

ADMINISTRATIVE PROCEDURES MANUAL

FOR CITY OF DURANGO

FAIR SHARE REQUIREMENTS

Adopted by Durango City Council December 2, 2009

Amended by City Council, February 2, 2010

Amended by City Council, March 1, 2011

Amended by City Council, August 21, 2012

TABLE OF CONTENTS

1. Purpose	2
2. Authority	2
3. Scope	2
4. Responsibility for Administration	3
5. Applicability	5
6. Definitions	7
7. Fair Share Proposals and Agreements	9
8. Requirements for Providing Fair Share Homes	12
9. Requirements for Rental Housing	22
10. Timing of Compliance	23
11. Alternative Means of Compliance	23
12. In-Lieu Contributions	24
13. Qualifying and Certifying Homebuyers	24
14. Resale Controls and Subsidy Recapture Requirements	24
15. Cost Offsets for Fair Share Developers	25

APPENDICES

A. Eligible Incomes of Fair Share Homebuyers	27
B. Fair Share Home Prices	27
C. Price Adjustments for Green Building Features	27
D. Detailed Requirements Marketing and Sales of Homes & Subsidy Recapture	28
E. Allowable Alternative Means of Compliance	33
F. In-Lieu Contribution Amounts	34
G. Policies and Procedures for Land Donations	35

1. PURPOSE

The City of Durango has enacted Fair Share housing requirements under Article 17 of Chapter 27 of its Code of Ordinances to establish policies requiring that certain types of new residential developments include a share of affordable and attainable housing or provide alternative means of compliance, as described herein. Recent studies of the local housing market have indicated a severe and increasing shortage of affordable and attainable housing, as well as the need for an increased supply of affordable-attainable housing to maintain quality of life and economic potential for citizens and businesses in Durango. “Affordable” housing is defined as housing affordable to households with incomes at or below 80 percent of area median income (adjusted for household sizes). “Attainable” housing is defined as housing affordable to households with incomes above 80 percent of area median income but not exceeding 125 percent of area median income (adjusted for household sizes). In accordance with Article 17, the purpose of the Manual is to provide detailed guidance on the administration, implementation and enforcement of Fair Share Requirements. It is anticipated that this Manual may be amended from time to time by resolution of the City Council in response to changed housing market conditions and opportunities to increase the efficiency and effectiveness of administering the provisions of Article 17.

2. AUTHORITY

The City enacted Article 17 pursuant to the express statutory authority conferred upon Colorado municipalities to enact ordinances pursuant to its police power [C.R.S., §§31-15-401, et seq.], to enact zoning ordinances in general [C.R.S., §31-15-103], to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land [C.R.S., §31-23-301], and pursuant to any and all such other authority as may be applicable including but not limited to the City’s home rule authority pursuant to Article XX of the Colorado Constitution, as well as the recognized authority of the City to protect the general welfare of its citizens. The provisions of Article 17 are adopted pursuant to the City’s home-rule power and authority under its municipal charter which was adopted effective November, 1978 and thereafter amended April, 1987; April, 1993; and April, 1997.

3. SCOPE

Article 17 sets forth policies governing the following actions by applicants, Developers, possible successors in title, city staff and boards, and program administrators related to development, marketing, sales and operation of certain real estate developments that are residential in whole or in part, including:

- 3.1. Submission and review of applicable residential development proposals and determining conditions of approval related to the provision of Fair Share Homes or alternate means of compliance.

3.2. Preparation, review, approval and execution of Fair Share Agreements between property owners and the city to ensure compliance with Article 17.

3.3. Monitoring the performance of property owners subject to such agreements, and any successors in title that are subject to such agreements or other requirements of Article 17 and taking appropriate action in the event of noncompliance.

4. RESPONSIBILITY FOR ADMINISTRATION

4.1. Regional Housing Alliance of La Plata County (“RHA”): RHA was created by the City and other local jurisdictions in La Plata County as a new unit of local government to plan, start up, finance and administer certain initiatives for the purpose of creating affordable and attainable housing. RHA is designated by Article 17 as being responsible for fulfilling all administrative functions of the requirements of Article 17, except for those which are specifically described as functions of the City Council, the City Manager, City Departments, or boards. RHA’s functions are as follows:

4.1.1. Fulfilling all administrative functions of Fair Share except for those which are specifically described as the responsibilities of the City Council, the City Manager, City departments, and boards.

4.1.2. Providing forms, information, technical assistance and certifications with regard to compliance with the Fair Share ordinance.

4.1.3. Assisting applicants in completing Fair Share Proposals (to be executed as Fair Share Agreements with the City if approved) that provide for affordable and attainable homes being built on-site in accordance with Fair Share provisions.

4.1.4. Assisting applicants in completing draft Fair Share Proposals that provide for alternative means of compliance, but only if directed to do so by the City Council.

4.1.5. Recommending to the City Manager approval of Fair Share Proposals and their incorporation into Fair Share Agreements with the City.

4.1.6. Ensuring that homebuyers benefiting from Fair Share are certified as eligible under Fair Share.

4.1.7. Monitoring compliance with Fair Share Agreements and reporting instances of noncompliance to the City Manager and appropriate City Departments.

4.1.8. Periodically revising Fair Share Home Prices, homebuyer income requirements, forms, and standard language for agreements as required for effective functioning of the Fair Share program.

4.1.9. Performing other functions not specifically described in the Fair Share Program or these Administrative Procedures, but essential for successful administration of Fair Share and within the powers and abilities of the department, so long as RHA has the legal, financial, technical and staffing capability to perform them.

4.1.10. RHA responsibilities do not include or supersede those responsibilities of the City Council, City Manager, City departments or boards as described herein or provided for by law or regulation.

4.2. Planning and Community Development Department: This City department shall be responsible for the following functions with regard to administration of the Fair Share Program:

4.2.1. Administering those parts of the Fair Share Program that permit or require the City to approve waivers or subsidies of certain fees that the City normally imposes on residential development.

4.2.2. Requiring that applicants work with the RHA to prepare Fair Share Proposals for submission to the City as a part of the development review process and prior to review of development applications and/or plans by the review body.

4.2.3. Where applicable and upon the City Manager's instruction, invoking sanctions for noncompliance with Fair Share Agreements.

4.2.4. Performing other functions described as the responsibility of the Planning and Community Development Department in the Fair Share ordinance or these administrative procedures.

4.3. City Attorney's Office: This office or its agent shall be responsible for the following functions with regard to administration of Fair Share:

4.3.1. Providing legal assistance when requested by the Planning and Community Development Department, Planning and Land Use Department, or City Manager. (RHA requests for legal assistance shall be made to the Planning and Community Development Department.)

4.3.2. Assisting in preparation, review and execution of Fair Share Agreements based on Fair Share Proposals from applicants that have been drafted and recommended for approval by RHA.

4.3.3. Pursuing such legal actions as may be necessary to enforce agreements, if such actions are permitted by common law, state statutes, any ordinance and or any agreement.

4.4. Planning Commission: This City commission shall be responsible for reviewing and making recommendations to the City Council with regard to Fair Share Proposals, as part of the Commission's normal process of reviewing development proposals.

4.5. City Council: The City Council shall be responsible for reviewing, and approving or denying, Fair Share Agreements as part of its normal approval process for land use approvals. In so doing, the City Council shall take into account the recommendations of the RHA and Planning and Community Development Department, and shall not withhold approval for any proposal for the provision of affordable or attainable housing that complies with the requirements of Article 17. The City Council has the discretion to allow or disallow certain alternative means of compliance as described herein. The City Council also has the discretion to approve or disapprove Fair Share Agreements for development projects that have unique circumstances that were not contemplated in the Fair Share Ordinance or Administrative Procedures. The City Council also has responsibility for hearing certain appeals as described in Section 7.8, below.

4.6. City Manager: The City Manager shall have the sole authority to execute Fair Share Agreements on behalf of the City, after approvals by the City Council.

4.7. Director of Planning and Community Development: The Director of Planning and Community Development has responsibility for hearing certain appeals as described in Section 7.8. below.

5. APPLICABILITY

5.1. Developments Not Subject To Fair Share Requirements: The provisions of Article 17 shall not apply to:

5.1.1. Developments Subject To Existing Affordable-Attainable Housing Agreements With The City: No provision of Article 17 applies to a development or portion thereof which, upon the effective date of Article 17, is subject to any formal, written and binding agreement with the City or La Plata County for providing affordable housing, which agreement has been performed or remains in effect and may be performed by and after the effective date of Article 17.

5.1.2. Developments With Three Or Fewer Dwelling Units: Compliance with Article 17 shall not be required for developments involving three or fewer dwelling units, unless the development is modified within 5 years of the initial application to increase the total number of dwelling units on the subject property to a number greater than three, in which event the provisions of Article 17 shall apply.

5.1.3. Rental Housing Developments: The requirements of Article 17 shall not apply to residential developments or portions thereof that are intended to be rented and are not separately platted as either single family residences, condominiums or townhomes. However, proposals for developments of three or more dwelling units which are separately platted and intended for rental will be subject to such requirements if and when the owner begins to market one or more individual dwelling units for sale.

