

SANTA FE COUNTY

Resolution No. 2010-~~109~~

A RESOLUTION AMENDING THE AFFORDABLE HOUSING REGULATIONS (No. 2006-99)

WHEREAS, Santa Fe County Ordinance No. 2006-02 ("Affordable Housing Ordinance") and Ordinance 2010-9 provide for the provision of Affordable Housing in Major and Minor Projects within central and northern Santa Fe County; and

WHEREAS, It is now necessary to amend, by resolution, the County's previously adopted Affordable Housing Regulations (Resolution No. 2006-99) to address: Maximum Target Home Prices, Homebuyer Education, Allowable Options and Upgrades, Asset Limitations, Eligibility Certifications, Shared Appreciation, and update certain forms and language within the regulations;

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners hereby adopts the Affordable Housing Regulations, attached hereto as Exhibit A, and declare that such regulations shall be effective immediately upon their recording with the Santa Fe County Clerk.

PASSED, APPROVED AND AMENDED this 26th day of October, 2010.

BOARD OF COUNTY COMMISSIONERS

[Signature]
Harry B. Montoya, Chairperson



[Signature]
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:

[Signature]
Stephen C. Ross
County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss BCC RESOLUTIONS
I Hereby Certify That This Instrument Was Filed for PAGES: 59
Record On The 28TH Day Of October, 2010 at 10:48:29 AM
And Was Duly Recorded as Instrument # 1615292
Of The Records Of Santa Fe County
[Signature] Witness My Hand And Seal Of Office
Deputy Valerie Espinoza
County Clerk, Santa Fe, NM

SEC. CLERK RECORDED 10/28/2010



Santa Fe County Affordable Housing Regulations

Article I. (Applicability)

- 1.1. **Title and Citation.** These Affordable Housing Regulations shall be known as and can be cited as the "Santa Fe County Affordable Housing Regulations," and are referred to herein as the "Regulations."
- 1.2. **Authority.** The Regulations are adopted by the Board of County Commissioners of the County of Santa Fe pursuant to Santa Fe County Ordinance No. 2006-02, as amended, referred to herein as the "Affordable Housing Ordinance".
- 1.3. **Effective Date.** These Regulations shall become effective immediately upon their filing with the Santa Fe County Clerk.
- 1.4. **Purpose.** These Regulations are adopted for the purpose of:
 - 1.4.1. Providing requirements, procedures, forms, and other material that the Affordable Housing Ordinance requires to be contained in the Regulations.
 - 1.4.2. Establishing internal controls to ensure accountability in the administration of the Affordable Housing Ordinance as well as provide safeguards for asset management.
 - 1.4.3. Establishing procedures for period amendment of these Regulations.

Article II (Definitions)

- 2.1 **Definitions.** As used in these Regulations, the following words shall have the following definitions:
 - 2.1.1. "Affordability Mortgage or Lien" means the instrument or instruments, recorded along with the deed conveying the Affordable Unit to the Eligible Buyer or Entry Market Buyer of the Unit, that
 - (A) creates a mortgage or lien in favor of the County in the amount of
 - (i) the difference between 95% of the market value of the Affordable Unit

at the time the Affordable Unit was first sold to an Eligible or Entry Market Buyer or, where the seller secures third party subsidy, the Maximum Target Housing Price plus third party deferred subsidy specific to "Housing Development Subsidy referred as "Gap Financing", excluding any and all down payment assistance programs or (ii), in the case of an Affordable Unit purchased by an Eligible Buyer or Entry Market Buyer as a result of the County exercising its right of first refusal with respect to the Affordable Unit, the sum of the amount of the Affordability Mortgage or Lien extinguished as part of the subject right of first refusal transaction and the County's share of any appreciation from such right of first refusal transaction;

(B) grants to the County a right of first refusal in the event the Eligible Buyer or Entry Market Buyer intends to sell the Affordable Unit;

(C) creates a mortgage or lien in favor of the County for its share of any Appreciation realized during the sale of the Affordable Unit within ten (10) years of its purchase by the Eligible Buyer and Entry Market Buyer; and

(D) addressing such other matters as are necessary or desirable to the effective implementation of the Affordable Housing Ordinance and Regulations.

2.1.2. "Affordable Housing" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible or Entry Market Buyer, where the Eligible Housing Unit is occupied by the Eligible or Entry Market Buyer as a primary residence.

2.1.3. "Affordable Housing Agreement" means a written agreement between the County and an Applicant in substantially the same form as provided for in these Regulations.

2.1.4. "Affordable Housing Administrator" means the County employee charged with administering the Affordable Housing Ordinance, making recommendations and taking other actions as set forth in the Affordable Housing Ordinance and the Regulations.

2.1.5. "Affordable Housing Plan" means a written plan that describes how an Applicant intends to comply with the Affordable Housing requirements of the Affordable Housing Ordinance, and which specifies the general location, number and types of Affordable Units that will be built and contains other information required by the Regulations or requested by the Affordable Housing Administrator.

2.1.6. "Affordably Priced Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible Buyer within Income Ranges 1, 2, or 3 respectively.

2.1.7. "Affordable Unit" means an Affordably Priced Housing Unit or an Entry Market Housing Unit.

2.1.8. "Allowable Option Upgrades" are options, lot premiums, or upgrades to standard features on the Affordable Unit that are chosen solely at the option of the Eligible Buyer or Entry Market Buyer. The Maximum Target Housing Price shall not include any options, lot premiums or upgrades chosen by the Eligible or Entry Market Buyer so long as the options, premiums and upgrades are published by the Seller in advance as part of its marketing efforts and so long as the options are reasonably comparable to those offered to other buyers of the same housing type and do not exceed the sum of \$5,000.00.

2.1.9. "Applicant" means a property owner who submits a development request to the County for approval of Project that is subject to the Affordable Housing Ordinance or, if the context requires, any person or entity that has succeeded to or assumed, in whole or in part, an Applicant's Affordable Housing Requirements with respect to a Project.

2.1.10. "Appreciation" means the difference between the current fair market value of an Affordable Unit and the initial market value established for purposes of calculating Appreciation in accordance with Section 5.1 or Section 5.2.2, as appropriate.

2.1.11. "Area Median Income" or "AMI" means the median income of the Santa Fe Metropolitan Statistical Area, adjusted for various household sizes, published by the United States Department of Housing and Urban Development ("HUD") and amended annually pursuant to data published by HUD; provide, however, that in the event of a discrepancy between the AMI established by HUD and the AMI inferred from HUD's actual income limits, the AMI, adjusted for various household size, inferred from HUD's actual income limits shall be used to establish the Income Ranges and Maximum target Home Prices in the Regulations.

2.1.12. "Certificate of Eligibility" means a certification issued by the Affordable Housing Administrator or his/her designee substantially in the form attached to the Regulations as Attachment 1. The Affordable Housing Administrator may designate one or more persons or entities to issue Certificates of Eligibility under these Regulations, provided that such person or entity, if not employed by Santa Fe County, agrees in writing to apply all applicable criteria and follow all applicable procedures set forth in the Affordable Housing Ordinance or these Regulations.

2.1.13. "Certificate of Compliance" means a certification issued by the Affordable Housing Administrator or his/her designee in favor of an Applicant in substantially the form attached to the Regulations as Attachment 2.

2.1.14. "Code Administrator" means the Santa Fe County Land Use Director or his/her designee.

2.1.15. "Community Water System" has the same meaning as that phrase as water supply system that serves five (5) or more dwelling units or commercial units through facilities that are under central or common ownership and/or management and that utilize permitted water rights instead of a domestic well, including public water supply systems such as those operated by Santa Fe County and the City of Santa Fe.

2.1.16. "Eligible Buyer" means the buyer of an Eligible Housing Unit whose Annual Gross Income is one hundred percent (100%) or less than the Area Median Income.

2.1.17. "Entry Market Buyer" means a buyer of an Eligible Housing Type of Unit whose Annual Gross Income is between 101% to 120% of the Area Median Income.

2.1.18. "Entry Market Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Entry Market Buyer within Income Range 4 respectively.

2.1.19. "Eligible Housing Type" or "Unit" means a housing unit, attached or detached, that is constructed in compliance with applicable codes. Design standards for an Eligible Housing Type or Unit are further categorized within these Regulations according to housing type, number of bedrooms, number of bathrooms, minimum square footages of heated residential/habitable area, and other criteria.

2.1.20. "Energy Star" means energy efficiency standards set forth in Section 10.1.

2.1.21. "Green Building Standards" means the energy and environmental design standards as set forth in Article 10.

2.1.22. "Income Range" means the income range used to determine the Maximum Target Home Price for each Eligible Housing Type. For purposes of the Affordable Housing Ordinance, the Income Ranges are as follows:

2.1.22.1 Income Range 1: 0% to 65% of the Area Median Income

2.1.22.2. Income Range 2: 66% to 80% of the Area Median Income

2.1.22.3. Income Range 3: 81% to 100% of the Area Median Income

2.1.22.4. Income Range 4: 101% to 120% of the Area Median Income

2.1.23. "Major Project means any division of property into twenty-five (25) or more parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

2.1.24. "Maximum Target Housing Price" means the highest price at which an Eligible housing Type or Unit may be sold to an Eligible or Entry Market Buyer in the appropriate Income Range and otherwise satisfy the affordable housing requirements of the Affordable Housing Ordinance or these Regulations. The methodology for establishing and the current Maximum Target Housing Price does not include any options, lot premiums or upgrades chosen by the Eligible or Entry Market Buyer so long as the options, premiums and upgrades are published by the seller in advance as part of its marketing efforts and so long as the options are reasonably comparable to those offered to other buyers of the same housing type and do not exceed the sum of \$5,000.00.

2.1.25. "Minor Project" means a subdivision of a parcel or parcels into at least five (5) but no more than twenty-four (24) lots or parcels (inclusive of any Affordable Housing provided as a result of the application of requirements of the Affordable Housing Ordinance) for purpose of sale, lease or other conveyance of one or more single-family residences.

2.1.26. "Qualified Transaction" means a transaction in which an Applicant sells an Affordable Housing Unit to an Eligible or Entry Market Buyer in accordance with the Affordable Housing Agreement, Affordable Housing Ordinance, and the Regulations.

2.1.27. "Project" means any Major Project or Minor Project.

2.1.28. "Single-family residences" means detached as well as attached dwelling units intended for single-family residency.

Article III
(Affordable Housing Requirements and
Affordable Housing Criteria)

3.1. Residual Fee; Distribution of Affordable Units.

3.1.1. Residual Fee.

3.1.1.1. Calculation. In the event that application of the affordable housing requirements set forth in Section 4 of the Affordable Housing Ordinance results in a fractional Affordable Housing Unit of 0.5 or less, a residual fee shall be required. The residual fee shall be determined by multiplying the fraction by the base residual fee. The base residual fee shall be equal to one-half (1/2) the average maximum Target Home Price for the Income range for which an Affordable Unit would have been required to be built if the fraction residual were greater than 0.5. Attachment 4 shows a sample calculation of the residual fee. The residual fee is not, and shall not be construed as, an alternate means of compliance.

3.1.1.2. Payment. Payment of the required residual fee is a condition precedent to recordation of the final plat and Affordable Housing Agreement for the Project, as a whole, or its first phase, if the Project is to be phased.

