

CITY OF SANTA FE
SANTA FE HOMES PROGRAM AGREEMENT
for 60 for sale dwelling units, SFHP Home(s) to be located at
"2868 Rufina", 2868 Rufina, Santa Fe, New Mexico

This Santa Fe Homes Program Agreement ("Agreement") is entered into on this ____ day of _____, 2023 by and between Homewise (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 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 2868 Rufina and known as "2868 Rufina" which property contains more or less 2.39 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 **60 for sale dwelling unit SFHP Homes, 45 2-BR units, and 15 1-BR units including 5 live work units. In addition to the SFHP homes, Developer proposes to construct 20% of the units as Low Priced Dwelling Units (LPDUs)** 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 **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 5 day of April, 2023.

ATTEST:


KRISTINE MIHELIC, CITY CLERK *dm*

CITY OF SANTA FE:


JOHN W. BLAIR
CITY MANAGER

CITY ATTORNEY'S OFFICE:


SENIOR ASSISTANT CITY ATTORNEY

SFHP DEVELOPER/SUCCESSOR IN INTEREST:

By: Jaime Jaramillo
Signature

Jaime Jaramillo
Printed Name

Its: Real Estate Development Planning Director
Title

STATE OF NEW MEXICO
NOTARY PUBLIC
NANCY GUTIERREZ
COMMISSION # 1114260
EXPIRING 03/02/2024

ACKNOWLEDGEMENTS

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

The foregoing instrument was acknowledged before me this 10th day of March, 2023
by Jaime Jaramillo.