5.2. Developments And Activities Subject To Fair Share Requirements: Subject to limitations described elsewhere in Article 17, the requirements of Article 17 shall apply to the following

activities related to the development, marketing, sales and operation of properties that are residential in whole or in part, except those described in §17-2-1 of Article 17:

5.2.1. Any application which is submitted to the City after the effective date of Article 17 in which residential development or subdivision is proposed as follows:

5.2.1.1. Applications for annexation initiated by persons other than the city unless previously subdivided into residential lots and not being re-platted.

5.2.1.2. Applications for rezoning.

5.2.1.3. Applications for a subdivision plat, including a plat for residential condominiums consisting of existing or new dwelling units.

5.2.1.4. Applications for an increase in density for a property subject to an approved master plan or development plan.

5.2.1.5. All site-specific development plans including, but not limited to, special use permit, and conditional use permit applications.

5.2.1.6. Applications requesting the extension of or connection to city utilities submitted to the city after the effective date of Article 17 [or give date?] for residential developments located outside the city limits shall be subject to the requirements of Article 17, as may be limited by the city's jurisdiction.

5.2.2. Sales of lots within a residential development subject to the requirements of Article 17.

5.2.3. The construction, occupancy, sale, resale and other transfers of Fair Share Homes, as defined herein.

5.2.4. Alternate means of compliance with Article 17 such as contributions of cash, real estate or in-kind resources for the construction of affordable or attainable housing pursuant to Fair Share. It is the intent of Article 17 that the city may permit alternatives to the provision of Fair Share Homes within a development, including but not limited to the payment of fees-in-lieu, which Alternative Means of Compliance, if permitted, will be described in the Administrative Procedures Manual. Such alternatives may be amended from time to time and must have a rational basis for achieving similar public benefits to the provision of Fair Share Homes in a development.

5.3. Fees-In-Lieu: Subject to limitations described elsewhere in Article 17, the following types of developments are (or may be) subject to paying fees-in-lieu of building Fair Share Homes:

5.3.1. A development required to provide two or fewer Fair Share Homes. In this type of development the Developer, by right, may elect to pay fees in lieu of building Fair Share Homes.

5.3.2. A development in which the calculation of the number of required Fair Share Homes results in a fraction of a Fair Share Home. In such cases, the requirement for a fraction of a Fair Share Home shall be satisfied by payment of a fractional fee-in-lieu as described in the Administrative Procedures Manual.

5.3.3. Any other type of development for which Article 17 and the Administrative Procedures Manual allow the Developer the option of meeting some or all of the Fair Share Obligation by payment of fees-in-lieu.

5.4. Simplified Compliance: Developments will be subject to simplified Fair Share Agreements and compliance requirements if all of the following criteria apply:

5.4.1. One hundred percent of the dwelling units will be affordable upon initial sales or leases to households with incomes up to 80% of the area median income, as calculated using the criteria and methods described herein.

5.4.2. The primary funding is from federal or charitable grants, or capital investments induced by federal guarantees, mortgage insurance or tax benefits. (Acceptable examples are Habitat for Humanity, Department of Agriculture and HUD housing programs, and rental projects using Low Income Housing Tax Credits.)

5.4.3. The homes or rental units are subject to long-term affordability requirements such as limits on rents charged or requirements to repay subsidies upon resale of owner-occupied homes.

5.5. Applicability To Developments Proposed For Lot Sales: Developments in which the Developer does not intend to directly sell homes but rather lots to builders or individual owners are still subject to Fair Share requirements. If the Fair Share Agreement calls for in-lieu fees or other alternative means of compliance, these requirements must be satisfied pro-rata upon or before the sale of lots. If the Fair Share Agreement calls for Fair Share Homes of certain sizes and price requirements, then liens or covenants which ensure that all Fair Share requirements are met must be placed by the Developer on the required number of lots being sold.

6. DEFINITIONS

Applicant(s) - A property owner or agent of a property owner who submits a development request to the City which is subject to any Fair Share Requirements or any successor in title that remains subject to Fair Share Requirements.

Area Median Income (AMI) - The median income for La Plata County, Colorado as adjusted for various household sizes and published and revised periodically by the U.S. Department of Housing and Urban Development (HUD).

Alternate Means of Compliance - Compliance with Article 17 by payment of a fee-in-lieu contribution or through the donation of land for affordable-attainable housing.

Dwelling Unit - One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, that is physically separated from any other rooms or dwelling units which may be in the same structure, and contains independent cooking, sleeping and bathroom facilities.

Fair Share Agreement - An agreement between a property owner of record and the City whereby the City confers benefits in the form of fee waivers and the property owner pledges to provide affordable-attainable homes or Alternative Means of Compliance.

Fair Share Developer - An owner of a property subject to any Fair Share Requirements, who is carrying out any phase of developing the subject tract, or as defined herein, certain successors in title.

Fair Share Development - A tract of land or improvements thereon subject to a Fair Share Agreement.

Fair Share Home - A home designed, built, priced, marketed and sold to satisfy a Fair Share Requirement for the provision of required affordable-attainable housing.

Fair Share Homebuyer or Fair Share Buyer - A purchaser of a Fair Share Home or the entire household occupying a Fair Share Home.

Fair Share Home Price - A price or prices that must not be exceeded for Fair Share Homes that are required to be built in Fair Share Developments.

Fair Share Pricing and Delivery Schedule - A schedule of the number, size, price and timeframe for delivery of Fair Share Homes within a Fair Share Development. This schedule may be included in a Fair Share Agreement for one or more phases of a development. Or such a schedule may be created later by the developer and approved by RHA for future phases of larger projects with multiple phases, in which the exact requirements for delivering Fair Share Homes cannot be determined at the time of execution of a Fair Share Agreement.

Fair Share Proposal – A plan containing all of the required elements of a Fair Share Agreement, which is submitted by an applicant as part of the City’s development approval process.

Fair Share Property Owner - The owner of any property which is subject to a Fair Share Requirement, or as defined herein, certain successors in title.

Fair Share Requirement or Fair Share – The obligation, as defined within Article 17, to provide affordable or attainable housing in conjunction with a Fair Share Development, either through the actual provision of housing or through Alternative Means of Compliance.

MarketRate Homes or Market-Rate Units - Homes in a Fair Share Development that are not subject to a Fair Share Home Price or other requirements.

Median Income - Area median income, as defined herein.

Regional Housing Alliance of La Plata County (RHA) - A governmental entity that has been designated by the City to carry out administrative tasks not reserved for City departments and boards.

7. FAIR SHARE PROPOSALS AND AGREEMENTS

Following are standards and procedures for preparation, review and approval of Fair Share Proposals and Agreements:

7.1. Requirement for Fair Share Proposals and Agreements: Applicants subject to Fair Share Requirements shall prepare and present Fair Share Proposals for review by the City and its agent as described elsewhere in Article 17. The provisions of such Fair Share Proposals shall be incorporated in Fair Share Agreements if and when approved by the City.

7.2. Availability Of Standard Forms: As part of its administrative responsibilities, the RHA will maintain a set of forms and form language to facilitate the development of Fair Share Proposals and Agreements that apply to various circumstance. Where unusual circumstances arise not contemplated in those forms, the RHA will be responsible for writing the first drafts of additional or replacement language for review and approval by the City.

7.3. Pre-Submission Conference: Prior to submitting any development request to which Fair Share applies, the prospective applicant shall schedule and hold a pre-submission conference with the RHA with regard to the development proposal and Fair Share Requirements. At the discretion of its Director, a representative of the Planning and Community Development Department may also attend.

7.4. Preparation of Fair Share Proposals: RHA shall assist Developers in preparing Fair Share Proposals.

7.5. Submission of Fair Share Proposals: A Fair Share Proposal shall be submitted with any development request to the City to which Fair Share applies. A submission must be accompanied by a written, favorable recommendation from RHA. If RHA decides not to recommend a Fair Share Proposal to the City, RHA must state its reasons in writing. The applicant may appeal RHA's decision as described in Section 7.7 herein.

7.6. Review of Fair Share Proposals: After submittal, each Fair Share Proposal shall be reviewed by the Planning and Community Development Department. After review, the Department shall take one of three actions with regard to a Fair Share Proposal:

7.6.1. Recommend the Fair Share Proposal for approval by the City Council.

7.6.2. Disapprove the Fair Share Proposal and refer it back to the applicant if it does not meet Fair Share Requirements. In this case, the Planning and Community Development Department shall make written comments regarding the proposal's deficiencies.

7.6.3. Re-submittal of Fair Share Proposals After Disapproval - If a Fair Share Proposal has been disapproved, an applicant may resubmit revised proposals so long as changes in the Fair Share Proposals are substantive.

7.7. Appeals: An applicant may appeal actions of the City with regard to Fair Share, as follows:

7.7.1. An applicant may appeal if:

7.7.1.1. The applicant believes the RHA or City staff misinterpreted the Fair Share Requirements in deciding not to recommend the Fair Share Proposal, and the proposal as written conforms to Fair Share Requirements, or

7.7.1.2. The applicant is aggrieved by any other action of the City with regard to Fair Share.

7.7.2. All such appeals shall be made on forms provided by the Planning and Community Development Department, and must be accompanied by a description of the action of the City which is being appealed and the grounds for appeal. If the applicant is appealing the RHA's or City staff's decision not to recommend a Fair Share Proposal, the appeal must be accompanied by:

7.7.2.1. A draft Fair Share Proposal that the RHA or City staff have decided not to recommend.

7.7.2.2. RHA and/or City staff comments on the Fair Share Proposal, including the reasons for disapproval of the proposal.