3.1.2. Distribution of Affordable Units.

3.1.2.1. Where required number of Affordable Units is three or less. In the event that three Affordable Units are required, the Affordable Units shall be dispersed among Income Range 1, Income Range 2 and Income Range 3. In the event that two Affordable Units are required, the Affordable Units shall be dispersed one each to Income Range 2 and 3. In the event that one Affordable Unit is required, the Affordable Unit shall be allocated to Income Range 2.

3.1.2.2. Where required number of Affordable Units is greater than four but not a multiple of four. In the event the required number of Affordable Units is greater than four but not a multiple of four, Affordable Units shall be distributed among Income Ranges in the following order until all units are distributed:

- Income Range 1;
- Income Range 2; and
- Income Range 3

For example, if six Affordable Units were required in a Project, the distribution would be as follows:

<u>Income Range</u>	<u>Number of Affordable Units Required</u>
Income Range 1	2
Income Range 2	2
Income Range 3	1
Income Range 4	1

3.2. Maximum Target Home Prices

3.2.1. Actual Sales Price Not To Exceed Maximum Target Home Prices.

The contract sales price of an Affordable Unit shall not exceed the Maximum Target Home Price established for the unit pursuant to the Regulations. For purposes of this subsection, the contract sales price means the purchase price to be paid by the Eligible or Entry Market Buyer for the Affordable Unit, as stated in the purchase agreement, minus the price attributable to personal property (if any) involved in the sale and any allowable lot premiums, options or upgrades.

3.2.2. Adjustment of Maximum Target Home Prices Due to High Home Owner Association Fees.

In the event that the homeowners' association fee, condominium fee, and/or common area fee applicable to the Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Home Price shall be reduced so that the buyer's mortgage loan principal amount is reduced by the amount of the monthly fee(s) that exceeds \$100. (Attachment 5 provides a sample calculation of the required adjustment.) Any such adjusted Maximum Target Home Price shall be set forth in the Affordable Housing Agreement.

3.2.3. Allowable Option Upgrades; Standard Features.

3.2.3.1 The Eligible or Entry Market Buyer may pay lot premiums and/or purchase upgrades or options up to a maximum, aggregate amount of \$5,000.00

3.2.3.2 Section 3.2.6.3 sets forth features and equipment that are considered standard. Standard features must be included in each Affordable Unit at no charge to Eligible or Entry Market Buyers other than the Maximum Target Home Price.

3.2.4. Adjustment of Maximum Target Home Prices.

3.2.4.1. Periodically, and as deemed necessary by the County, but no later than the one year anniversary of the Regulations' adoption and

annually thereafter, the Affordable Housing Administrator shall review and adjust the Maximum Target Home Price in each Income Range based upon changes in the AMI and/or any of the factors and assumptions used to determine housing expense ratios in Section 3.2.5.1.

3.2.4.2. The Affordable Housing Administrator shall publish new Maximum Target Home Prices immediately upon adjustment and, within thirty (30) days, shall report to the Board of County Commissioners the new Maximum Target Home Prices.

3.2.4.3. The initial Maximum Target Home Prices set forth in an Affordable Housing Agreement shall be valid for one year following execution of the Agreement, and shall be adjusted annually thereafter to the then current Maximum Target Home Prices established by the Affordable Housing Administrator.

3.2.5. Establishment of Maximum Target Home Prices. Maximum Target Home Prices are established to maintain a target housing expense ratio of approximately 33% for the assumed household size with the lowest household income in each applicable Income Range, with the exception of the Maximum Target Home Price for Income Range 1 units and studios in all income Ranges. For Income Range 1, Maximum Target Home Prices shall be calculated using 50% of the Area Median Income for the assumed household size. The Maximum Target Home Price for a studio home is based on an estimated marginal cost savings between a studio and a 1 bedroom home of \$70 per square foot. Since the assumed household size for a studio is 1 person, the housing expense ratio for the lowest income household for a studio will be lower than 33%. Attachment 6 provides a sample calculation of a housing expense ratio.

3.2.5.1. Factors in Determining Housing Expense Ratios. The following assumptions are used in the determination of housing expense ratios:

3.2.5.1.1. Assumed household sizes:

<i>Unit Size</i>	<i>Assumed household size</i>
Studio	1 person
1 Bedroom	1 person
2 Bedroom	2 person
3 Bedroom	3 person
4 Bedroom	4 person

(Note: These assumed household sizes are for determination of housing expense ratios only. Minimum household sizes are contained in Section 4.1.3)

- 3.2.5.1.2. Interest rate: 5.04%
- 3.2.5.1.3. Term of loan: 30 years.
- 3.2.5.1.4. Private mortgage insurance: 0.057% of home price per month.
- 3.2.5.1.5. Hazard insurance: 0.0283% of home price per month.
- 3.2.5.1.6. Taxes: 0.0467% of home price per month.

3.2.6. Minimum Requirements for Eligible Housing Types. Eligible Housing Types shall be site-built to conform to local, state and federal laws and regulations, as well as these additional criteria concerning design, equipment and physical features:

3.2.6.1. Minimum Bathrooms and Floor Area. Affordable Units shall be constructed according to the following minimum requirements for bathrooms and square footage of habitable space:

Unit Type	Minimum Number of Bathrooms	Minimum Square Footage of Habitable Space
Studio	1	750 square feet
1 Bedroom	1	850 square feet
2 Bedrooms	1	1,000 square feet
3 Bedrooms	2	1,150 square feet
4 Bedrooms	2	1,250 square feet

For purposes of the square footage requirement, habitable space means finished, above-grade living space that would be considered habitable under generally accepted appraisal standards.

3.2.6.2. Waiver of Minimum Square Footage Requirements. Upon request by the Applicant, the Affordable Housing Administrator may reduce the minimum square footage of habitable space requirements whenever these minimums are greater than the average square footage of the corresponding market rate units proposed for the Project, weighted by the number of units of each size to be built. For example, if the

Applicant proposes 6 studios with 600 square feet of habitable space and 4 studios with 790 square feet, the average square footage of the market rate studios would be 676; i.e., $((6 \times 600) + (4 \times 790)) / 10$.

3.2.6.3. Standard equipment and equipment hookups. All features required to be included in a new home by any applicable federal, state or local building code shall be considered standard features, the price of which is included in the Maximum target Home Price. The following features are also considered standard features that must be included in an Affordable Unit for which the Eligible or Entry Market Buyer shall not be charged any amount in excess of the Maximum Target Home Price: (1) a new kitchen range and necessary hookups; (ii) hookups for clothes washer, clothes dryer, and built-in dishwasher; and (iii) a central heating system. In addition, the builder must, without additional charge to the Eligible or Entry Market Buyer, use in the construction of Eligible Housing Types basic construction materials with the same rating (e.g. R-factor, gauge, etc.) that is used in market rate units. For purposes of this section, basic construction materials means insulation, electrical wiring and amp protection, plumbing pipes, and the like.

3.2.6.4. Design and location. Affordable Units shall be designed and located so as to be integrated with market units in the Project, in terms of location, architecture, and landscaping. The location of Affordable Units shall be fixed in the final plat for the Project. The design of Affordable Units shall be reviewed and approved by the Affordable Housing Administrator before the Applicant begins marketing any affordable or market unit for sale within the Project.

3.2.7. Required Mix of Unit Sizes and Types.

3.2.7.1. Default Mix. The mix of unit types within a given Income Level shall be determined by multiplying the following percentages by the required number of Affordable Units in each Income Level:

Unit Size	Required percentage of Affordable Units
Studio	25%
1 Bedroom and 2 Bedroom	
3 Bedroom	50%
4 Bedroom	25%

If fractions result from application of this formula, round up for 0.5 or more and round down for less than 0.5. If rounding results in a total that is more than the total number of Affordable Units required, one unit shall be removed from each Unit Size in the following order until the sum of all Unit Sizes equals the total number of required Affordable Units:

- 1.) Studio, 1 Bedroom and 2 Bedroom;
- 2.) 4 Bedroom; and
- 3.) 3 Bedroom.

Attachment 7 provides a sample calculation of the required unit mix using the above formula.

3.2.7.2. Determining Mix of Studio, 1 Bedroom, and 2 Bedroom Units. The Applicant shall specify in its Affordable Housing Plan the proposed mix of studios, 1 Bedroom Units, and 2 Bedroom Units within each Income Level. The Affordable Housing Administrator may, subject to the Board of County Commissioner's approval, adjust the proposed mix, taking into consideration the following:

- 3.2.7.2.1. The mix of market rate units offered for sale in the Project;
- 3.2.7.2.2. The relative demand within the Income Level for Affordable Units of the different sizes; and/or
- 3.2.7.2.3. Such other factors as the Affordable Housing Administrator deems relevant.

3.2.7.3. Changes to Default Mix. The applicant may request to provide a mix of unit sizes that varies from the default percentages set forth in Section 3.2.7.1. As part of its Affordable Housing Plan, the Applicant may request to change the default mix. The Affordable Housing Administrator may, subject to the Board of County Commissioners' approval, grant such request after considering the following:

- 3.2.7.3.1. Whether a different mix of Affordable Units would better match the mix of market rate homes within the Project;
- 3.2.7.3.2. Whether a different mix of unit sizes would better match the relative demand within the Income Level for Affordable Units; and/or
- 3.2.7.3.3. Such other factors as the Affordable Housing Administrator deems relevant.

3.2.7.4. Generally, in a development of detached ownership units, the Affordable Units shall be detached. Generally, in a development with a mix of

detached and attached units, the proportion of detached Affordable Units shall be no less than the proportion of detached market rate units of comparable size. The Board of County Commissioners shall have discretion to approve an Affordable Housing Plan in which the proportion of detached and attached Affordable Units differs from the proportion of detached and attached market units.

Article IV

(Eligible Buyers, Entry Market Buyers, Buyer Certification Process, Sale and Marketing of Affordable Units)

4. Affordable Units shall be marketed, sold and occupied according to these criteria:

4.1. Eligible Buyers, Entry Market Buyers. Affordable Units shall be sold to and occupied by an owner-occupant household meeting the definition of Eligible Buyer or Entry Market Buyer. An Eligible or Entry Market Buyer household must meet the following eligibility requirements:

4.1.1. Income Limitation. The household income of the Eligible or Entry Market Buyer shall not have exceeded the household income ranges established by the Affordable Housing Administrator. For purposes of determining eligibility, a household whose income is greater than the maximum allowable income for a given Income Range but below the threshold for the next highest Income Range shall be deemed to be in the next highest Income Range. For instance, a household whose income is 100.4% of the Area Median Income shall be deemed to be in Income Range 4.

4.1.1.1. Imputation of Income. Generally. Income shall be imputed to the cash value of that portion of a household's assets in excess of \$25,000. For example, if the cash value of households' assets was \$100,000.00, income would be imputed to \$75,000. The following assets shall not have income imputed to them: retirement funds that cannot be accessed without the payment of a penalty; the principal of trust funds, to the extent that the principal cannot be invaded by the household; necessary personal property; education accounts committed to a dependent; and other assets to readily accessible to the purchaser. Income shall be imputed at the rate of 20% per annum for Eligible or Entry Market Buyer's age 64 or younger and 10% for Eligible or Entry Market Buyer's age 65 or older with the imputed income added to the yearly income of the household for the purpose odd terming eligibility.