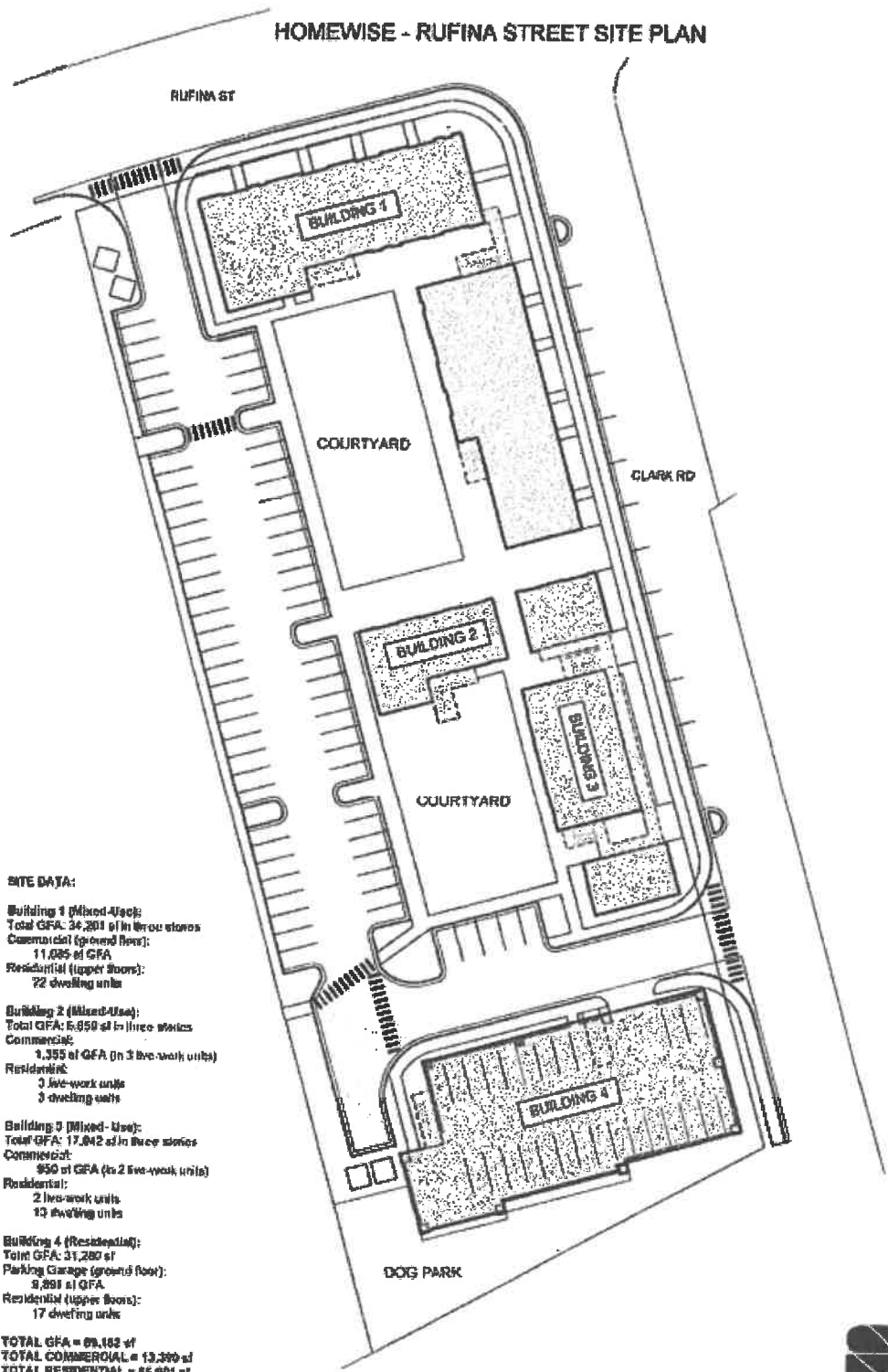
Nancy Gutierrez
NOTARY PUBLIC

My Commission Expires:
03/02/2024

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

STATE OF NEW MEXICO
NOTARY PUBLIC
NANCY GUTIERREZ
COMMISSION # 1114260
EXPIRING 03/02/2024

HOMESWE - RUFINA STREET SITE PLAN



SITE DATA:

Building 1 (Mixed-Use):
 Total GFA: 34,281 sf in three stories
 Commercial (ground floor):
 11,085 sf GFA
 Residential (upper floors):
 72 dwelling units

Building 2 (Mixed-Use):
 Total GFA: 5,958 sf in three stories
 Commercial:
 1,355 sf GFA (in 3 live-work units)
 Residential:
 3 live-work units
 3 dwelling units

Building 3 (Mixed-Use):
 Total GFA: 17,842 sf in three stories
 Commercial:
 950 sf GFA (in 2 live-work units)
 Residential:
 2 live-work units
 17 dwelling units

Building 4 (Residential):
 Total GFA: 31,280 sf
 Parking Garage (ground floor):
 8,281 sf GFA
 Residential (upper floors):
 17 dwelling units

TOTAL GFA = 99,352 sf
TOTAL COMMERCIAL = 13,390 sf
TOTAL RESIDENTIAL = 85,961 sf
TOTAL DWELLING COUNT = 89 UNITS
 (53 residential dwellings & 6 live-work units)



**SANTA FE HOMES PROGRAM
SFHP PLAN AND HOME SALES PRICING SCHEDULE
Effective April 2022***

<i>Income Range</i>	<i>Studio 1-2 person HH (850 sq ft min)</i>	<i>One Bedroom 1-2 person HH (850 sq ft min)</i>	<i>Two Bedrooms 1-2 person HH (1000 sq ft min)</i>
Tier 2 (50-65%AMI)	Max. Price \$137,250 0 Unit	Max. Price \$144,500 1 unit	Max. Price \$165,250 2 units
Tier 3 (65-80% AMI)	Max. Price \$180,750 1 Unit	Max. Price \$188,000 2 units	Max. Price \$214,750 3 units
Tier 4 (80-100%AMI)	Max. Price \$224,000 0 Unit	Max. Price \$231,250 1 unit	Max. Price \$264,250 2 units

*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

The project has an area of approximately 2.39 acres and is requesting rezoning to C-2 without a zoning maximum limit so long as it meets City Code requirements. 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 **60** homes, 45 2BR and 15 1BR.

CALCULATION for the SFHP requirement:

- = Total number of units multiplied by (0.2) = # of Units Required
- = **60** total units x 0.2 = **12 SFHP unit(s)** are required
- = **12 lots/units** delivered and a fractional fee paid for **0** units

LOW PRICED DWELLING UNIT

Additionally, Developer proposes to include an additional 12 homes (20% of total) as Low Priced Dwelling Units (LPDUs), priced according to the following schedule.

HH size	% Median Income Limit	Income Limit	Level to Serve (100%AMI)	Total Price
3	120%	\$82,150	\$72,550	\$403,584
4	120%	\$91,200	\$80,600	\$448,365
5	120%	\$98,600	\$87,150	\$484,802

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.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203967

Contractor: Homewise

Description: SFHP For Sale Housing Agreement: 60 total for sale dwelling unit SFHP Homes, 45 2-BR units, and 15 1-BR units including 5 live work units. In addition to the SFHP homes, Developer proposes to construct 20% of the units as Low Priced Dwelling Units.

Contract Agreement Lease / Rent Amendment

Term Start Date: Upon Approval Term End Date: x/xx/xxxx

Approved by Council Date: _____

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. Procurement History: REVENUE - NO SIGNATURE REQUIRED

[Signature] Mar 23, 2023
Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: No procurement.