7.7.3. Appeals of staff decisions shall be heard first by the Planning Commission, which may override the RHA's or City staff's action and forward the Fair Share Proposal to the City Council for consideration, with or without conditions, or may deny the appeal.

7.7.4. If an appeal with regard to staff approval of a Fair Share Proposal has been denied by the Planning Commission, or approved with conditions that are unacceptable, the applicant has two alternatives for gaining approval of a Fair Share Proposal:

7.7.4.1. To resubmit to staff a Fair Share Proposal which is acceptable to staff, or

7.7.4.2. To appeal to City Council, which may approve or deny the appeal or approve it with conditions.

7.7.5. If a Fair Share Proposal is subject to appeal, the outcome of the appeal process may determine whether the applicant is entitled to certain development incentives. In this case,

the applicant may choose one of the following options with regard to continued processing of the development proposal:

7.7.5.1. Processing may be suspended until the appeal is heard and decided, or

7.7.5.2. Processing may be continued.

7.8. Approval Of Development Proposals Subject To Fair Share Requirements: No development proposal subject to Fair Share Requirements may be heard by the review body unless a Fair Share Proposal has been recommended as complying with Fair Share Requirements by the RHA and City staff, or the lack of such recommendation has been successfully appealed as set forth elsewhere in Article 17. Such Fair Share Proposal presented by the Applicant shall correspond to the other aspects of the final development, including but not limited to the total numbers of dwelling units proposed.

7.9. Execution of Fair Share Agreements: After all development approvals (except for building permits) have been received, the Fair Share Agreement may be executed by the City Manager and the applicant. The Fair Share Agreement shall be recorded in the offices of the La Plata County, Colorado Clerk and Recorder prior to any permits being issued or the start of any work. The Fair Share Agreement shall be referred to and recorded as follows:

7.9.1. The Fair Share Agreement shall be referred to in the annexation agreement or the rezoning ordinance and referred to on the annexation plat, final subdivision plat, or final development plan as appropriate. It shall be included as a condition of approval for any extension of or connection to City utilities beyond the city limits.

7.9.2. The Fair Share Agreement shall be recorded in the offices of the La Plata County, Colorado Clerk and Recorder at the time of recording the annexation plat, rezoning ordinance, final subdivision plat, final development plan, as appropriate, or prior to issuance of a building permit if the previous documents are not required, in which case a copy of the recorded agreement shall be included with the submittal for a building permit.

7.10. Noncompliance with Agreements: If RHA determines that a property owner subject to a Fair Share Agreement has failed to comply with any terms or conditions of that agreement, the RHA shall immediately notify the Planning and Community Development Department in writing. Upon such notification, or if the Planning and Community Development Department itself determines there is noncompliance, the Department shall notify the property owner of the noncompliance in writing and order compliance by the most reasonable and expeditious means. This notification shall describe a date certain by which the property owner shall be in full compliance (which may not be less than one week or more than one year from the date of the notice), and shall describe: (i) the exact nature of the noncompliance, and (ii) the possible sanctions for noncompliance with this notification. The RHA shall receive a copy of such notification and will be responsible for follow-up monitoring.

7.11. Sanctions For Noncompliance: If on a date certain by which compliance has been ordered by the City, the Fair Share Property Owner is still considered in noncompliance, the

RHA shall notify the City Manager and the Planning and Community Development Department of the noncompliance and request that sanctions be imposed. The City shall have the authority to impose one or more of the following sanctions which the City (acting in consultation with the RHA) deems most effective and appropriate considering the nature of the noncompliance:

- 7.11.1. Withholding the recording of plats,
- 7.11.2. Withholding or revoking building permits,
- 7.11.3. Issuing stop-work orders, and/or
- 7.11.4. Withholding or revoking certificates of occupancy.

7.12. Legal Action And Fines: When requests for compliance or subsequent sanctions have not resulted in compliance with a Fair Share Agreement, the RHA or the Planning and Community Development Department may request that the City Manager instruct the City Attorney's office to pursue enforcement in the appropriate court of law. The failure to comply with the provisions of an executed Fair Share Agreement is declared to be a violation of Article 17 and, upon proof thereof, shall subject the Applicant or Fair Share Developer to the fines and penalties set forth in §1-16 of the Code of Ordinances of the City of Durango.

7.13. Enforcement Outside The City Limits: If after having been given notice as set forth in Section 7.10 of this Manual, a property owner subject to a Fair Share Agreement, as a condition of the extension of or connection to City utilities beyond the city limits, fails to comply with said agreement, the RHA or Planning and Community Development Department may request that the City Manager direct the City Attorney's office to pursue enforcement of specific performance requirements in accordance with the Fair Share Agreement in an appropriate court of law.

8. REQUIREMENTS FOR PROVIDING FAIR SHARE HOMES

Fair Share Homes shall be designed, built, marketed, sold and occupied according to these criteria:

8.1. Eligible Incomes Of Homebuyers: Following are general eligibility criteria for purchasing Fair Share Homes.

8.1.1. Fair Share Homes shall be sold to and occupied by an eligible owner-occupant household. An eligible owner-occupant household for a Fair Share Home shall have an income corresponding to one of four tiers of affordable-attainable home prices, adjusted for family size, as described in Appendix A, "Eligible Incomes of Fair Share Homebuyers."

8.1.2. An eligible household's income shall have been certified by RHA no more than 120 days prior to a purchase contract being executed for a Fair Share Home.

8.1.3. It is the Fair Share Developer's responsibility to match income-certified buyers with Fair Share Homes in the appropriate tier.

8.2. Fair Share Home Prices: Sale prices of Fair Share Homes shall be determined as follows:

8.2.1. Schedule of Fair Share Home Prices: The sales price of Fair Share Homes (exclusive of closing costs) being sold to an eligible owner-occupant pursuant to a Fair Share Agreement shall be at or below an amount described in Appendix B, “Fair Share Home Prices.” For purposes described elsewhere in this document, Fair Share Home Prices are described for: i) studio, one-, two- and three+- bedroom and ii) for price tiers representing the following maximum percentages of area median income (AMI): 80, 95, 110, and 125.

8.2.2. Target Incomes: “Target” and maximum income levels as percentages of area median income (AMI) for the four Fair Share price tiers are as follows. The target percentage of AMI is set lower than the maximum AMI allowed for buyers in order to assure that a full range of qualified, prospective homebuyers are able to afford to buy the homes.

<u>Tier</u>	<u>Maximum % AMI</u>	<u>Target % AMI</u>
1	80%	65%
2	95%	80%
3	110%	95%
4	125%	110%

8.2.3. Revising Fair Share Home Prices: Fair Share Home Prices shall be revised within 15 calendar days of HUD having published a new annual schedule of area median incomes adjusted by family size (www.huduser.org). Fair Share prices may also be adjusted if mortgage interest rates change substantially, at the discretion of RHA or at the directive of the Planning and Community Development Department or the City Council. Revised Fair Share Home Prices will be based upon the following assumptions:

8.2.3.1. The affordable price equals the assumed affordable down payment amount plus an affordable mortgage amount.

8.2.3.2. The buyer will make a down payment amounting to at least three percent of purchase price, with the exact amount for each price tier to be determined by RHA based on current market conditions.

8.2.3.3. The buyer will theoretically pay 33 percent of income for mortgage principal, interest, taxes, property insurance, mortgage insurance (if any) and association fees (if any), although in practice most Fair Share Homebuyers will pay less or more than 33 percent of income for these costs.

8.2.3.4. Monthly property tax payments are assumed to be 0.045% per month times the estimated assessed value of typical Fair Share Homes of different bedroom sizes.

8.2.3.5. Monthly property insurance payments are assumed to cost 0.02% of estimated replacement value of typical Fair Share Homes of different bedroom sizes.

8.2.3.6. Homeowner association fees are assumed to be \$125 per month. If homeowner association fees are estimated to be less than \$90 or more than \$125 per month for a

particular Fair Share Development, RHA will recalculate Fair Share Prices based upon the estimated costs.

8.2.3.7. The prevailing market interest rate for 30-year fixed-rate conventional, prime mortgage loans shall be determined by RHA by a survey of three representative local lenders of RHA's choice. This interest rate shall be the average of the rates currently charged by those lenders.

8.2.3.8. The affordable monthly payment is calculated at 33 percent of the assumed monthly incomes of households with incomes at the target AMIs (described above).

8.2.3.9. The amount of monthly payment available for mortgage principal and interest payments is determined by subtracting presumed typical amounts for real estate taxes, insurance, mortgage insurance payments, and association fees from the affordable monthly payment.

8.2.3.10. The affordable mortgage amount is determined by using a mortgage calculator or mortgage table to determine the amount of a 30-year mortgage supported by the presumed amount available for principal and interest payments.

8.2.3.11. Based upon the assumptions in this subsection 8.2.3, the affordable home price will equal the affordable mortgage amount divided by 0.97 or .95. This takes into account the 3 percent or 5 percent presumed down payment.