4.1.1.2. Imputation of Income; Regulations and Guidelines. The Affordable Housing Administrator shall, except as noted above,

follow the regulations and guidelines of the United States Department of Housing and Urban Development ("HUD") and the Santa Fe County Housing Services Division/Housing Authority concerning the imputation of income to a household's assets (e.g., which assets are excluded as necessary personal property, how to determining the market and cash value of assets, etc). If the Affordable Housing Administrator discovers that the regulations and guidelines of HUD and the Santa Fe County Housing Services Division/Housing Authority concerning the imputation of income to assets (i) fail to address a necessary topic or (ii) conflict with the Affordable Housing Ordinance or Regulations, the Affordable Housing Administrator shall, as soon as possible, propose to the Board of County Commissioners regulations to address such topic or conflict. Pending adoption of such regulations, the Affordable Housing Administrator shall address such topic or conflict in any pending application(s) in a manner the Affordable Housing Administrator deems reasonable.

4.1.1.3. Hardship Exceptions to Income Limits. The Affordable Housing Administrator may, in cases of demonstrated hardship, certify as Eligible or Entry Market Buyer an application who (i) currently falls within the income ranges established by the Affordable Housing Administrator but (ii) exceeded such ranges during the previous two calendar years. Qualifying hardships include, but are not limited to, divorce, death of a spouse, or a long-term disability that limits the income a household member can reasonably be anticipated to earn in the foreseeable future.

4.1.2 Asset Limitations. For the two full calendar years prior to and at the time of filing of their request for certification application, the household of the Eligible Buyer or Entry Market Buyer shall not have aggregate assets greater than \$125,000. The following assets shall not count toward the asset limitation: retirement funds that cannot be accessed without the payment of a penalty; the principal of trust funds, to the extent that the principal cannot be invaded by the household; necessary personal property; education accounts committed to a dependent; and other assets to readily accessible to the purchaser.

4.1.2.1. Exceptions to Asset Limitations. The Affordable Housing Administrator may make exceptions to the asset limitation as follows:

4.1.2.1.1. The Affordable Housing Administrator shall have the discretion to certify as an Eligible or Entry Market Buyer an

applicant whose household has in excess of \$125,000 in assets where the individual circumstances merit it, such as where the income of the household is so far below the Area Median Income that, notwithstanding their assets, the household could not afford to purchase a home on the open market.

4.1.2.1.2. The Affordable Housing Administrator may, in cases of acceptable changes in financial position, certify as an Eligible or Entry market Buyer an applicant whose household (i) currently has less than \$125,000 in assets but (ii) had in excess of \$125,000 during the previous two calendar years. Acceptable changes in financial position include, but are not limited to, divorce, use of assets to purchase necessary personally property, such as a car, or change in market value or underlying assets.

4.1.3. Minimum household size. The household size may not be smaller than the following minimum household sizes:

Unit Size	Minimum Household Size
Efficiency/Studio	1 person household
1 Bedroom	1 person household
2 Bedrooms	1 person household
3 Bedrooms	2 person household
4 bedrooms	3 person household

4.1.4. First time homebuyer status. Eligible Buyers and Entry Market Buyers and all adults in their households must be first time homebuyers, meaning that:

4.1.4.1. they cannot have had an ownership interest in a home (not including a manufactured home) during the 3-year period prior to the date on which they file their application for certification; or

4.1.4.2. they had an ownership interest in a home other than a manufactured home during the 3-year period prior to the date on which they file their application for certification but transferred such interest to a third party because of divorce or separation from a co-owner.

4.1.4.3 they (i) currently own a home in a location outside of Santa Fe County, but had previously lived in Santa Fe County (ii) had previously lived in Santa Fe County for at least ten years and (iii) wish to return to Santa Fe County; provided, however, that their current home outside of Santa Fe County must be sold before or at

the time of purchasing an Affordable Unit and shall be considered in computing their income and asset eligibility.

4.1.5. Eligible Financing. An Eligible Buyer or Eligible Entry Market Buyer must finance the purchase of the Affordable Unit with a prime mortgage loan, defined here to mean a mortgage loan (i) with an interest rate that is no more than 250 basis points above the New Mexico Mortgage Finance Authority Mortgage Saver rate; (ii) that does not charge in excess of 2% origination fee; and (iii) is not an interest-only loan, adjustable rate loan, or stated income loan.

4.2. Marketing To Eligible or Entry Market Buyers. Brochures and other marketing materials used by Applicants to market Affordable Units shall clearly state the requirements of the Affordable Housing Ordinance with regard to pricing of Affordable Units, long-term affordability provisions, rental restrictions, and buyer eligibility requirements.

4.3. Certification Process for Eligible or Entry Market Buyers. The Applicant and the County, or its designee, shall follow the process provided in this Section for certifying the eligibility of Eligible or Entry Market Buyers.

4.3.1. The prospective Eligible or Entry Market Buyer shall provide a Certification Package to the County or its designee containing the following:

4.3.1.1. A copy of the current pay stubs or other proof of current year earnings and/or income for the prospective buyer(s) and all persons 19-years old or older who will occupy the Affordable Unit.

4.3.1.2. A complete copy of the two most recent federal and state income tax returns and W-2s for the prospective buyer(s) and all persons 19-years old or older who will occupy the Affordable Unit.

4.3.1.3. A copy of a credit report for the prospective buyer(s) and all persons 19-years old or older who will occupy the Affordable Unit issued within the last thirty (30) days by either, Trans Union, Experian, or Equifax.

4.3.1.4. A copy of the most recent month's account statement of all financial accounts in which the prospective buyer(s) or anyone 19-years old or older who will occupy the Affordable Unit have or had an ownership interest, including but not limited to, checking accounts, savings accounts, certificates of deposit, money market accounts, brokerage accounts, IRA accounts, deferred compensation accounts, and 401(k) accounts.

4.3.1.5. A financial statement listing all of the assets and liabilities of the prospective buyer(s) and anyone 19-years old or older who will occupy the Affordable Unit.

4.3.1.6. Sworn statements from the prospective buyer(s) and anyone 19-years old or older who will occupy the Affordable Unit that verifies that the information provided in accordance with this Section is true, correct and complete, and that the unit to be purchased will be used as the primary residence of the prospective buyer(s). The sworn statement from the prospective buyer(s) shall also indicate the names and birth dates of everyone who is expected to occupy the Affordable Unit.

4.3.1.7. Homebuyer Education Certification from a qualified organization that provides income verifications, homebuyer education training for home purchase and financial counseling.

4.3.1. 8. Such other relevant information as may be requested on forms developed by the Affordable Housing Administrator.

4.3.2. Upon receipt of the complete Certification Package and a fee of Two Hundred Dollars (\$200.00) payable to the County or its designee, the County or its designee shall issue a receipt to the Applicant signifying the receipt of a complete Certification Package. If the fee is not submitted, the Certification Package will not be reviewed and a receipt for a complete Certification Package will not be issued. Certification Packages are to be submitted to the Santa Fe County Affordable Housing Administrator or designee.

4.3.3. Within fifteen (15) business days of the delivery of a complete Certification Package and the \$200 processing fee, the County or its designee shall determine the eligibility of the prospective buyer(s) and inform the Applicant and prospective purchaser(s) in writing of their decision; provided, however, that the County or its designee may request additional information from the prospective buyer(s) or any 19-year old or older who will occupy the affordable unit, in which case a determination will be made within fifteen (15) business days of their receipt of the additional information. If the prospective purchaser(s) are found to be an Eligible Buyer or Entry Market Buyer, a "Certificate of Eligibility" shall be issued to the Eligible Buyer or Entry Market Buyer (with a copy to the Applicant from whom the Eligible Buyer or Entry Market Buyer desire to purchase an Affordable Unit). The Affordable Housing Administrator may request additional information from the Eligible/Entry Market Buyer and/or the County's designee for verification or

audit purposes, including, but not limited to, additional credit reports, or other supporting financial and employment documentation.

4.3.4. Prospective buyer(s) shall be denied a Certificate of Eligibility and be forever barred from reapplying for certification should the Affordable Housing Administrator determine that:

- 4.3.4.1. they transferred assets to a third party or otherwise hid assets in order to qualify as an Eligible Buyer or Entry Market Buyer;
- 4.3.4.2. they submitted a materially incomplete, inaccurate, or misleading Certification Package; or
- 4.3.4.3. otherwise engaged in fraudulent, dishonest, or misleading conduct to qualify as an Eligible Buyer or Entry Market Buyer.

4.3.5. Unless there is a change in income or asset status that renders the prospective buyer(s) ineligible under the Regulations, the Certificate of Eligibility shall be valid for a period of six months after issuance. During that six-month period, the certified Eligible Buyer or Entry Market Buyer or the Applicant must immediately notify the County or the designee who issued the Certificate of Eligibility of any change in status (e.g., income or assets) that may make the Eligible or Entry Market Buyer no longer eligible under the criteria established in the Regulations.

4.3.6. If an Eligible or Entry Market Buyer, who was initially determined to be eligible for an Affordable Unit and has executed a purchase contract for such unit, is subsequently determined not to be eligible for the Affordable Unit for which s/he has signed a purchase contract because of an increase in the household income received after the purchase contract was signed, the Affordable Housing Administrator, at its sole discretion, may approve the sale of the Affordable Unit to the Eligible or Entry Market Buyer if one of the following conditions is met:

4.3.6.1. If the Eligible or Entry Market Buyer's income does not exceed the maximum AMI percentage for the original income range by more than 5 percentage points, the Eligible or Entry Market Buyer may be allowed to purchase the Affordable Unit at the original Maximum Target Housing Price. Closing of the home to be extended no more than 90 days.

4.3.6.2. If the Eligible or Entry Market Buyer's income exceeds the maximum AMI percentage for the original income range by more than 5 percentage points, and the income is within a higher income range, the Eligible or Entry Market Buyer may be allowed to purchase the Affordable Unit at the Maximum Target Housing Price applicable for the higher income range, provided that the applicant replaces the Affordable Unit in the lower income range.

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4.4. Allocation of units. The Affordable Housing Ordinance and these Regulations are established to benefit all residents of the County and, as such, it is the policy of the County that all potential Eligible Buyers be given an equitable opportunity to purchase Affordable Units.

4.4.1. The County or its designee shall maintain and make available to Applicants lists of prospective Eligible Buyers and Entry Market Buyers who (i) have been issued Certificates of Eligibility within the past year or who expressed interest in purchasing Affordable Units and (ii) have pre-qualified for mortgage financing. For Projects for which the County or its designee expects immediate effective demand to outstrip the supply, the County or its designee shall establish and maintain an equitable process for allocating rights to purchase the units. In developments where the County or its designee has established such a process, the Applicant shall be required to follow the process when selecting Eligible Buyers and Entry Market Buyers. For Projects other than those described above, the Applicant shall establish and maintain an equitable process of marketing and selling Affordable Units.

**Article V
(Long Term Affordability, Rental Prohibition)**

5. The Ordinance's goals of having Affordable Units owner-occupied by Eligible Buyer or Entry Market Buyers and maintaining long term affordability shall be achieved through the following means.

5.1. Affordability Mortgage or Liens.

5.1.1 Each Affordable Unit shall be subject to an Affordability Mortgage or Lien securing the County's right to (i) the difference between the Maximum Target Home price and 95% of the unrestricted fair market value of the Affordable Unit at the time of initial sale to the Eligible Buyer or Entry Market Buyer, as determined by an appraiser approved by the County and the Maximum Target Home Price plus third party deferred subsidy specific to "Housing Development Subsidy referred as " Gap Financing", excluding any and all down payment assistance programs, secured by the seller. (ii) the County's Appreciation Share. For purposes of determining Appreciation, the initial market value shall be 95% of the unrestricted fair market value of the Affordable Unit at the time of the initial sale. The Affordability Mortgage or Lien shall be:

5.1.2. Duly executed and recorded in the Office of the County Clerk simultaneously with all other closing documents, such as the deed, purchase money mortgages, etc.;

- 5.1.3. Subordinate to any purchase money mortgage securing a note incurred in conjunction with the initial purchase of the Affordable Unit;
- 5.1.4. Non-amortizing, and carry a rate of zero percent interest; and
- 5.1.5. Due only upon (i) resale or unauthorized transfer of the Affordable Unit; or (ii) the failure of the Eligible or Entry Market Buyer to occupy the Affordable Unit as their primary residence, except where they receive the prior written approval of the Affordable Housing Administrator to do so.