4. Funding Source: REVENUE

Org / Object: 2400223/430253

Andy Hopkins Mar 23, 2023
Andy Hopkins (Mar 23, 2023 13:47 MDT) Budget Officer Approval: _____ Date: _____

Comment & Exceptions: E1: 21501.430253

Staff Contact who completed this form: Toniette Candelaria Martinez Phone # 505-955-6607

Email: tocandelariamartinez@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: 2868 Rufina

Procurement Title: N/A

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting _____ Staff Name _____

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Toniette Candelaria Martinez, Project Specialist 3/21/2023

Department Rep Printed Name (attesting that all information included) Title Date
[Signature] Contracts Supervisor Mar 23, 2023

Purchasing Officer (attesting that all information is reviewed) Title Date

ITT Representative (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.

** original attached **

CANDELARIA MARTINEZ, TONIETTE O.

From: CANDELARIA MARTINEZ, TONIETTE O.
Sent: Thursday, March 23, 2023 2:43 PM
To: VIGIL, XAVIER I.
Subject: RE: Completed: You're copied on "CM HOUSING 2868 RUFINA Re-1"

Good afternoon,
I'm sending the original Agreement through inter office mail. It's sitting in the outbox now. This Agreement needs wet signatures.

Thank you,

Toniette Candelaria-Martinez
City of Santa Fe, Office of Affordable Housing
505-316-4634 mobile, 505-955-6607 office
500 Market Street, Suite 200, Santa Fe, NM 87501
P.O. Box 909, Santa Fe, NM 87504-0909

X- Please let me know when this is ready. I'll contact the Developer to make the payment so the Developer can take to get recorded @ SF County.
*☺ Toni
3/23/2023
x6607*

From: SANTA FE, NM <adobesign@adobesign.com>
Sent: Thursday, March 23, 2023 2:39 PM
To: LOVATO, JOANN D. <jdlovato@santafenm.gov>; HOPI P. <jptapia@santafenm.gov>
Cc: CARDENAS, GERALYN F. <gfcardenas@santafenm.gov>; <tocandelariamartinez@santafenm.gov>; VIGIL, XAVIER I.
Subject: Completed: You're copied on "CM HOUSING 2868 RUFINA Re-1"

APIA, JIMMY

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



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Acrobat Sign**



Jimmy Tapia cc'd you on
CM HOUSING 2868 RUFINA Re-1




City of Santa Fe, New Mexico

Memorandum



DATE: March 16, 2023

TO: John Blair, City Manager

VIA: Alexandra Ladd, Director, Office of Affordable Housing 

FROM: Toniette Candelaria Martinez, Project Specialist, Office of Affordable Housing

RE: Santa Fe Homes Agreement – 2868 Rufina

ACTION REQUESTED:

Please sign the attached Santa Fe Homes Program (SFHP) Agreement between the City of Santa Fe and Homewise, developer of 2868 Rufina, located at 2868 Rufina. As per this Agreement, the Developer or Successor in Interest will provide 60 for sale dwelling units, of which 12 will be SFHP Homes and 12 will be Low Priced Dwelling Units (LPDUs) for a total of 40% affordably-priced homes.

ITEM & ISSUE

2868 Rufina proposes to include 60 for-sale homes, located at 2868 Rufina. According to the Santa Fe Homes Program regulation, 20% of these homes will be priced affordably and sold to income-certified homebuyers. The required number of SFHP homes is calculated as follows:

- = 60 total units x 0.2 = **12 SFHP unit(s)** are required
- = **12 lots/units** delivered and a fractional fee paid for **0** units

The homes will be distributed according to the following pricing schedule:

<i>Income Range</i>	<i>Studio 1-2 person HH</i>	<i>One Bedroom 1-2 person HH</i>	<i>Two Bedrooms 1-2 person HH</i>
Tier 2 (50-65%AMI)	Max. Price \$137,250 0 Unit	Max. Price \$144,500 1 unit	Max. Price \$165,250 2 units
Tier 3 (65-80% AMI)	Max. Price \$180,750 0 Unit	Max. Price \$188,000 2 units	Max. Price \$214,750 4 units
Tier 4 (80-100%AMI)	Max. Price \$224,000 0 Unit	Max. Price \$231,250 1 unit	Max. Price \$264,250 2 units

Additionally, the Developer proposes to build 12 LPDUs. The following sales pricing schedule will apply and be updated according to contemporary income data at the time of closing:

HH size	% Median Income Limit	Income Limit	Level to Serve (100%AMI)	Total Price
3	120%	\$82,150	\$72,550	\$403,584
4	120%	\$91,200	\$80,600	\$448,365
5	120%	\$98,600	\$87,150	\$484,802

All affordable homes will be distributed throughout the property and delivered proportionate to the market rate units - for every five homes sold, two will be affordable.