SETBACKS**  
FRONT: 18' FOR FRONT FACING GARAGES: 30'  
SIDE: 5' FOR STRUCTURES UP TO 10'; 10' FOR STRUCTURES HIGHER THAN 10'  
REAR: 10' (EXCEPT FOR 18' OR 30' OF VARIANCE LOT DEPTH)  
HEIGHTS: MAX 24'

**PARKING:**  
6-4 SPACES FOR DWELLING UNIT WITH MAX 2' WALKWAY AND BIWAY SPACES. STREET PARKING PROVIDED. 50

**AFFIDAVIT**  
I, THE UNDERSIGNED, HAVE CALLED THIS FINAL DEVELOPMENT PLAN TO BE PREPARED. ALL THAT APPEARS ON THIS PLAN IS MADE BY THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE OWNER.

**HOLGAS HERRERA NEVO CONSTRUCTION CONTRACTING INC. CEO**  
THE FOREMAN FMS SPORN, ACKNOWLEDGED AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES \_\_\_\_\_

**DESIGN ENGINEERING**  
ALEXANDER ESTATES II

DATE	BY
09/21/23	DRP
09/21/23	DRP

**DEVELOPMENT PLAN**

SFC CLERK RECORDED 03/03/2023

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

Effective April 2022\*  
(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 \$165,250 0 Unit	Max. Price \$185,750 #2 Units	Max. Price \$206,250 #1 Unit
<b>3 (65-80%AMI)</b>	Max. Price \$214,750 0 Unit	Max. Price \$241,500 #4 Units	Max. Price \$268,250 #2 Units
<b>4 (80-100%AMI)</b>	Max. Price \$264,250 0 Unit	Max. Price \$297,250 #2 Units	Max. Price \$330,250 #1 Unit

Prices reflect April 2022 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.

**AFFORDABILITY CALCULATION**  
Single Family/Condo Building Lots

The project has an area of approximately 8.49 acres, and is zoned R-7, to permit 7 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 3. The project proposes 59 of 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
- = 59 total units x 0.2 = **11.8 SFHP unit(s)** are required
- = 12 lots/units delivered and a fractional fee paid for 0.0 units\*

**\*Note: Developer has opted to provide an additional affordable home in lieu of paying fractional fee.**

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**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.

SEC CLERK RECORDED 03/03/2023