If an Affordable Unit is sold for less than 95% of the initial fair market value, the Affordability Mortgage or Lien may, at the County's sole discretion, be forgiven to the extent that the sale proceeds are insufficient to pay all superior liens and the County's Affordability Mortgage or Lien.

5.2. Right of First Refusal. The Affordability Mortgage or Lien (or other appropriate agreement between the County and Eligible Buyer or Entry Market Buyer) shall contain a right of first refusal, whereby, in the event the Eligible Buyer or Entry Market Buyer decides to sell the Affordable Unit, the County has the right to purchase the Affordable Unit or the right to broker resale of the Affordable Unit to another Eligible or Entry Market Buyer at the current market price, as determined by an MAI appraiser acceptable to the County. This instrument shall require the owner of an Affordable Unit to provide the County with fifteen (15) days advance, written notice of their intent to sell the Affordable Unit, during which period the County may exercise its right of first refusal by providing the current owner with written notice that it has done so. The instrument shall further provide the County with an additional sixty (60) days after it has exercised its right of first refusal to purchase the unit or broker a purchase and sale of the unit to complete the transaction. If the County fails to timely exercise its right of first refusal, or if it does not complete the transaction within the allotted time period, the owner shall have the right to sell the unit to any buyer at an unrestricted price.

5.2.1. In the event that the County exercises its right to purchase the Affordable Unit or to broker resale of the Affordable Unit, it shall resell the unit to an Eligible or Entry Market Buyer. The purchase price paid by the subsequent Eligible or Entry Market Buyer shall be equal to the market price, as determined by the appraisal obtained pursuant to Section 5.2, less the total of the outstanding Affordability Mortgage or Lien and Appreciation Share, if any, due to the County.

5.2.2. The Eligible or Entry Market Buyer purchasing the Affordable Unit as part of the right of first refusal transaction shall execute an Affordability Mortgage or Lien and/or other appropriate documents that meet the requirements of this Section. The amount of the Affordability Mortgage or

Lien shall equal the sum of the amount of the Affordability Mortgage or Lien extinguished as part of the subject right of first refusal transaction and the Appreciation Share due to the County as part of the right of first refusal transaction. The Affordability Mortgage or Lien stemming from the right of first refusal transaction shall also provide for shared Appreciation pursuant to Section 5.3, and the ten-year period shall begin on the date of the closing of the resale to the Eligible or Entry Market Buyer. For purposes of determining Appreciation for an Eligible or Entry Market Buyer who purchases an Affordable Unit as part of a right of first refusal transaction, the initial market value shall be the market value determined by the appraisal obtained pursuant to Section 5.2.

5.3 Shared Appreciation Requirements. The Affordability Mortgage or Lien shall provide that if the Affordable Unit is sold during the ten-year period beginning on the date of the initial sale of the Affordable Unit, the County shall share in any Appreciation according to the following formula. The Eligible Buyer's or Entry Market Buyer's share of the Appreciation shall be derived by multiplying the number of full years that have elapsed from the date they purchased. The County's share of the Appreciation and the amount of the Affordability Mortgage or Lien shall be due at the closing of the transaction. The amount of the lien will be the difference between 95% of the appraised value and the Maximum Target Price. The County's share of appreciation, if any, will be in the proportion to the percentage of the County lien to the initial market value at the time of the Eligible Buyer or Entry Market Buyer's initial purchase. The value of improvements shall be deducted from the gross appreciation as indicated below.

5.3.1. The Eligible Buyer or Entry Market Buyer may deduct from the gross appreciation the cost of improvements made to the home that add to the value of the home or prolong its useful life. Improvements that are no longer part of the home shall not be deducted from gross appreciation. Repairs that maintain the home in good condition but do not add to its value or prolong its life shall not be deducted from gross appreciation. Examples of improvements that may be deducted from gross appreciation include, but are not limited to:

Additions

- Bedroom Deck Bathroom Garage Porch Patio

- Lawn & Grounds
- Landscaping Driveway Walkway Fence Retaining Wall
- Irrigation System

- Heating & Air Conditions

Heating System Central Air Conditioning Furnace Duct Work
Central Humidifier Filtration System

Plumbing
Septic System Water Heater Soft Water System Filtration System
Interior Improvements
Appliances Kitchen modernization Flooring Wall to Wall
Carpeting

Insulation
Attic Walls, Floor, Pipes, Ductwork

Miscellaneous
Storm Windows Doors New Roof Central Vacuum
Wiring Upgrades Security System

The Eligible Buyer or Entry Market Buyer must provide the Affordable Housing Administrator with receipts and other records for all improvements that are deducted from the gross appreciation.

Attachment 8 provides a sample determination of Appreciation Share.

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5.4. Affordable Housing Fund. Any amounts collected from application of any Affordability Mortgage or Lien, including any Appreciation share earned by County, shall be deposited into a fund created in the County treasury or separate trust whose sole purpose shall be to support Affordable Housing within Santa Fe County or, alternatively, transferred to the Santa Fe County Housing Authority to support Affordable Housing within Santa Fe County. The fund or trust shall be governed by rules and requirements set forth in a separate Ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

5.5. Rental Prohibition:

5.5.1. General Policy. Pursuant to Section 7 of the Affordable Housing Ordinance, an Eligible Buyer or Entry Market Buyer shall not lease or rent an Affordable Unit to anyone unless:

5.5.1.1. the Eligible or Entry Market Buyer is under duress by reason of unemployment, family medical emergency, is unable to sell the Affordable Unit for an amount sufficient to pay off all liens on the Affordable Unit, including, but not limited to, the Affordability Mortgage or Lien, or other unique circumstances of hardship; and

5.5.1.2. the proposed lease is approved in advance, in writing by the Affordable Housing Administrator.

For purposes of this Rental Prohibition, the term lease or rent means allowing anyone to use the Affordable Unit as their primary residence at a time when the Eligible or Entry Market Buyer(s) are not using the Affordable Unit as their primary residence, regardless of whether any rent or other consideration is given to the Eligible or Entry Market Buyer in exchange for the ability to use the Affordable Unit as a primary residence.

5.5.2. Initial Application. An Eligible Buyer or Entry Market Buyer desiring to lease or rent their Affordable Unit shall submit their request on a form to be developed by the Affordable Housing Administrator. In addition to any other information required by the Affordable Housing Administrator, such form shall require the Eligible Buyer or Entry Market Buyer to (i) explain how renting or leasing the Affordable Unit will alleviate the claimed hardship and (ii) to submit sufficient documentation to establish (a) the hardship condition claimed or (b) inability to sell the Affordable Unit at a price sufficient to pay off all liens on the Affordable Unit, including, but not limited to, the Affordability Mortgage or Lien. In the latter case, the Affordable Housing Administrator shall have the sole discretion to reduce the Affordability Mortgage or Lien by an amount sufficient to make the sale of the Affordable Unit economically viable.

5.5.3. Length of Lease Approval; Extensions. The Affordable Housing Administrator shall have sole discretion to determine how long the approval to lease an Affordable Unit shall be valid, but in no case shall the initial approval be valid for more than one year. If, after one year or such shorter period as proscribed by the Affordable Housing Administrator has lapsed, the Eligible or Entry Market Buyer demonstrates that they continue to meet the criteria in Section 5.3.2, the permission to lease the Affordable Unit may be extended for an additional period not to exceed one year, subject to further extensions. There shall be no limitations on the number of lease extensions that may be approved by the Affordable Housing Administrator based upon demonstrated eligibility.

Article VI

(Closing, Certification of Qualified Transactions)

6.1 Closing and Certification of Qualified Transactions. All Qualified Transactions shall be closed in accordance with the procedures in this Section

6.1.1. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility.
2. The date and time of the scheduled closing.
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, MAI certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (ii) have been prepared within the previous 6 months.

6.1.2. Recordation of Affordability Mortgage or Lien. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage or Lien. Any cost associated with the recording and returning of the Affordability Mortgage or Lien shall be borne by the Applicant.

6.1.3. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction,

a copy to the County of the Settlement Statement (HUD 1) for the Qualified Transaction, signed by the seller, purchaser.

6.1.4. Certificate of Compliance for Qualified Transaction. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

Article VII (Affordable Housing Plan and Affordable Housing Agreement)

7.1 Affordable Housing Plan. As part of its required submittals to the Land Use Department, an applicant shall submit an Affordable Housing Plan at the earliest stage of the Project approval process, unless the Affordable Housing Administrator or BCC allow the Applicant to submit the Affordable Housing Plan at some later stage in the approval process. In no event shall an Affordable Housing Plan be submitted later than the preliminary plan and/or plat stage of a Project's approval. The Land Use Department shall forward for review the Affordable Housing Plan to the Affordable Housing Administrator, who may ask appropriate County staff to review and comment on the Affordable Housing Plan. The Affordable Housing Administrator shall analyze the plan for the Board of County Commissioners, who shall review the Affordable Housing Plan in conjunction with the underlying application for the Project (e.g., application for master plan approval). The Affordable Housing Administrator and/or Board of County Commissioners may request additional information from the applicant, or reject or require amendments to a proposed Affordable Housing Plan if the proposed Affordable Housing Plan fails to meet the requirements of the Affordable Housing Ordinance or the Regulations. The substance of the Affordable Housing Plan will be incorporated into the Affordable Housing Agreement, which shall be filed and recorded simultaneously with or before the final development plan or final plat for the Project, whichever instrument is the first to be recorded. The requirement that the Affordable Housing Agreement be filed with or before the final plat or development plan shall be referenced on the final plat or development plan.

7.1.1. The Affordable Housing Plan shall, at a minimum, include the following:

7.1.1.1. Calculation establishing the number, type (e.g., studio, 1 Bedroom), and size of the Affordable Units to be provided by Income Level as well as any required residual fee.

7.1.1.2. The Applicant's proposal for providing required Affordable Housing and/or Alternate Means of Compliance, which shall include a

timetable for delivering required Affordable Units or Alternate Means of Compliance.

7.1.1.3. If an Alternative Means of Compliance is proposed, the Affordable Housing Plan shall, in addition to any matters required to be addressed by Section 8 of the Regulations, address each of the applicable criteria set forth in Section 16(E) and Section 16(F) of the Affordable Housing Ordinance and submit sufficient supporting data to enable the effective evaluation of applicable criteria.

7.1.1.4. If a waiver of all or any of the requirements of the Affordable Housing Ordinance is sought on the basis of hardship, the Affordable Housing Plan shall demonstrate that a hardship exists, as defined in Section 17(B) of the Affordable Housing Ordinance, and submit sufficient documentation to substantiate its claimed hardship, including, but not limited to, pro-forma financial statements demonstrating the economic infeasibility of the Project.

7.1.1.5. The Plan shall demonstrate how the Affordable Units will be integrated into the overall design and layout of the Project, and if off-site Affordable Units are proposed pursuant to Section 16(A)(3), the Receiving Project, so that the Affordable Units are integrated with the market rate units and not obviously different in style or type. If the Project or Receiving Project is to be phased, the Plan shall also demonstrate the number of Affordable Units and market units to be completed in each phase.