8.2.3.12. Schedules of Fair Share Home Prices by type and size of home shall be based upon the following assumptions regarding typical sizes of households that will occupy each type of home:

<u>Assumed Type of Home</u>	<u>Household Size</u>
Studio	1 person
1 Bedroom	1 person
2 Bedroom	2 persons
3 Bedroom	4 persons
4+ Bedroom	6 persons

(Note: These assumed typical household sizes are for pricing purposes only. See Section 8.9.2 for minimum and preferred sizes of households that can occupy a Fair Share Home.)

8.2.4. Contracts For Purchase And Sale Of Fair Share Homes: Fair Share Agreements shall require that each contract for the initial purchase and sale of a Fair Share Home shall indicate as the sales price the then-current Fair Share Price as published by RHA. RHA will make best efforts to inform Fair Share Developers when Fair Share Prices are in the

process of being revised, and when they are revised. But in any case, the Developer is responsible for using the then-current Fair Share price.

8.2.5. Price Adjustment For Green Building Features: As an incentive for Fair Share Developers to provide homes with energy-efficient and healthy designs and materials, and considering the additional benefits to Fair Share Homebuyers, the maximum Fair Share Home Price of such homes will be adjusted upwards in accordance with a schedule of price adjustments in Appendix C.

8.2.6. The Developer is required to get the development warranted for owner-occupied, single family sales and financing prior to marketing or selling any Fair Share Homes in a condominium development.

8.3. Pricing of Fair Share Homes in a Development: In a Fair Share Proposal and Fair Share Agreement, an applicant shall propose Fair Share Home Prices as follows:

8.3.1. Maximum Allowed Prices: The allowed maximum sale price of individual Fair Share Homes and low-priced dwelling units shall be determined from the Fair Share Home Prices (Appendix B) which are current as of the date upon which the purchase contract is fully executed.

8.3.2. Calculation Of Sales Price: The actual sale price shall include all of the following costs to the buyer as described on the settlement sheet for the sale:

8.3.3. The full sales price of the home.

8.3.4. Any sales commission which is payable by the buyer.

8.3.5. Any other settlement costs charged to the buyer, which in La Plata County are normally charged to a seller.

8.3.6. No Side Agreements With Buyers: There shall be no side agreements obligating buyers to pay Developers for any add-on features or services. Any amounts paid out of closing shall be included in the calculation of the home price for purposes of satisfying Fair Share Requirements.

8.3.7. No Third-Party Subsidies Allowed For Builder: The required sale price of a Fair Share Home by a for-profit Developer may not be achieved by use of subsidies from any source other than the Developer, so that, given the scarcity of subsidy funds, all Fair Share Applicants that are for-profit entities will be treated equally and fairly. However, the City encourages the use of such subsidies to reduce prices of Fair Share Homes from the maximum amounts allowed by Article 17 to a lower price, or to fund or partially fund down payments and closing costs of Fair Share Buyers. It is expected that local nonprofit and government mortgage assistance programs will offer such subsidies on some Fair Share Homes. Nonprofit builders and Developers may use subsidies to achieve the required Fair Share Home Prices.

8.3.8. Skewing Fair Share Prices: Applicants that are required to provide more than one Fair Share Home of a certain size and tier (for example, three 2-bedroom homes in Tier 3), may, by including this in their Fair Share Proposal, or later with written approval from RHA, skew the prices of these homes above and below the required prices, so long as the average price is at or below the Fair Share Price. This technique is desirable to the City because it allows for home purchase by some families with lower incomes than would otherwise be possible (offset by the Developer being able to charge slightly higher prices on a few Fair Share Homes).

8.4. Required Number of Fair Share Homes in a Development: In any development which is fulfilling Fair Share Requirements by directly providing Fair Share Homes the number of Fair Share Homes shall be equal to 16 percent of the total number of homes proposed to be built—the total to include both Fair Share Homes and market-rate homes. The whole number resulting from this calculation shall be the number of homes required. See Section 8.6 if fractions result from this calculation. It is anticipated that in larger developments being built in phases over a number of years, the number of market-rate homes may not be certain at the time of execution of the Fair Share Agreement. In such cases, the Fair Share Agreement will include an estimated number of market-rate homes and estimated required number of Fair Share Homes for the entire project. If the number of homes in the first phase of such development is certain at the time of execution of the Fair Share Agreement, then a separate Fair Share Pricing and Delivery Schedule for that phase shall be incorporated in the Agreement. As the number of homes in future phases becomes certain, the Agreement shall provide for RHA to administratively approve subsequent Fair Share Pricing and Delivery Schedules for future phases of the development, consistent with the overall Fair Share Requirements of the development. The ratio of Fair Share Homes by tiers in a development shall be 7-3-3-3 for Tiers 1, 2, 3 and 4 respectively. The distribution of Fair Share Homes by tier shall be determined as described in Section 8.5 below.

8.5. Pricing and Delivery Schedules: In a Fair Share Proposal or Agreement or as otherwise required by Article 17, the Fair Share Pricing and Delivery Schedules shall be in the form of a chart that contains the numbers of required Fair Share Homes by bedroom size and price tier, and shall indicate the current Fair Share Price for each size of home in each tier. In any Development or phase of a Development for which the Schedule is provided, the distribution of Fair Share homes among price tiers and bedroom sizes of homes shall be made as follows:

8.5.1. Distribution Among Price Tiers: The distribution shall be made as follows:

Fair Share Homes Required	Tier 1	Tier 2	Tier 3	Tier 4
1	0	1	0	0
2	1	0	1	0
3	1	1	0	1
4	2	0	1	1
5	2	1	1	1

6	3	1	1	1
7	3	1	2	1
8	4	1	2	1
9	4	1	2	2
10	5	1	2	2
11	5	2	2	2
12	5	2	2	3
13	6	2	2	3
14	6	2	3	3
15	7	2	3	3
16	7	3	3	3
16+	Repeat Sequence			

8.5.2. Distribution Among Bedroom Sizes: The distribution of bedroom sizes of the required Fair Share Homes in the Pricing and Delivery Schedule shall be made in accordance with Section 8.7, below.

8.6. Providing “Fractions” of Homes: If the calculation described in Section 8.5 results in a fraction of a home, this obligation may be satisfied by payment of a fee-in-lieu pursuant to Section 12 herein or through a land donation of equivalent value in support of affordable/attainable housing.

8.7. Required Numbers Of Bedrooms And Bathrooms In Fair Share Homes: In creating a Fair Share Proposal, an applicant shall propose configurations for Fair Share Homes as follows:

8.7.1. In each Fair Share Development, Fair Share Homes shall have a mix of bedroom sizes as similar as possible (given rounding of numbers) to the mix of bedroom sizes of the market-rate homes in the Development.

8.7.2. If the bedroom sizes of some or all market-rate homes are not known at the time of execution of the Fair Share Agreement (as in a large, planned development being built over many years), then the following mix of bedroom sizes for Fair Share Homes shall be the default for such Agreement until the bedroom mix of market-rate homes becomes certain. As such time, the Development Agreement shall allow RHA to administratively adjust the schedule of required Fair Share Homes to reflect the bedroom mix of the development.

8.7.2.1. Default bedroom mix for groups of Fair Share Homes:

1 Bedroom: 20%
2 Bedroom: 40%
3 Bedroom: 40%

8.7.3. Fair Share Homes will have the following minimum numbers of bathrooms and half-bathrooms, to ensure that they are livable for households of different sizes:

1 and 2 Bedroom Homes: Minimum of 1 bathroom

3 Bedroom Homes:	Minimum of 1.5 bathrooms
4+ Bedroom Homes:	Minimum of 2 bathrooms

8.8. Other Minimum Design, Structural And Site Requirements For Fair Share Homes: Fair Share Homes shall be built to conform to local, state and federal laws, and these additional criteria concerning design, equipment and physical features in order to assure their livability and marketability.

8.8.1. Floor Area: Fair Share Homes shall have these minimum floor areas of gross heated living area (inclusive of partitions, closets, heated utility rooms, halls and stairways, but exclusive of attics, porches, unfinished basements, garages and unheated storage space):

8.8.1.1. Detached Homes:

<u>Detached Unit Type</u>	<u>Minimum Floor Area</u>
1 Bedroom	800 square feet
2 Bedroom	1,000 square feet
3 Bedroom	1,250 square feet
4+ Bedroom	1,400 square feet

8.8.1.2. Attached Homes:

<u>Attached Unit Type</u>	<u>Minimum Floor Area</u>
Studio	500 square feet
1 Bedroom	650 square feet
2 Bedroom	800 square feet
3 Bedroom	950 square feet
4+ Bedroom	1,100 square feet

8.8.2. Marketability: Notwithstanding the foregoing standards, Fair Share Developers are advised to use their own judgment about possible additions of square footage and amenities over these minimums described herein for the purposes of marketing the Fair Share Homes and other homes in the development.

8.8.3. Equipment And Equipment Hookups: Each home shall, at a minimum, include: i) a new kitchen range and refrigerator, ii) hookups for a clothes washer, dryer and built-in dishwasher, and iii) a central heating system. Resistance electric heating is not permitted unless the applicable homes have exceptionally low heat loads and the City approves this alternate in the Fair Share Agreement or otherwise in writing.