7.1.1.6. The Applicant shall clearly set forth:

7.1.1.6.1. all incentives allowed under the Affordable Housing Ordinance or other Ordinance for which it claims eligibility, including any pertinent calculations (e.g., density bonus calculation); and

7.1.1.6.2. its eligibility for such incentives. Without in any way limiting the generality of the foregoing, if the Applicant is:

7.1.1.6.2.1. claiming incentives for Entry Market Housing Units pursuant to Section 10 of the Affordable Housing Ordinance, the Applicant shall identify the energy efficiency measures that the Applicant proposes to provide within the Project as a whole as well as the means by which the Applicant will substantiate that it did, in fact, provide such measures within the Project as a whole; or

7.1.1.6.2.2. claiming incentives when it proposes alternative means of compliance, sufficient documentation to establish that the Affordable

Housing Ordinance, when applied to the project, would result in economic infeasibility of the Project.

7.2 Affordable Housing Agreement.

7.2.1. Contents. The Affordable Housing Agreement shall incorporate the substance of the approved Affordable Housing Plan, be generally in the form attached to these Regulations, and address the following matters, as applicable, in addition to other necessary or appropriate matters:

7.2.1.1. The binding nature of the Affordable Housing Agreement on successors in interest to the Applicant and anyone to whom a lot on which Affordable Units are to be built is transferred, and the legal mechanisms by which such obligations will be passed on to such persons.

7.2.1.2. The Applicant's requirements for providing the County or its designee with documentation demonstrating compliance with the Affordable Housing Agreement.

7.2.1.3. Provisions granting the County or its designee the right to inspect the Applicant's records and developments sites to ensure compliance with the Affordable Housing Agreement, the Affordable Housing Ordinance, and the Regulations.

7.2.1.4. The remedies available to the County in the event the Applicant breaches the Affordable Housing Agreement or otherwise violates the Affordable Housing Ordinance and the Regulations.

7.2.1.5. The expiration date of the Affordable Housing Agreement and any conditions under which it may be terminated earlier than that date.

7.2.1.6. The mechanics and timelines for the closing of Qualified Transactions, including responsibility for the recording of the Affordability Mortgage or Lien and other necessary or appropriate documents.

7.2.1.7. Development incentives to be granted by the County in consideration of the Applicant's obligations under the Affordable Housing Agreement.

7.2.1.8. Other terms and conditions necessary to implement the requirements of the Affordable Housing Ordinance and the Regulations with regard to the Project.

7.2.1.9. In developments where demand is expected to outstrip supply, a description of a fair and equitable method to be used for the allocation of the Affordable Units pursuant to these Regulations.

7.2.1.10. A description of how the Affordable Units will be marketed and sold to Eligible Buyers.

7.2.1.11. In Projects where the Applicant has agreed to provide energy efficiency measures within the Project as a whole, the energy efficiency measures the Applicant has agreed to provide.

7.2.2. Approval and Execution of the Affordable Housing Agreement. The Affordable Housing Agreement shall be approved by the Board of County Commissioners. It shall be executed by the Applicant and the Chairperson of the Board of County Commissioners (or such other person to whom signature authority is delegated by the Board of County Commissioners), and countersigned by the Affordable Housing Administrator.

7.2.3. Final Plats. The Final Plat and/or Development Plan shall identify the lots and/or units that are committed for Affordable Housing in accordance with the Affordable Housing Agreement. No final plat shall be recorded until the duly executed Affordable Housing Agreement for the underlying Project or phase thereof is recorded.

7.3. Timing of Compliance. Required Affordable Units or Alternate Means of Compliance shall be provided in a timely fashion, as follows:

7.3.1. Completed Affordable Units shall, at a minimum, be sold in proportion to the sale of unimproved lots or market rate units. This principle shall be reflected in each Affordable Housing Agreement. In developments where the County has approved off-site construction of Affordable Units as an Alternate Means of Compliance, the Affordable Housing Agreement shall specify the timing of delivery of the off-site Affordable Units in relation to completion of the market rate units in the Sending Project and Receiving Project. The Affordable Housing Agreement shall require that off-site Affordable Units be delivered in rough proportion to the completion of market rate units in the Sending and Receiving Projects and provide appropriate remedies for breach of this requirement.

7.3.2. In developments where the County has approved an in-lieu contribution of cash or land as an Alternate Means of Compliance, the in-lieu contribution shall be due and deliverable after approval of the development request and prior to the recording of the Final Plat or Development Plan and the Affordable Housing Agreement. An Applicant

may propose an alternative to this timing requirement as part of the request for Alternate Means of Compliance, subject to approval from the County.

7.4. Non-Compliance. It shall be unlawful for any person to violate any provision of or fail to comply with any of the requirements of the Affordable Housing Ordinance, the Regulations, or Affordable Housing Agreement to which they are subject. Whenever the County finds that any person has violated or is violating a requirement of the Affordable Housing Ordinance, the Affordable Housing Agreement, or Regulations to which they are subject, the County shall issue a written notice of violation. The notice of violation shall:

7.4.1. Set forth the specific violation found.

7.4.2. Establish a specific and reasonable period of time for the correction of the violation found.

7.4.3. State that failure to comply with the notice may result in the County seeking some or all of the remedies set forth in the Affordable Housing Agreement or otherwise available at law or equity.

7.4.4. The notice shall be hand delivered to the Applicant or other person or mailed registered mail, return receipt requested to their last known address.

7.5. Certificate of Compliance with Affordable Housing Agreement.

Upon completion of a Project, the Applicant shall provide the County with the individual Certificates of Qualified Transaction for each Affordable Unit sold and other such documentation necessary to demonstrate that the Applicant has met all obligations established in the Affordable Housing Agreement. Within a reasonable time after receipt of this documentation, the County shall determine if the Applicant has met all obligations under the Affordable Housing Agreement and, if so, shall issue a Certificate of Compliance with Affordable Housing Agreement and, if not, shall issue a notice of violation detailing the violations; provided, however, that, in the event that the County requires additional information to determine the Applicant's compliance with its obligations under the Affordable Housing Agreement, the County shall have a further reasonable time in which to determine whether the Applicant has met all of its obligations.

Article VIII
(Alternate Means of Compliance, Waiver of Affordable Housing Requirements)

8.1. Proposed Off-Site Construction as Alternative Means of

Compliance. The Board of County Commissioners may approve of an Applicant's proposal to build units off-site as an Alternate Means of Compliance only after considering the matters set forth in Section 16(E) of the Affordable Housing Ordinance.

8.1.1. Where an Applicant proposes to build units off-site as an Alternative Means of Compliance, both the Project (the "Sending Project") and the off-site affordable housing project (the "Receiving Project") shall be considered and processed as a single Project, except as provided in Section 8.1.2.

8.1.2. Where an Applicant proposes to build units off-site as an Alternate Means of Compliance but the Receiving Project is to be located within an area governed by the Santa Fe County Exterritorial Zoning Ordinance, Ordinance No. 1997-4, as amended, the Santa Fe County Extraterritorial Subdivision Regulations (1991), or the platting and planning jurisdiction of any municipality (hereinafter referred to collectively as "the Extraterritorial Zone"), the provisions of Section 8.1.2 shall not apply. However, the Receiving Project must receive final development plan and plat approval from the Extraterritorial Zoning Authority or, in areas without an extraterritorial zoning ordinance or regulations, from the appropriate municipality prior to the approval of the final development plan and plat for the Sending Project.

8.1.3. Required Units in the Sending and Receiving Projects. The number of required Affordable Units in the Sending and Receiving Projects shall be based on the total number of units to be constructed or created in both the Sending and Receiving Projects. So, for example, if the Sending Project proposed 15 units and the Receiving Project 10, the Sending and Receiving Project would be considered a Major Project subject to the requirement of providing at least 30% Affordable Housing. Attachment 9 provides the formula and a sample calculation used to determine the required Affordable Units in a Sending and Receiving Project.

8.2. Approval of Cash or Land Donation. -- The Board of County Commissioners may approve of an Applicant's proposal to make a contribution of cash or land as an Alternate Means of Compliance only after considering the matters set forth in Section 16(F) of the Affordable Housing Ordinance.

8.2.1. Determination of Cost for Cash Payment. The default method for approximating the cost of building Affordable Units shall be to sum the Maximum Target Home Prices for the Income Ranges and unit sizes that would have been required pursuant to Article III. Alternatively, an Applicant proposing a cash payment as an alternative means of compliance may seek a determination from the Board of County Commissioners of their actual cost of constructing the required unit sizes. The Applicant bears the burden of proving their actual construction costs and must submit sufficient documentary evidence to do so. Relevant documentary evidence includes, but is not limited to:

8.2.1.1. construction agreements for the construction of comparable units in the Project or other developments within three

- (3) months of the Applicant's request that the Board of County Commissioners determine their actual cost of construction;
- 8.2.1.2. agreements with or invoices from suppliers of necessary materials for the construction of comparable units;
- 8.2.1.3. audited financial statements reflecting the actual cost of constructing comparable units; and/or
- 8.2.1.4. other reliable documentary evidence acceptable to the Board of County Commissioners.

8.2.2. Determination of Value for Land Donation. The total estimated value of the Affordable Units that would have been constructed within the Project shall be determined by summing the Maximum Target Home Prices for the Income Ranges and Unit Sizes that would have been required pursuant to Article III.

8.3. Donation of Land. Where an Applicant proposes to donate land as part of an Alternate Means of Compliance, the Applicant shall provide, at Applicant's cost, to the County an appraisal of the property performed by an MAI certified appraiser acceptable to the County. If the appraised value is less than the value required by Section 8.2.2, the Applicant's proposal shall also include a cash donation for the difference between the appraised value of the land and the value required by Section 8.2.1.

Article IX (Incentives)

9.1. Incentives - Generally. Applicants providing Affordable Units pursuant to the Ordinance and these Regulations shall be eligible for the incentives listed in Sections Eight through Fifteen of the Affordable Housing Ordinance. The incentives actually approved for the Project by the County shall be set forth in the Affordable Housing Agreement. The accounting of applicable incentives for a Project shall be properly documented according to administrative procedures as set forth by the County and as stated in Section 11.

9.2. Density Bonus. If the density bonus calculation set forth in Section 9 of the Affordable Housing Ordinance results in less than a whole bonus unit the result shall be rounded down if the fraction is .5 or less and rounded up if the fraction is more than .5 to determine the allowable number of density bonus units.

Article X (Energy Efficiency Standards and Incentives)

10.1. Applicability. This Article applies whenever a Project wishes to be eligible for incentives for Entry Market Housing Units pursuant to Section 10 of the Affordable Housing Ordinance.

10.2. For Entry Market Units to be eligible for incentives, every market unit and Affordable Unit in the Project (and Receiving project, if Applicable) must be constructed to meet Energy Star standards and receive Energy Star Verification from a third-party using either the HERS Ratings or Builder Option Packages (BOPs).

10.3. An Applicant's agreement to comply with Energy Star standards throughout the Project must be included in the Affordable Housing Agreement or in a separate agreement approved by the Board of County Commissioners.

10.4. The Applicant shall submit Energy Star Verifications from a third-party for each market and Affordable Unit in the Project. The Energy Star Verifications shall be submitted to the Affordable Housing Administrator periodically, but no less frequently than monthly, for each unit completed during the subject period.

Article XI (Internal Control and Audit Requirements)

11.1. Internal Control. The County shall develop and implement procedures to ensure compliance with these Regulations; provide separation of duties where applicable; and safeguard the assets and funds generated from Affordable Housing and related activities.

11.1.1. Affordable Housing Fund. A separate Fund or Trust shall be established pursuant to Section Eighteen of the Affordable Housing Ordinance No. 2006-02 and other regulatory standards, including, but not limited to, GASB, GAAP, and NM 1978, Section 6-27-1 et seq. Proceeds from Affordability Mortgage/Lien and/or related Affordable Housing activity-generated funds shall be deposited and administered pursuant to the rules and requirements of this Fund.

11.2.1. Recording and Accounting. The County shall ensure that all recording and accounting of documentations, transactions, valuation of assets, applicable incentives and relief of fees are performed timely and accurately to ensure compliance with all regulatory requirements.

11.2. Audit Requirements. The Affordable Housing Administrator and/or designee(s) of the County shall periodically, but minimally on an annual basis, conduct a review and internal audit to ensure compliance with these regulations and may conduct site visits to a Project for examination of documentations and/or other related information. The review or internal audit shall include the verification of Affordable Units built within a Project.

11.3. The Use of Third-Party Designees to Establish Buyer Eligibility.

The verification of documentation to establish buyer eligibility shall be strictly adhered to pursuant to these Regulations. Where the County allows third-parties to conduct the verification processes and review buyer eligibility, an agreement with such third-parties must indicate the agent's acknowledgement of and commitment to comply with these Regulations.

**Article XII
(Miscellaneous)**

12.1. Severability. If any term of these Regulations shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of the Regulations shall not be affected and shall be valid and enforceable to the fullest extent of the law.

12.2. Forms. The forms attached to these Regulations are models only. The Affordable Housing Administrator and/or Board of County Commissioners may make appropriate changes to the forms to address the individual circumstances of a particular case or as otherwise needed, so long as such changes do not violate the Affordable Housing Ordinance or these Regulations.

SFC CLERK RECORDED 10/29/2010

A

Attachment 1

SANTA FE COUNTY
AFFORDABLE HOUSING CERTIFICATE OF ELIGIBILITY

The Certificate of Eligibility, issued this ___ day of _____ of 20 __, certifies that _____ (“Eligible or Entry Market Buyers”) meet(s) the criteria for “Eligible Buyers or Entry Market Buyers” established under Article IV of the Santa Fe County Affordable Housing Regulations and are eligible to purchase an Affordable Unit within Income Range ___ and of a size no larger than ___ bedrooms.

Unless there is a change in income or asset status that renders the Eligible or Entry Market Buyers ineligible under the Affordable Housing Regulations, the Certificate of Eligibility shall be valid for a period of six months from the date first written above.

Pursuant to the Affordable Housing Regulations, the Eligible or Entry Market Buyers (and the entity from whom they desire to purchase an Affordable Unit) must immediately notify Santa Fe County Affordable Housing Administrator or the entity issuing this Certificate of Eligibility (if other than the Affordable Housing Administrator) of any change in status (e.g., income or assets) that may make the Eligible or Entry Market Buyer no longer eligible under the criteria established in the Affordable Housing Regulations.

This Certificate of Eligibility is issued by [] the Santa Fe County Affordable Housing Administrator or [] _____, a third-party acting pursuant to a valid agreement with Santa Fe County.

(Signature)

By: _____
(Print Name)

Of: _____
(Print Name of Organization)

Its: _____
(Print Title)

SFC CLERK RECORDED 10/28/2015

SANTA FE COUNTY
AFFORDABLE HOUSING CERTIFICATE OF QUALIFIED TRANSACTION

This Certificate of Qualified Transaction is issued this ___ day of ____, 20__ to _____ (“Applicant”) pursuant to Article VI of the Affordable Housing Regulations (“Regulations”). The Santa Fe County Affordable Housing Administrator hereby certifies that the sale of the Affordable Unit on Lot ____, Block ____, Unit ____, of the _____ (name of subdivision or development) to _____ (name of Eligible Buyer(s)) is a Qualified Transaction as defined in Article VI, Section 6.1.4 of the Regulations.

Santa Fe County Affordable Housing Administrator

By: _____

SFC CLERK RECORDED 18/28/2018

SANTA FE COUNTY
AFFORDABLE HOUSING CERTIFICATE OF COMPLIANCE

This Certificate of Compliance is issued this ___ day of _____, 20__ to _____ (“Applicant”) pursuant to Article VI of the Affordable Housing Regulations (“Regulations”). The Santa Fe County Affordable Housing Administrator hereby certifies that _____ (name of Applicant) has met its obligations under the Regulations and the Affordable Housing Agreement dated _____ and executed by the Applicant.

Santa Fe County Affordable Housing Administrator

By: _____

SFC CLERK RECORDED 10/28/2010

SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
SAMPLE CALCULATION – REQUIRED INCOME RANGE DISTRIBUTION AND
RESIDUAL FEE

Section 3.1 requires that Affordable Units in Major Projects be distributed evenly between Income Ranges 1, 2, 3 and 4.

For purposes of example, following is a sample calculation of the required Affordable Units in each Income Range and the Residual Fee. Example: Major Project proposing a total of 74 units:

1. Total number of all units to be built in development	74
2. Multiply number from line 1 by 30%	22.2
3. If line 2 contains a fractional unit greater than .5, round up. An additional unit is required, and no Residual Fee is required. If the fraction is .5 or less, round down and complete the Residual Fee calculation below. Enter the whole number result after rounding:	22
4. Determine how many units are required in each applicable Income Range. Divide number from line 3 by 4. If that division yields fractional units, round down and enter the whole number result in each of the following Income Ranges:	
4a. Income Range 1:	5
4b. Income Range 2:	5
4c. Income Range 3:	5
4d. Income Range 4:	5
5. If the total of lines 4a, 4b, 4c and 4d does not equal the total required from line 3, add one unit at a time to each Income Range in the following order until the total equals the total required from line 3: Income Range 1, Income Range 2, and Income Range 3. Enter the new totals on lines 5a, 5b, 5c, and 5d. This is the total number of Affordable Units that must be provided in each Income Range.	
5a. Income Range 1:	6
5b. Income Range 2:	6
5c. Income Range 3:	5
5d. Income Range 4:	5
Residual Fee Calculation	
(To be completed only if the fractional residual from line 2 was .5 or less.)	
6. Enter fractional residual from line 2.	.2
7. Determine base residual fee; i.e., one-half (1/2) the average Maximum Target Home Price for the Income Range for which an Affordable Unit would have been required to be built if the fractional residual from line 2 was greater than 0.5.	
7a. Enter Income Range for which an Affordable Unit would have	Income

been required to be built if the fractional residual from line 2 were 0.5 or higher:	Range 3
7b. Determine average Maximum Target Home Price for Income Range by (i) summing the Maximum Target Home Prices in the Income Range indicated in line 7a for a Studio, 1 Bedroom House, 2 Bedroom House, 3 Bedroom House, and 4 Bedroom House and (ii) dividing that sum by 5 to yield an average:	\$142,795.80 ¹
7c. Multiply line 7b by one-half (1/2) to yield base residual fee:	\$71,397.90
8. Determine Residual Fee. Multiply the fraction from line 6 times the base residual fee in line 7c. This is the total Residual Fee that is owed:	\$14,279.58

*Section 3.1.1.3.1 provides the basis for the Residual Fee calculation

SFC CLERK RECORDED 10/28/2018

¹ Assumes the following Maximum Target Home Prices for the indicated unit type within Income Range 3:

Unit Type	Maximum Target Home Price
Studio	\$114,219
1 Bedroom	\$123,480
2 Bedroom	\$141,120
3 Bedroom	\$158,760
4 Bedroom	\$176,400

SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
ADJUSTMENT OF MAXIMUM TARGET HOME PRICE FOR HOMEOWNERS
ASSOCIATION FEES OR CONDOMINIUM FEES

Article III, Section 3.2.2 of the Regulations provides that, in the event that the homeowners' association fee, condominium fee, and/or common area fee applicable to the Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Home Price shall be reduced so that the buyer's mortgage loan principal amount is reduced by the amount of the monthly fee(s) that exceeds \$100.

Following is a sample calculation of how the Maximum Target Home Price is adjusted to account for such fees, using a 3 bedroom home in Income Range 3 with an \$200.00 monthly Home Owner's Association ("HOA") fee as an example:

1. Determine Maximum Target Home Price for applicable Income Range:	\$180,000
2. Using Mortgage Calculator, determine Principle and Interest Payment (pursuant to Section 3.2.5.1, assume a 6% fixed annual percentage rate and a 30 year amortizing loan):	\$1,079
3. Reduce Principle and Interest Payment by the portion of the monthly HOA fee exceeding \$100.00:	\$979
4. Using Mortgage Calculator, determine Maximum Target Home Price using payment from line 3 and assumptions from line 2. This is the Adjusted Maximum Target Home Price.	\$163,320

SEC. CLERK RECORDED 10/28/2010

SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
SAMPLE CALCULATION – HOUSING EXPENSE RATIO

Article III, Section 3.2.5 provides that Maximum Target Home Prices are established to achieve a housing expense ratio of approximately 33% for a family with the assumed household size and the lowest income in each Income Range.

Section 3.2.5.1 provides the following assumptions used to determine the housing expense ratio:

Assumed household sizes:

<i>Unit Size</i>	<i>Assumed household size</i>
1 Bedroom	1 person
2 Bedroom	2 person
3 Bedroom	3 person
4 Bedroom	4 person

Interest rate: 6.0%

Term of loan: 30 years

Private mortgage insurance: 0.057% of home price per month

Hazard insurance: 0.0283% of home price per month

Taxes: 0.0467% of home price per month

For purposes of example, following are steps used to determine the housing expense ratio. **Example:** 3 bedroom home in Income Range 2.

- a. Determine Home Size: 3 Bedroom
- b. Determine Applicable Income Range: Income Range 2 (more than 65% but not more than 80%)
- c. Determine Home Price (from Attachment 12): \$146,000
- d. Determine Assumed Household size: 3 person
- e. Determine median income for 3 person household (as established by the Affordable Housing Administrator): \$59,400
- f. Determine lowest income for applicable Income Range: $65\% \times \$59,400 = \$38,610$
- g. Determine monthly income: $\$38,610 / 12 = \$3,217.50$

- h. Determine Principal and Interest Payment (using mortgage payment calculator): \$875
- i. Determine Private Mortgage Insurance $0.057\% \times \$146,000 = \83
- j. Determine Hazard Insurance: $0.0283\% \times \$146,000 = \41
- k. Determine taxes: $0.0467\% \times \$146,000 = \68
- l. Determine total monthly payment: $\$875 + \$83 + \$41 + \$68 = \$1,067$
- m. Determine housing expense ratio: $\$1,067 / \$3,217.50 = 33\%$

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**SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
SAMPLE CALCULATION – REQUIRED UNIT MIX**

Section 3.2.7.1 requires the mix of unit types in a Project be determined in accordance with the following formula (unless a different mix is approved by the Affordable Housing Administrator):

Unit Size	Required percentage of Affordable Units
Studio, 1 Bedroom and 2 Bedroom	25%
3 Bedroom	50%
4 Bedroom	25%

For purposes of example, the following is a sample calculation of the required unit mix within Income Level 1. Example: Major Project proposing (i) 125 total units and (ii) 37 Affordable Units, 10 of which are required to be within Income Level 1.