8.8.4. Location: Fair Share Homes shall be dispersed widely among market-rate homes, to the extent practicable. Fair Share Agreements shall indicate through schematic plans or schedules of lots the location of required Fair Share Homes, except for large, long-term

developments where phases may not yet be precisely planned. For phases in which locations of Fair Share Homes cannot be determined, Fair Share Agreements will establish the principle that Fair Share Homes will be dispersed and a process for the Developer to submit and receive approval of a location plan.

8.8.5. Design And Materials: Fair Share Homes shall be designed, built and landscaped to be similar in external appearance to nearby market-rate homes, and with similar quality and type of materials, lighting, plantings, and (if provided) irrigation systems.

8.9. Marketing To Income-Qualifying Buyers For Fair Share Homes: Fair Share Developers shall market Fair Share Homes in accordance with the following requirements:

8.9.1. Matching Household Incomes To Fair Share Home Prices: The Fair Share Eligible Incomes and Fair Share Prices Schedules (see Appendices A and B) are divided into Tiers 1, 2, 3 and 4. The price tiers have been calculated to be affordable to homebuyers whose incomes are in the corresponding income tiers. The lower the tier number, the greater the discount builders have to provide, and the more affordable the home prices are. Therefore, in order to provide for an equitable and cost-effective allocation of these discount-priced homes, the following rules apply:

8.9.1.1. Pricing and Delivery Schedules: In any Fair Share Development, Fair Share Home Prices will be established for particular homes in a Pricing and Delivery Schedule that is part of the Fair Share Agreement or—for larger, phased developments—later approved by RHA.

8.9.1.2. Matching Income Tiers To Price Tiers: A Fair Share Homebuyer may not buy a home in a lower price tier or one with more bedrooms than indicated in Section 8.9.2, below. For example, a buyer with a Tier 4 income (highest incomes) and two household members may not buy a Fair Share Home in price Tiers 1, 2 or 3, and may not buy a Fair Share Home with more than two bedrooms. However, a Fair Share Homebuyer may buy a home in a higher price tier if the buyer can obtain grants, low-cost financing, family gifts or other means of affording the home.

8.9.2. Matching Household Sizes To Unit Types/Sizes: The City recognizes that larger-sized affordable homes are particularly scarce and the cost to build larger homes is higher. Therefore it is in the public interest to allocate larger Fair Share Homes to larger families to the extent practicable, and the following guidelines will be used in marketing and selling Fair Share Homes:

8.9.2.1. Unit Type Guideline For Allowed Household Sizes:

<u>Unit Type</u>	<u>Household Size</u>
Studio	1

1 Bedroom	1-2
2 Bedroom	2-3
3 Bedroom	3-4
4+ Bedroom	4-5

8.9.2.2. A Fair Share Home may not be marketed or sold to a household which is smaller than the household sizes indicated, unless the RHA approves in writing fewer persons based only upon:

8.9.2.2.1. Possible unavailability of a qualified buyer of the proper household size (assuming good-faith marketing efforts by the Developer to find a qualified buyer), or

8.9.2.2.2. The demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section. In this case, the RHA shall use HUD regulations regarding occupancy of Section 8-assisted dwelling units as a guideline.

8.9.3. Residency And Employment Preferences; Waiting Lists: Persons otherwise qualified to buy Fair Share Homes who have resided in La Plata County for two years or more, or who are employed in La Plata County shall have preference for purchasing Fair Share homes. The RHA will administer a waiting list of families interested in purchasing Fair Share homes, which will indicate length of residency and employment location. Prospective buyers with this preference will move toward the top of the waiting list in the order in which they were added to the list. Prospective buyers without this preference may be added to the list, but will only have an opportunity to buy a Fair Share Home if qualified and if the home is not taken by a buyer with a preference. The RHA and Fair Share Developers will coordinate the mechanics of maintaining individual waiting lists for particular Fair Share Developments, if desired. Any prospective homebuyer who rises to the top of a waiting list will have first rights to purchase any Fair Share home for which the family qualifies. If a prospective homebuyer fails to prequalify for a mortgage, he or she will retain his or her place on the waiting list but is suspended and skipped over until the homebuyer proves able to qualify for a home purchase mortgage.

8.9.4. Marketing Materials: Brochures, advertisements and other marketing materials shall clearly state the policies of the Fair Share Program with regard to pricing of Fair Share Homes and buyer eligibility (both for the program in general and eligibility to buy specific homes).

8.9.5. Responsibility For Marketing Fair Share Homes: The Fair Share Developer or the Developer's successor in title (as with the same of building lots with Fair Share Requirements) has the primary responsibility for marketing and selling Fair Share Homes.

8.9.6. Interested Buyer Lists: The RHA will maintain lists of prospective Fair Share buyers who have passed preliminary pre-qualifications for financing. Such lists will be made available to Fair Share Developers for marketing purposes.

8.9.7. Inability To Find Qualified Buyer: See Appendix D

8.9.8. Buyer Certification: Prior to executing a purchase contract for any Fair Share Home, the prospective Fair Share Buyer must be certified by RHA as meeting Fair Share Requirements. The certification must have been made within the 120 calendar days immediately prior to the full execution of the purchase contract. Fair Share Developers may sign purchase contracts with non-certified prospective buyers, conditional upon certification within 10 working days, if the Developer is reasonably certain that the prospective buyer can be certified. However, in this case, Fair Share Developers must be willing to accept the inherent risks involved in executing conditional contracts.

8.9.9. Requirement For Special Language In Purchase Contracts: Fair Share Developers and Fair Share Buyers may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the Fair Share Buyer prior to execution of the contract. The disclosure form will explain any deed restrictions, restrictive covenants and/or liens that are placed on the Fair Share Home to insure long-term affordability.

8.9.10. Complying With Long-Term Affordability Requirements: For marketing and sales requirements related to long-term affordability requirements, see Appendix D.

8.10. Filing of Deed Restrictions And Liens; Escrow Instructions: A Fair Share Developer selling a Fair Share Home shall cause to be recorded in the offices of the La Plata County, Colorado Clerk and Recorder, simultaneous with the recording of the deed of conveyance, a form of deed restriction, restrictive covenant, deed of trust or other legal instrument, approved by RHA, that fulfills long-term affordability controls and recapture requirements described in Article 17. The effect of the recordation of said legal instruments shall be to create, in accordance with state law, an obligation that runs with the property. The City must approve the forms of such legal instruments. RHA is responsible for preparing such legal instruments prior to sale of a Fair Share Home. Fair Share Agreements shall include escrow instructions requiring certification of Fair Share compliance by the escrow agent handling the sale of Fair Share Homes and require that a copy of the settlement statement be provided to RHA (as the City's agent), to enable compliance monitoring by RHA.

8.11. Monitoring by RHA of Completed Sales: Upon receipt of a settlement statement for a Fair Share Home, RHA will determine if the completed Fair Share Home sale complies with Fair Share Requirements, and if not, notify the City in writing as to the specifics of noncompliance. The procedures are as follows:

8.11.1. Notice of Sale of A Fair Share Home: The City must receive notice of the sale in writing and also be given: (a) a copy of the settlement sheet for the sale of the property, (b) copies of any legal instruments related to the City's long-term affordability requirements in the exact form that they will be executed and filed to meet requirements of the Fair Share Agreement, and (c) bills, statements or other documents indicating any other costs associated with the sale of the Fair Share Home. The City must approve the form and content of any legal instruments related to long-term affordability prior to recordation.

8.11.2. Sales In Compliance: Sales in compliance will be certified as such and shall count toward fulfillment of the Developer's Fair Share Agreement.

8.11.3. Sales Not In Compliance: When a sale is found to be not in compliance with the Fair Share ordinance or a Fair Share Agreement or the information is insufficient to determine compliance, the owner will be notified in writing and has the opportunity to rectify the noncompliance or information lacking with respect to that Fair Share Home. However, in the event of such noncompliance, the City may not certify any sale of a Fair Share Home, and reserves the right not to certify the sale of any further non-Fair Share Homes, while recognizing that this will create an encumbrance and title flaw if any sale is made without such certification.

8.12. Rental Prohibition: Fair Share Homes shall not be rented to a second party, since the intent of the program is to provide these homes only for income-qualified owner occupants. One six-month waiver of this requirement, plus another six-month extension, if merited, may be granted by the RHA for extenuating circumstances such as a family having to temporarily move because of a family emergency or being unable to sell a home after a move caused by a change in employment. Any further extensions or other types of waivers must be granted by the City. If the RHA or the City become aware that a Fair Share Home is being rented without a proper waiver, the City may issue an order requiring that the tenant vacate the residence within 60 days, or such longer period that the City deems appropriate. If such order is not complied with, the homeowner is deemed to be in default of the Fair Share deed restriction and/or lien, and appropriate legal action may be taken by the City.

9. REQUIREMENTS FOR RENTAL HOUSING

9.1. No Fair Share Requirements: At this time, the City has no Fair Share Requirements regarding the construction of rental housing.

9.2. Residential Condominiums Not Considered Rental Housing: All newly-built residential condominiums, or subdivisions of existing multi-family buildings to create condominium units, will be considered as essentially creating purchase opportunities for owner-occupied housing, even if such units are temporarily rented. In these cases, the Developer must enter into a Fair Share Agreement with the City agreeing to build and/or market and sell Fair Share Homes as provided herein, except that conversions of existing properties to condominiums will be subject to the provisions of Section 8.8 herein, regarding standards for design and construction, only with regard to those components of the building and grounds which are rebuilt or replaced as a part of any renovations prior to their initial marketing as owner-occupied dwelling units.

10. TIMING OF COMPLIANCE

Required Fair Share Homes or Alternative Means of Compliance shall be provided in accordance with the following requirements:

10.1. Timing of Providing Fair Share Homes: In each development in which more than one Fair Share Home is required to be sold, the Fair Share Agreement shall provide for Fair Share Homes to be sold in sequence and in proportion to the sale of unimproved lots or Market-Rate Homes. This sequence shall be defined precisely. Such timing of compliance shall be represented in a Fair Share Pricing and Delivery Schedules as described elsewhere in Article 17.

10.2. Earlier Delivery: A Developer may sell affordable or attainable units earlier than required in a Fair Share Agreement or a Fair Share Pricing and Delivery Schedule.

10.3. Timing Of Providing In-Lieu Contributions: In-lieu contributions when required or permitted shall be due and deliverable to the City or RHA (as designated in the Fair Share Agreement) before the recordation of the Fair Share Agreement. An Applicant may, at his or her option, propose an alternative to this requirement in which staged contributions are made upon the predicted occurrence of certain events, such as the sale of lots.

10.4. Staged Delivery of In-Lieu Contributions: In the case of staged delivery of in-lieu contributions when permitted, the value of each contribution shall be determined in accordance with provisions elsewhere in Article 17 that take into account the differential financial value to the City of payments that are made a substantial amount of time later than recordation of the Fair Share Agreement, using conventional methods of discounting future cash flows to present value.

11. ALTERNATIVE MEANS OF COMPLIANCE

11.1. Alternatives To Building Fair Share Homes: Article 17 requires that applicants provide Fair Share Homes on the property proposed for development. However, it is recognized that in some circumstances a Developer may be able to offer an alternative means of compliance of equal value to the City. Such alternatives, if approved by the City, might include contributions of cash, undeveloped or partly-development land.

11.2. Allowable Alternative Means Of Compliance: Only certain Alternative Means of Compliance will be allowed by the City, as approved by the City Council from time to time, in consideration of current housing market conditions. Those currently allowed are identified in Appendix E. For example, at a time when an unusually large number of lower-priced homes are available for sale in the Durango market, the City may determine that it is more desirable for Developers to provide in-lieu cash contributions, which can be used to subsidize home purchases by lower-income homebuyers. Such an alternative could, at times, be more beneficial to low- and moderate-income families and the economic health of the community.

12. IN-LIEU CONTRIBUTIONS

In circumstances in which in-lieu cash contributions are allowed by the City, the amounts of such contributions shall be determined as follows:

12.1. Contribution Amounts: Contribution amounts will be calculated from the dollar amounts in Appendix F, “In-Lieu Contribution Amounts,” which correspond to the various Price Tiers (further broken out by home sizes) that are identified in Appendix B, “Fair Share Home Prices.”

12.2. Calculation of Contribution Amounts: The calculation of contribution amounts begins with a good-faith estimate of the lowest prevailing market-rate prices for new homes of various bedroom sizes, which is represented in the Fair Share Home Price schedule at Tier 4. In-lieu contribution amounts are then calculated for Tiers 1, 2, and 3 as the difference between the Tier 4 price and the price for each respective tier. The intent is to represent the approximate price discounts (below the lowest market prices) that are represented by the Tier 1, 2 and 3 prices.

12.3. When Contributions Are Made Only For Some Fair Share Homes: When some but not all required Fair Share Homes are proposed to be provided on site, the Developer (with RHA assisting) will determine the price tiers and home sizes of those homes plus the remaining homes that would be required, by completing a Fair Share Home Pricing and Delivery Schedule identifying which homes will be provided on site and which ones are proposed to be substituted with an in-lieu contribution. For all homes being substituted, the dollar amount of the required in-lieu contribution will be calculated by taking the figure from the corresponding dollar amounts in Appendix F and multiplying by the number of Fair Share Homes required for each pricing tier and home size.

12.4. When Contributions Are Made In Lieu Of Building All Required Fair Share Homes: In this event, the in-lieu contribution for each Fair Share Home that is not provided is calculated as follows. First, the average bedroom size of homes proposed in the development is determined and rounded to the nearest whole number. Then the in-lieu contribution amount for that size of home is averaged for Tiers 1, 2, 3, and 4. The averages appear in Appendix F.

13. QUALIFYING AND CERTIFYING HOMEBUYERS

13.1. The method of income certification, limitation on assets and imputing income from assets for program eligibility will follow RHA’s established Homebuyer Program Policies and Procedures that address the Fair Share Program and unrelated mortgage assistance programs of RHA.

14. RESALE CONTROLS AND SUBSIDY RECAPTURE REQUIREMENTS

Documentation of each sale will include terms and conditions restricting the resale of Fair Share Homes, if and only if there is a price discount of \$2,000 or greater. The price discount is defined as the difference between the price paid for the Fair Share Home and the appraised value as determined by an appraisal performed for the first deed of trust lender or other approved appraisal. Upon resale or transfer of Fair Share Homes, the City intends to perpetuate housing affordability by recapturing a portion of the value of the home or placing price and other restrictions as follows, and as described more fully in Appendix D:

14.1. When the price discount is equal to 20% or less of the appraised value of the home, RHA will be owed and collect the following on the City's behalf:

14.1.1. The amount of the price discount to the Fair Share Homebuyer.

14.1.2. A share of any home price appreciation, in proportion to the ratio between the price discount and the appraised value at the time of initial sale.

14.2. When the subsidy (price discount) equals more than 20% of the appraised value of the home, RHA shall require that the Fair Share Homebuyer, upon resale or transfer, sell only to an income-qualified buyer with restrictions on the resale price.

14.3. When the price discount is less than \$2,000, no resale controls will be imposed, because the transaction costs of imposing and monitoring them may exceed the amount of the price discount.

15. COST OFFSETS FOR FAIR SHARE DEVELOPERS

To assist in making residential construction less costly and therefore more affordable, the City offers the following cost offsets to Fair Share Developers in consideration of their construction and sale of Fair Share Homes, and to the extent that price discounts on such homes are equal to or exceed such cost offsets. Annually, the prices of low-cost new homes on the market will be compared with the recalculated Fair Share Prices, to determine which Fair Share Price tiers represent discounts that are equal to or exceed the typical cost offsets. The applicability of cost offsets to price tiers will be reviewed annually and will be amended accordingly as indicated by the review.

These cost offsets do not apply to applications for residential developments located outside the city limits, which are requesting the extension of, or connection to, City utilities. Developers of Fair Share Homes are entitled a refund of certain development fees paid to the City, as follows:

15.1. Such refunds will be made only for fees paid in connection with the construction of a Fair Share Home in Price Tiers 1 and 2, with such refund payable only after a sale to a qualified buyer has been certified by RHA.

15.2. The fees paid or allocable on a per-dwelling-unit basis that qualify for such refunds are as follows:

15.2.1. Building Permit Fees

15.2.2. Use Tax

15.2.3. Water Plant Investment Fees

15.2.4. Sewer Plant Investment Fees

15.2.5. Water Tap Fees

15.3. With regard to sewer plant investment fees, the City will, via a refund, subsidize a portion of the fee paid for connection to the South Durango Sewer District (SDSD) system. Such

portion shall be equal to the sewer plant investment fee charged by the City of Durango Sewer District when the fee was paid to SDSD.

15.4. Notwithstanding the foregoing, the total amount of fees refunded for construction and sale of a Fair Share Home shall not exceed the price discount for that home, as defined in Section 14 herein.

15.5. Land use application fees will be refunded for projects involving which are entirely residential and in which all of the residential units have price and income restrictions equivalent to or lower than those for Fair Share Homes. At the City's sole discretion, such fees may be waived in advance rather than refunded.

Appendix A: Eligible Incomes of Fair Share Homebuyers

A chart indicating the maximum qualifying incomes for Fair Share Homebuyers is posted on the RHA website. Go to <http://www.rhalpc.org/programs/fair-share>. The eligibility incomes are updated annually based on changes in the La Plata County median income as calculated by the U.S. Department of Housing and Urban Development. The Fair Share ordinance provides for these changes to be made administratively by RHA.

Appendix B: Fair Share Home Prices

A chart indicating the maximum prices for Fair Share homes is posted on the RHA website. Go to <http://www.rhalpc.org/programs/fair-share>. These maximum affordable prices are updated annually based on changes in the La Plata County median income, typical mortgage interest rates, and other market data such as changes in typical tax rates and homeowner/condo association fees. The Fair Share ordinance provides for these changes to be made administratively by RHA.

Appendix C: Price Adjustment for Green Building Features

The following amounts may be added to Fair Share prices if homes meet LEED Silver or Green Communities comprehensive standards for healthy materials, energy efficiency and “smart” siting.