1. Total number of required Affordable Units in Income Level 1	10
2. Required distribution: Apply the following percentages to the total from line 1 to determine the required number of units of each type. If a fraction results, round up for .5 or over, round down for under .5	
2a. Studio/One bedroom/Two Bedroom. 25% x Line 1	3
2 b. Three Bedroom: 50% x Line 1	5
2 c. Four Bedroom: 25% x Line 1	3
3. The sum of lines 2a, 2b, and 2c should equal the total from Line 1. If this total is greater than the total from line 1, drop one unit from Line 2a (Studio/One Bedroom/Two Bedroom). If the new total is still greater than the total from line 1, drop one unit from line 2c (Four Bedroom). Enter new totals on lines 3a, 3b and 3c. This is the required distribution of unit sizes that must be provided, unless an alternate distribution is approved by the Affordable Housing Administrator.	
3a. Studio/One Bedroom/Two Bedroom	2
3b. Three Bedroom	5
3c. Four Bedroom	3

Repeat Calculation for Each Income Level.

SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
 SAMPLE CALCULATION – DETERMINATION OF COUNTY AFFORDABILITY
 MORTGAGE/LIEN AND APPRECIATION SHARE

Article V of the Regulations requires an Affordability Mortgage/Lien in favor of the County be created on the sale of an Affordable Unit to an Eligible or Entry Market Buyer. Article V also requires that the Affordability Mortgage/Lien provide for the County to share in any Appreciation on an Affordable Unit that is sold during the ten year period beginning on the date of such sale.

Following, for purposes of example, is a sample calculation of the determination of the County Lien and the appreciation share. **Example:** 3 Bedroom Home purchased by Eligible Buyer in Income Range 3 at a hypothetical Maximum Target Home Price of \$175,000 and resold 4 years later, assuming the hypothetical initial appraised value and resale values indicated.

Determine Initial Affordability Lien

1. Determine Maximum Target Home Price: \$175,000
2. Determine appraised value of Affordable Unit: \$250,000
3. Determine 95% of appraised value ($\$250,000 \times 95\%$): \$237,500
4. Determine initial amount of Affordability Lien ($\$237,500 - \$175,000$): \$62,500

This amount is payable to the County upon sale of the home regardless of how long the eligible owner owns the home.

Determine County's Percent of Appreciation Share

Appreciation shall be determined by dividing Line 4 (initial amount of Affordability Lien) by Line 2, the Initial appraised value = 25%

5. Resale Price of Affordable Unit: \$275,000
6. Subtract line 2 from line 5 to determine Gross Appreciation
7. Subtract Eligible Capital Improvements
8. Multiply line 6 by 5%. This is the deduction from gross appreciation for seller-paid closing costs and commissions.
9. Subtract lines 7 and 8 from line 5, this is the Net Appreciation
10. Multiply line 9 by line 4; this is the County's Share of Net Appreciation
11. Determine the County's Lien Amount
12. Add line 10 and line 3, this is the County's Lien Amount due to the County upon sale or transfer of title.

SANTA FE COUNTY AFFORDABLE HOUSING REGULATIONS
 SAMPLE CALCULATION – AFFORDABLE UNITS REQUIRED IN AN OFF-SITE
 PROJECT

Section 16 of the Affordable Housing Ordinance allows an Applicant to request approval to construct Affordable Units off-site as an Alternate Means of Compliance. Section 16 of the Affordable Housing Ordinance and Section 8.2.2 of the Affordable Housing Regulations require that the number of required Affordable Units be calculated based upon the total number of units in the Sending and Receiving Projects combined.

The following formula is used to determine the required number of Affordable Units:

S = Number of Units in Sending Project

R = Number of Units in Receiving Project

T= Total Number of Units in Sending Project and Receiving Project (prior to density bonus)

A = Number of Required Affordable Units in Sending and Receiving Projects

$S+R=T$

A = .30T or .16T (depending upon whether the Sending and Receiving Project, considered as a single Project, is a Major or Minor Project)

For purposes of example, following is a sample calculation of the number of Affordable Units required in a Sending and Receiving Project. Example: Applicant proposes off-site construction of Affordable Units and proposes 100 units in the Sending Project and 100 units in the Receiving Project.

S = 100

R = 100

T=S+R

T=200

A=.30T

A=60

SFC CLERK RECORDED 10/28/2010

[RESERVED]

SFC CLERK RECORDED 10/28/2018

SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (the "Agreement") is entered into as of this ____ day of _____, 200__, by and between _____, a New Mexico [insert type of business entity], with its principal place of business at [insert address] (the "Applicant"), and Santa Fe County (the "County").

RECITALS

WHEREAS, the Applicant has requested approval of a ____ parcel subdivision to be located at _____, within central or northern Santa Fe County (the "Project"); and

[WHEREAS, the Project is to be completed in phases, with Phase I having received Final Plat approval; and]

WHEREAS, Santa Fe County Ordinance No. 2006-02 ("Ordinance") requires, among other things, the Applicant to provide Affordable Units within the Project and/or comply with the Ordinance through alternative means; and

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to implement the Ordinance; and

WHEREAS, pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan, which was approved by the Affordable Housing Administrator, and

WHEREAS, Applicant and the County desire to memorialize the Applicant's obligations under the Ordinance and Regulations.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. **Definitions.** All capitalized terms herein have the same meanings given them in the Ordinance and Regulations.

2. **Required Affordable Units and Lots.** Applicant agrees to cause to be built and sold to Eligible Buyers and Entry Market Buyers the following Affordable Units within Phase [] of the Project for the Maximum Target Housing Price indicated:

Lot Number	Income Range of	Affordable Unit	Maximum Target
------------	-----------------	-----------------	----------------

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(Per Final Plat Attached Hereto as Exhibit A)	People to Whom Affordable Unit May be Sold	Type	Housing Price
(E.g., 4A)	(E.g., Income Range 1)	(E.g., Studio)	(E.g., \$100,000)

All Affordable Units shall meet the minimum structural requirements, minimum bathrooms and floor area, and other requirements set forth in the Regulations.

The Maximum Target Home Prices set forth above shall be valid for one year following execution of the Agreement, and shall be adjusted annually thereafter to the then current Maximum Target Home Prices established by the Affordable Housing Administrator.

3. Development Schedule. The development schedule for the Project and individual Phases shall be such that the number of constructed Affordable Units bears the same proportion to the number of constructed market units as the total number of required Affordable Units bears to the total number of approved market units. For example, in a 100 parcel subdivision in which 30 units are required to be affordable, three Affordable Units must be constructed for every 10 market units constructed.

[This requirement also applies to Applicants proposing to provide Affordable Units outside the Project but within central and northern Santa Fe County as an alternative means of compliance.]

4. Integration of Affordable Units and Affordable Lots in the Project. The County agrees that the Affordable Units and Lots are integrated into the Project [and individual Phases] as required by the Ordinance and Regulations.

5. Final Plat Recordation. This Affordable Housing Agreement must be filed and recorded simultaneously with the Final Plat for the Project or the phase to which this Agreement relates. Should the Final Plat be filed and recorded without this Affordable Housing Agreement, such filing and recordation shall be null and void and without any legal effect.

6. Marketing Plan. In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units in the following manner:

- Print Advertising.
- Flyers and Other Promotional Media.
- Listings Entities Designed to Assist First Time Homebuyers.
- Broker Listings.

[Details of these and other marketing efforts shall be specified.]

7. Incentives. In consideration of Applicant's obligations hereunder and in accordance with the Ordinance, County has agreed to provide the following incentives to Applicant:

- A. Density Bonus. County agrees to grant Applicant a density bonus of (i) _____ units for the provision of the Affordably Priced Housing Units identified in

Paragraph 2 hereof and (ii) ___ units for the provision of the Entry Market Housing Units identified in Paragraph 2 hereof, for a total density bonus of ___ units over and above the number of units it would have otherwise been entitled to under the Santa Fe County Land Development Code.

B. Relief from Development Fees. County agrees to waive all development fees for each Affordably Priced Housing Unit [and Entry Market Housing Unit] to be provided by Applicant hereunder.

C. Relief from Additional County Water Utility Connection Charge. County agrees to waive any additional water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units [and Entry Market Housing Unit] to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve Applicant of any obligation it may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units [and Entry Market Housing Units].

D. Water for Affordably Priced Housing Units. County agrees to supply the Affordably Priced Housing Units and Entry Market Housing Units identified in Paragraph 2 above with water, including all necessary water rights. [If the County is unable to supply all of the Affordably Priced Housing Units, specifically identify the units it can supply.]

E. Energy Efficiency Measures. Applicant agrees to provide the following energy efficiency measures within the Project as a whole:

[detail energy efficiency measures]

- 1.
- 2.
- 3.

Pursuant to § 10 of the Ordinance, these energy efficiency measures allow Applicant to earn incentives it otherwise would not be eligible for on Entry Market Housing Units, which incentives are reflected in subparagraphs A through D hereof.

8. Successors, Assigns, and Buyers of Affordable Lots. Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Paragraph 2 and in Exhibit A is transferred. Applicant agrees to provide County with ten (10) business days' advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer or Entry Market Buyer, such notice to include a copy of the sales contract or other agreement by which such third party shall irrevocably assume Applicant's obligations hereunder with respect to such Affordable Lot. County shall have the right to (i) request further assurances that Applicant's obligations with respect to the Affordable Lot are being assumed by the transferee; (ii) require changes to the portion of the sales contract or other agreement concerning the transferee's assumption of Applicant's obligations; and (iii) attend the closing of the transfer to assure that the sales contract or other agreement whereby the transferee assumes Applicant's obligation is executed.

9. Closing of Qualified Transactions.

A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, MAI certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (ii) have been prepared within the previous 6 months.

B. Recordation of Affordability Mortgage or Lien. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD 1) for the Qualified Transaction, signed by the seller, purchaser and mortgagee.

7. **Remedies.** Applicant acknowledges and agrees that, but for this Affordable Housing Agreement, County would not have approved the final plat for the Project or the phase of the Project to which this Affordable Housing Agreement relates. Applicant further acknowledges and agrees (i) that, because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and non-feasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, is to pay County the Maximum Target Home Price for those units, so as to enable County to provide affordable housing elsewhere. Accordingly, County shall be entitled to the following remedies for the indicated breaches by Applicant of this Affordable Housing Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

A. Selling Homes on Affordable Lots to Non-Eligible Buyers or Non-Entry Market Buyers: In the event Applicant sells homes built on Affordable Lots to someone other than an Eligible Buyer or Entry Market Buyer, County shall be entitled to:

- (i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- (ii) refuse to grant preliminary or final plat approval for any future phase of the Project;

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(iii) collect all development fees and water connection charges that were waived, pursuant to Paragraph 7(B)-(C) of this Affordable Housing Agreement, for each house on an Affordable Lot Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;

(iv) collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be; and/or

(iii) collect as damages the Maximum Target Home Price for each Affordable Unit that Applicant was required to build on the Affordable Lot that it improperly sold to a non-Eligible Buyer or non-Entry Market Buyer, such damages to be paid into the fund or trust established pursuant to Section 18(G) of the Ordinance.