	0 BR	1-2 BR	3 BR	4 BR
All Tiers	\$2,000	\$2,500	\$3,000	\$3,500

The following amounts may be added to Fair Share prices if homes meet EnergyStar or equivalent/better energy efficiency standards.

	0 BR	1-2 BR	3 BR	4 BR
All Tiers	\$1,000	\$1,250	\$1,500	\$1,750

Appendix D: Detailed Requirements for Marketing and Sales Of Fair Share Homes, and Subsidy Recapture

A. First Sale by Builder - Pricing

1. “Fair Share Price” is determined by RHA price schedule, which has 4 tiers of prices as described in Appendix B.
2. Incomes of buyers must be at or below maximum income limits for each price tier.
3. For purposes of long-term affordability controls, the “Price Discount” is calculated as follows:
 - a. Appraised Value
 - b. (minus) Fair Share Price
 - c. (equals) Price Discount

B. Marketing and Sales of Fair Share Homes by Developers/Builders

1. When building a home “on spec” to satisfy Fair Share requirements, Builder must give *Notice of Intent to Sell* to the City or RHA, with 5 working days’ notice, for each Fair Share Home (“Home”). Construction of homes must be 90% completed prior to issuance of a Notice of Intent to Sell. Generally, the following kinds of marketing efforts are expected, similar to the ways in which the Developer is marketing market-rate homes in the same development:
 - a. Holding multiple open houses in the Fair Share home or a similar model home.
 - b. Providing a brochure with a rendering or photo of the Fair Share Home, a schematic floor plan, and list of standard features.
 - c. Listing the home on the Multiple Listing Service
 - d. Running newspaper advertisements describing the home.
2. Builders may attempt to pre-sell homes to satisfy Fair Share requirements. If this option is chosen, these procedures must be followed:
 - a. If Builder has information from a prospective “pre-sale” buyer who indicates that he/she may have an income qualifying for a Fair Share Home, Builder should immediately request an income certification by RHA. At the same time, Builder should provide the proposed price of the home to determine which Price Tier the home will fall under, in relation to Builder’s Fair Share plan and the prospective buyer’s income.
 - b. RHA then will provide an income certification if the prospective buyer is qualified and written confirmation of the credit (regarding required size of unit and price tier per the Fair Share Plan), if any, that Builder will receive if the home is sold. The written confirmation will include the not-to-exceed price of the home.
 - c. When and if the home sells under those conditions and RHA has reviewed the settlement documents, RHA will confirm with Builder whether or not the home sold at the required Fair Share Price, and if so, confirm that Builder received credit for one Fair Share Home sold to an eligible buyer.
 - d. A Builder is free to attempt as many pre-sales to potential Fair Share Buyers as desired. However, if pre-sales are not completed in compliance with Fair Share requirements and Builder’s Fair Share plan, then the Builder is still obligated to

build and market a Fair Share Home as described in section B(1) above and B(3-9) below.

3. Notwithstanding the provisions above, condominium units may only be marketed and sold in accordance with specific provisions of the Fair Share Proposal and Agreement with regard the pre-selling and qualification for mortgage financing
4. The Home must be exclusively marketed to qualified and income-certified prospective buyers on City or RHA waiting list for the first 30 days, to the extent that qualified buyers are available.
5. The Builder must offer each Home with full disclosure of its restrictions on pricing, eligible incomes of buyers, and requirements for long-term affordability and recapture of Price Discounts (see below).
6. The Builder must refer potential buyers not on the waiting list to the City or RHA for income certification, counseling and homebuyer training – all of which are prerequisites of purchasing a Home.
7. The City or RHA may, with Builder’s written consent, determine that a buyer in an income tier different than a Home’s pricing tier is eligible for purchase, if no qualified buyer is available in the appropriate income tier.
8. The City or RHA may exercise a right of first refusal to purchase a Fair Share Home within 30 days of receipt of the *Notice of Intent to Sell*, and must take the necessary steps to close the purchase within 60 days of giving notice.
9. If a home does not sell within 120 days of construction completion, Builder may sell the home at a market price. Market price is defined as the appraised value of the unit which is determined by a third party appraisal, which can be ordered by the RHA. When the unit is sold the Developer will deliver to the RHA a fee in lieu based on the following formula: market sales price less than a 3% sales commission less the Fair Share Price. If after the home has been marketed for 90 days at appraised value (market value), the RHA will allow the sales price to be decreased by up to 10%. If after 60 days the home still does not sell, the price can be dropped an additional 5% every 30 days until the home is sold.
10. If the Developer has sold lots to homebuilder(s), the Developer is responsible for assuring that each builder is fully informed of these requirements and if there are multiple builders, that there is a coordinated plan and oversight to assure that these requirements are met.

C. Deed Restriction or Lien Imposed at First Sale (By Builder)

1. If the Price Discount by the builder exceeds 20% of the appraised value of the Home:
 - a. A Price Cap applies.
 - b. Upon resale, the Buyer will receive the following share of appreciation:
 - i. 3% times years of ownership, times the original Fair Share Price of the home, to the extent appreciation occurs.
 - ii. 100% of the added value, at time of resale, of Eligible Capital Improvements. The value of Eligible Capital Improvements will be determined by a special appraisal paid for by the Seller, and are limited to the following improvements:
 1. New or added structures (addition, garage, porch, deck, paved patio)

2. Conversion of non-living space to conditioned living space.
 3. Landscaping and paving that have added more than \$2,000 to a home's appraised value.
- iii. If the home is sold at a loss, neither the City nor RHA will share in the loss.
- c. The City or RHA shall have a Right of First Refusal to purchase the Home upon resale, as described below.
 - d. The lien or deed restriction will prohibit the Seller from listing the home for sale with a sales agent or from paying any fees or commissions, except as a last resort and only if approved in writing by the City or RHA.
 - e. Underlying the Price Cap requirements are Shared Appreciation requirements, which supersede Price Cap requirements if and only if certain circumstances occur during the marketing and resale process, as described below.
2. If price discount by the builder is 20% or less of appraised value of the home, shared appreciation applies as follows:
 - a. Shared appreciation, upon resale, requires payback to the City or RHA of the following:
 - i. Original Price Discount plus
 - ii. A percentage share of appreciation as described in Section E(2) below.

D. Resale of a Fair Share Home - With Price Cap

1. A homeowner selling a Fair Share Home ("Seller") must give *Notice of Intent to Sell* to the City or RHA. If credit is desired for Eligible Capital Improvements, Seller must attach an appraisal by a licensed appraiser of their current market value.
2. Upon receipt of the Notice, the following must occur:
 - a. The City or RHA calculates an Allowed Resale Price and transmits it in writing to the Seller within five working days of receipt of the *Notice of Intent to Sell*.
 - b. The Home must be offered on an exclusive basis to prospective buyers on the Fair Share waiting list, for 30 calendar days following the transmittal to Seller of the Allowed Resale price.
 - c. The City or RHA will refer to the Seller any Qualified Buyers who are selected from the Fair Share waiting list based on eligibility to buy Seller's home and priority on the waiting list.
3. At any time during the marketing of the home, the Seller may refer prospective buyers not on the waiting list to the City or RHA for income certification, counseling and homebuyer training – all of which are prerequisites of purchasing a Fair Share Home. Prospective buyers will take their place on the waiting list in accordance with the City's or RHA's requirements.
4. The City or RHA may exercise a Right of First Refusal to purchase the home at the Allowed Resale Price during the first 30 days after receipt of the *Notice of Intent to Sell*. In that event,

the City or RHA must take necessary steps to close the sale within 60 days of exercising the Right of First Refusal.

5. The Price Cap and the related Seller restrictions on resale are null and void, and default to Shared Appreciation requirements if any of the following circumstances occur:
 - a. The City has not transmitted to the Seller an Allowed Resale Price within five working days of receipt of the Notice of Intent to Sell.
 - b. The City or RHA has not provided the Seller with the name and contact information for at least one Qualified Buyer within 30 calendar days of receipt of the Notice of Intent to Sell.
 - c. Requirements (a) and (b) above have been met, but no Qualified Buyer has made a good-faith effort to obtain financing within 45 calendar days of the City or RHA providing Seller with the names of one or more Qualified Buyers.
 - d. Requirement (a) and (b) above have been met, but no Qualified Buyer has closed a purchase of the home within 60 days of the City or RHA providing Seller with the names of one or more Qualified Buyers.
 - e. The City or RHA waive the Price Cap requirement due to no qualified buyers being available or knowledge that no qualified buyer intends to purchase the home.

E. Resale of a Fair Share Home - With Shared Appreciation

1. The homeowner may sell the home with no resale price restrictions.
2. Upon resale, the City or RHA will be owed and paid the following, which will have been established in the original Fair Share lien or deed restriction.
 - a. The principal amount of the Price Discount already calculated in the lien or deed restriction, plus
 - b. A percentage share of appreciation as determined by multiplying the Net Appreciation in the value of the property by ___% (the ratio of the principal sum of loan to the appraised value of the property at the time of loan). Net Appreciation is calculated as follows:
 - i. Resale price
 - ii. (minus) Appraised value at time of original purchase,
 - iii. (minus) reasonable costs of a sales commission in connection with the sale of the property not to exceed 6%,
 - iv. multiplied by the Capital Improvements Ratio.
 - v. The Capital Improvements Ratio shall be the ratio that the total number of legally permitted square feet of living space in the residence on the Property at the time of purchase bears to the total number of legally permitted square feet of living space in the residence on the Property at the time the note is due. The Borrower shall be required to report any increase in living space and provide a copy of a certificate of occupancy or equivalent document to the RHA no later than 30 calendar days prior to the closing of any sale of the Property or other payment of this Note. The failure to provide such notice

shall disqualify any such improvements from inclusion in the Capital Improvements Ratio.