B. Breach of Agreement to Provide Energy Efficiency Measures. In the event Applicant fails to provide the energy efficiency measures identified in Paragraph 7(E) throughout the entire project, County shall be entitled to:

(i) an injunction from a Court of competent jurisdiction requiring Applicant to comply with its energy efficiency obligations;

(ii) refuse to grant preliminary or final plat approval for any future phase of the Project; and/or

(iii) collect as damages 20% of the average price of market units in the Project or phase that this Affordable Housing Agreement relates to times the number of units the Applicant received as a density bonus for agreeing to provide the energy efficiency measures, such damages to be paid into the fund or trust established pursuant to Section 18(G) of the Ordinance. For example, if the Applicant got a density bonus of 3 units for providing energy efficiency measures throughout the Project as a whole and the average price of market units in the Project or phase was \$400,000, County could collect as damages \$240,000.

C. Failure to Timely Build Affordable Units. In the event the Applicant fails to time build Affordable Units, the County shall be entitled to:

(i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder; and/or

(ii) refuse to grant preliminary or final plat approval for any future phase of the Project.

8. Miscellaneous Provisions

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by 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.

B. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations and the Laws of the State of New Mexico.

C. 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.

D. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to the development.

F. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Affordable Housing Agreement as of this ____ day of _____, 200__.

APPLICANT:

By: _____
Its: _____

SANTA FE COUNTY

APPROVED AS TO FORM:

_____, Chairperson
Board of County Commissioners

County Attorney

SANTA FE COUNTY AFFORDABLE
HOUSING ADMINISTRATOR

SFC CLERK RECORDED 10/28/2010

**Santa Fe County Affordable Housing
Income Ranges and Maximum Target Home Prices**

The Regulation's definition of Area Median Income recognizes that there may be a discrepancy between the AMI established by the United States Department of Housing and Urban Development ("HUD") and the AMI inferred from HUD's actual income limits. In that event, the Regulations provide that the AMI, adjusted for various household size, inferred from HUD's actual income limits shall be used to establish the Income Ranges and Maximum Target Home Prices in the Regulations. Using the AMI inferred from HUD's actual income limits for FY 2010, current as of May 30, 2010, the following are the Income Ranges for the indicated household sizes within each Income Range:

Income Range	Income Ranges for Indicated Household Size							
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
1	\$0 to \$30,030	\$0 to \$34,320	\$0 to \$38,610	\$0 to \$42,900	\$0 to \$46,330	\$0 to \$49,765	\$0 to \$53,175	\$0 to \$56,630
2	\$30,031 to \$36,950	\$34,321 to \$42,250	\$38,611 to \$47,500	\$42,901 to \$52,800	\$46,331 to \$57,000	\$49,766 to \$61,250	\$53,176 to \$65,450	\$56,631 to \$69,700
3	\$36,951 to \$46,200	\$42,251 to \$52,800	\$47,501 to \$59,400	\$52,801 to \$66,000	\$57,001 to \$71,280	\$61,251 to \$76,560	\$65,451 to \$81,840	\$69,701 to \$87,120
4	\$46,191 to \$55,450	\$52,801 to \$63,350	\$59,401 to \$71,300	\$66,001 to \$79,200	\$71,281 to \$85,550	\$76,561 to \$91,850	\$81,841 to \$98,200	\$87,121 to \$104,550

Based upon the above Income Ranges, the following are the current Maximum Target Home Prices for the different unit sizes:

Income Range	Maximum Target Home Price Studio	Maximum Target Home Price 1 Bedroom	Maximum Target Home Price 2 Bedroom	Maximum Target Home Price 3 Bedroom	Maximum Target Home Price 4 Bedroom
Income Range 1	\$84,750	\$92,000	\$105,250	\$118,250	\$131,500
Income Range 2	\$112,500	\$119,500	\$136,750	\$153,750	\$170,750
Income Range 3	\$140,500	\$147,250	\$168,250	\$189,250	\$210,250
Income Range 4	\$176,750	\$184,000	\$210,250	\$236,500	\$262,750

**DETERMINATION OF VALUE OF CASH PAYMENT OR LAND DONATION
AS ALTERNATIVE MEANS OF COMPLIANCE**

Pursuant to Section 8.2, below is a sample of how to calculate the required value of cash payment and/or land donation as an alternative means of compliance with the affordable housing requirements:

Proposed 100 Dwelling Unit Project

Total Affordable Units Required: 30

Income Range 1:	8
Income Range 2:	8
Income Range 3:	7
Income Range 4:	7

<i>Income Range</i>			<i>Maximum Target Home Price 2 Bedroom</i>	<i>Maximum Target Home Price 3 Bedroom</i>	<i>Maximum Target Home Price 4 Bedroom</i>
Income Range 1	8		(2)\$100,000	(4)\$112,000	(2)\$125,000
Income Range 2	8		(2)\$130,000	(4)\$146,000	(2)\$162,000
Income Range 3	7		(1)\$160,000	(4)\$180,000	(2)\$200,000
Income Range 4	7		(1)\$200,000	(4)\$225,000	(2)\$250,000

Selection of an affordable unit mix is subject to change, based on various factors, including the overall design and unit mix in a Project. The following example uses the default mix provided in the Regulations, with the additional assumption that no market rate studios or 1 Bedroom Units were proposed in the Project and, thus, will not be built as Affordable Units:

1. Pursuant to Section 3.2.7.1 of the Regulations, a project must provide 25% of 2 Bedroom Units, 50% of 3 Bedroom Units, and 25% of 4 Bedroom Units within each Income Range as a general mix.
2. In determining the mix amongst income ranges, this example assumes the following:
 - For Income Ranges 1 & 2, select (2) 2-Bedrooms, (4) 3-Bedroom units and (2) 4-Bedrooms each.
 - For Income Range 3, select (1) 2-Bedrooms, (4) 3-Bedroom units and (2) 4-Bedrooms.
 - For Income Range 4, select (1) 2-Bedrooms, (4) 3-Bedroom units and (2) 4-Bedrooms.
3. Total of Maximum Target Home Prices based on above mix:

$$2 \times \$100,000 + 4 \times \$112,000 + 2 \times \$125,000 +$$

$$2 \times \$130,000 + 4 \times \$146,000 + 2 \times \$162,000 +$$

$$1 \times \$160,000 + 4 \times \$180,000 + 2 \times \$200,000 +$$

$$1 \times \$200,000 + 4 \times \$225,000 + 2 \times \$250,000 = \qquad \qquad \qquad \$4,946,000$$
4. Total Cash and/or Property Due as Alternative Means of Compliance: \$4,946,000

**AFFORDABILITY LIEN,
OPTION TO PURCHASE,
AND APPRECIATION SHARE LIEN**

SANTA FE COUNTY AFFORDABLE HOUSING PROGRAM

AFFORDABILITY LIEN

_____, Husband and Wife, _____, Santa Fe, New Mexico 87508 (address) (hereinafter referred to as "the Buyer" or "Buyer"), pursuant to Santa Fe County Ordinance No. 2006-02 (as amended)(the Santa Fe County Affordable Housing Ordinance), grants to Santa Fe County, a political subdivision of the State of New Mexico, whose address is 102 Grant Avenue, Santa Fe, New Mexico, 87504, a lien on the property described on Exhibit A hereto (hereinafter referred to as "the Property") in the amount of the difference between the Maximum Target Housing Price as defined in Ordinance No. 2006-02 and ninety-five percent of the unrestricted fair market value of the Property at the time of initial sale, as determined by an appraisal approved by the County (hereinafter referred to as "the Affordability Lien"). The Maximum Target Housing Price of the Property is: \$ _____. Ninety-five percent of the unrestricted fair market value of the Property at the time of initial sale is: \$ _____. The amount of the Affordable Lien is: \$.00.

OPTION TO PURCHASE

Buyer also grants to Santa Fe County an irrevocable option to purchase the Property, or the right to broker resale of the Property pursuant to the Santa Fe County affordable housing program to an eligible or entry market buyer, at the-then fair market value of the Property. The Buyer shall provide the County with fifteen (15) days written notice of Buyer's intent to sell the Property during which period the County may indicate its intent to purchase the Property or broker a purchase and sale of the property to an eligible buyer. The County shall have an additional sixty (60) days after it has notified the Buyer of its intent to purchase the Property or broker a purchase and sale of the Property to complete the purchase or brokerage and sale of the Property.

APPRECIATION SHARE LIEN

Buyer also grants to Santa Fe County a share in the appreciation of the Property, as follows: If the Property is sold or refinanced during the ten-year period beginning on the date of sale of the Property to the Buyer, the County shall share in the resulting appreciation, if any, by subtracting the number of whole years that elapsed since the sale of the Property to the Buyer from ten (10), multiplying that result by 0.10, and multiplying that result by the proposed sale price (if a sale) or fair market value of the Property (if refinancing). If the sale price is insufficient to close the transaction and satisfy this affordability lien, the County's share in the resulting appreciation shall be reduced according to the methodology set forth in Santa Fe County Ordinance No. 2006-02 (as amended) and the County's Affordable Housing Regulations.

SFC CLERK RECORDED 10/28/2010

State of New Mexico)
) ss.
County of Santa Fe)

Acknowledgements

The instruments contained within this document, the Affordability Lien, the Option to Purchase, and the Appreciation Share Lien, all running in favor of Santa Fe County, were signed by _____ and acknowledged before me this ____ day of _____.

Notary Public

My commission expires:

SFC CLERK RECORDED 10/28/2010

EXHIBIT A

[INSERT DESCRIPTION OF PROPERTY]

SFC CLERK RECORDED 10/28/2010

**AFFORDABILITY LIEN,
OPTION TO PURCHASE,**

SANTA FE COUNTY AFFORDABLE HOUSING PROGRAM

AFFORDABILITY LIEN

_____ (Borrower), _____, Santa Fe, New Mexico _____
(address) (hereinafter referred to as "the Buyer" or "Buyer"), pursuant to Santa Fe County Ordinance No. 2006-02 (as amended)(the Santa Fe County Affordable Housing Ordinance), grants to Santa Fe County, a political subdivision of the State of New Mexico, whose address is 102 Grant Avenue, Santa Fe, New Mexico, 87504, a lien on the property described on Exhibit A hereto (hereinafter referred to as "the Property") in the amount of the difference between the Maximum Target Housing Price as defined in Ordinance No. 2006-02 and ninety-five percent of the unrestricted fair market value of the Property at the time of initial sale, as determined by an appraisal approved by the County (hereinafter referred to as "the Affordability Lien"). The Maximum Target Housing Price of the Property is: \$ _____ .00. Ninety-five percent of the unrestricted fair market value of the Property at the time of initial sale is: \$ _____ .00. The amount of the Affordable Lien is: \$ _____ .00.

OPTION TO PURCHASE

Buyer also grants to Santa Fe County an irrevocable option to purchase the Property, or the right to broker resale of the Property pursuant to the Santa Fe County affordable housing program to an eligible or entry market buyer, at the-then fair market value of the Property. The Buyer shall provide the County with fifteen (15) days written notice of Buyer's intent to sell the Property during which period the County may indicate its intent to purchase the Property or broker a purchase and sale of the property to an eligible buyer. The County shall have an additional sixty (60) days after it has notified the Buyer of its intent to purchase the Property or broker a purchase and sale of the Property to complete the purchase or brokerage and sale of the Property.

State of New Mexico)
) ss.
County of Santa Fe)

Signature of Buyer

Acknowledgements

The instruments contained within this document, the Affordability Lien, the Option to Purchase, and the Appreciation Share Lien, all running in favor of Santa Fe County, were acknowledged before me this ___ day of _____, 2009.

Notary Public

My commission expires: _____

SFC CLERK RECORDED 10/28/2010

EXHIBIT A

[INSERT DESCRIPTION OF PROPERTY]

SFC CLERK RECORDED 10/28/2010