3. To facilitate the purchase of the home by an income-qualified buyer under the Fair Share program, the City or RHA may at their sole discretion allow such buyer to assume the Seller's right and obligations under the Fair Share lien or deed restriction—effectively passing along the affordability benefits that were given to the original purchaser instead of requiring a payoff to the City or RHA.
4. The lien or deed restriction will be structured in such a way that, upon resale of a Fair Share Home, title companies will require repayment or alternative compliance with Shared Appreciation requirements (i.e. permitted assumptions).
5. Proceeds to the City or RHA will be deposited into an account that is dedicated to offering low-cost financing for home purchases by qualified homebuyers or investments to make homes and rental units more affordable by other means.

Appendix E: Allowable Alternative Means of Compliance

Following are the alternatives to building Fair Share Homes on site that will currently be considered by the City Council. These may change from time to time according to the City's view of their public benefits in light of current affordable housing needs and housing market conditions. These allowed alternative means of compliance will be in effect until revised by action of the City Council.

1. Cash in-lieu payments are acceptable for some or all of the Fair Share units required in a project given the current number of homes available in the market at affordable/attainable price points.
2. Donation of land within the tract subject to Fair Share requirements is permitted subject to the sole discretion of RHA in determining that the land can feasibility be developed for affordable housing. The following minimum conditions must be met for a parcel to be considered by RHA:
 - a. All major infrastructure has been installed within 50 feet of the perimeter (or will be installed at the Developer's cost).
 - b. The tract is suitable for building affordable housing based on an analysis by the RHA of market conditions, available financing (including subsidy financing), and availability of one or more qualified Developers to produce the housing.
 - c. The Developer accepts the typical terms of the donation described in Appendix G, below, including the RHA's determination of the number of Fair Share Homes for which the Developer will receive credit as a result of the donation.
 - d. The donation is made in accordance with the above requirements and all other requirements described in Appendix G, below. Until market conditions change, land donations will be allowed and used to build rental or special-needs housing affordable to households at or below 80% of AMI with a priority for serving households at or below 50% of AMI.

Appendix F: In-Lieu Contribution Amounts

Methodology:

The purpose of in-lieu payments, when allowed, is to provide sufficient funding to create an affordable housing opportunity for one family that would otherwise have been able to buy a Fair Share Home. This amount, therefore, is intended to be equivalent to the estimated price discount on a Fair Share Home in comparison to similar new homes on the market.

To determine this discount, RHA surveys MLS listings of homes and condominium units to determine benchmark market prices. The survey determines these prices for 0-1, 2, 3 and 4-bedroom homes that were built within the past three years. In each category, where a sufficient sample size exists, the third lowest price of all recently built homes on the market is selected as the benchmark price. If a sufficient sample size does not exist in one of these size categories, a \$40,000 increment is added or subtracted from the benchmark price for a home nearest in size.

Then, the Fair Share price is subtracted from the benchmark market price to determine a good-faith estimate of the typical price discount for price for homes with 0-1, 2, 3 and 4 bedrooms. This estimated price discount for each bedroom size and Fair Share Price tier becomes the in-lieu payment amount. One or more of the four tiers may have zeros for the in-lieu payment amount. This occurs when certain Fair Share prices are higher than the corresponding benchmark market prices determined through RHA's market survey.

Because the methods used are based on various ever-changing market conditions (such as prevailing new home prices, interest rates, median income), the in-lieu payment amounts can vary considerably from year-to-year.

A chart indicating the in-lieu payment amounts is posted on the RHA website. Go to <http://www.rhalpc.org/programs/fair-share>. The Fair Share ordinance provides for these changes to be made administratively by RHA.

Appendix G: Policies and Procedures for Land Donations

A. Process for Developers to Propose and Make a Land Donation

1. For the process to start, the Developer must prepare a Fair Share Plan for a proposed development that includes a land donation or state in writing that the Developer wishes to amend an existing Fair Share plan to substitute a land donation for some or all of the required Fair Share homes that are not yet built.
2. Tthe Developer submits a Land Donation Proposal Form which is, in effect, a concept proposal to RHA, prior to creating a Fair Share plan or amending an existing plan. RHA will keep City Planning staff informed of the concept proposal and any substantial changes to the proposal. The concept proposal will include:
 - a. A plan of the proposed site to be donated, indicating current and future road and infrastructure access, topographical (topo) lines and (by shading or other indication) any unbuildable areas.
 - b. A description of the number and type of affordable housing units that can be built on the site, including:
 - i. The number of units currently entitled or proposed to be entitled for the site.
 - ii. The number of units that are feasible to build on the site, if less than the entitled number due to site constraints (RHA will provide an estimate of the desired mix of unit sizes, which is subject to change as RHA’s feasibility analysis continues).
 - iii. A schedule of and timetable for the actions by the Developer that must precede the land donation (for example, installing infrastructure, getting public approvals, or completing other phases of the project).
 - c. A disclosure of any easements, FAR restrictions, dedicated green space, drainage channels, water retention areas, and other code-required or contractually-required restrictions on development of the site.
 - d. A copy of any proposed or recorded deed restrictions and easements affecting the site.
 - e. Restrictions, if any, proposed by the Developer on building types, materials, heights, minimum or maximum sizes of dwelling units, etc.
 - f. Restrictions, if any, proposed by the Developer on future occupancy of the affordable housing by different populations: e.g. the future housing is age-restricted.

3. Based on the information provided, RHA will do the following:
 - a. Determine whether the site is suitable for constructing affordable for-sale or rental housing that meets the current requirements of the Fair Share program.
 - b. Determine whether the construction of affordable housing on the proposed site is financially and operationally feasible given then current market conditions and the site restrictions. (RHA will typically issue a Request For Proposals (RFP) for development of the affordable housing on a donated site, and must determine if an RFP can be reasonably expected to be successful.)
 - c. Engage a land planner or engineer (“Consultant”) to do the due diligence as described in the section titled “RHA Site Due Diligence” below, to the extent that RHA, at its sole discretion, deems necessary. RHA will obtain one or more fixed-price proposals for the due diligence. The Developer may recommend one or more firms, but RHA will select a qualified firm at its sole discretion. If RHA decides to accept a proposal, the Developer must certify in writing its willingness to pay for the due diligence or, alternatively, its desire to withdraw the proposed donation. If the Developer agrees to pay for the due diligence, it will remit a payment to RHA in advance for the cost of the due diligence.
 - d. Complete an “in-lieu equivalency” analysis (see below for explanation) to determine, on a preliminary basis, the credit that the Developer would receive for the donation, in terms of Fair Share homes that would not have to be provided on site due to the donation, based on the method described in Section C below but relying on a broker price opinion obtained by RHA and not a full appraisal.
4. If the concept plan is complete and meets the criteria described in 3a and 3b above and if the due diligence in Section 3 above is satisfactory to RHA and the City, RHA will notify the Developer of its preliminary approval and indicate the Fair Share credits that the Developer could earn from the land donation. The Developer, at its sole discretion, may accept this approval and complete its Fair Share Plan accordingly or withdraw the proposed donation, but if the proposal is withdrawn, the Developer will still be obligated to pay for any agreed-upon cost of due diligence.
5. If the proposed terms of RHA’s approval are acceptable to the Developer, the Developer will incorporate the land donation plan in its proposed Fair Share Plan or a proposed amendment to an existing Fair Share plan. The Fair Share Plan will still include the provision of all Fair Share Homes required by the Fair Share ordinance. An appendix to the agreement will describe the land donation as an offset for a certain number of Fair Share homes. This procedure will be followed to allow for the possibility that the Developer is

later unable to make the land donation—or, despite being required by the agreement to make the land donation, fails to do so.

6. City staff will review the entire proposed Fair Share Plan or amendment and approve or deny it. If the plan is denied, the City staff will state the reasons for denial in writing.
7. If the plan or amendment is approved by the City, RHA and the City will draft language incorporating the Fair Share Plan (or amendment of a Fair Share plan) in a development agreement with the City, and if required, will draft language for the subdivision plat or amended plat. See “Typical Terms of Fair Share Agreement Regarding Land Donations” below.
8. The Developer will execute the approved development agreement when directed by the City.

B. Site Due Diligence by RHA

RHA will engage an engineer or land planner to complete the following site due diligence:

1. Confirm the proposed site has public road access and available electric, gas, water, sewer and cable within 50 feet of the property line with the capacity for the proposed development.
2. Confirm and summarize the entitlements of and development requirements on the site.
3. Check the property records for any recorded easements, deed restrictions, etc. that would affect current and future development of the site.
4. Inquire as to any contractual requirements on the development of the site from the Developer, Homeowners Association or others and summarize such requirements.
5. Perform a site visit noting the development conditions and impediments on the site.
6. Prepare an estimate of the site work costs to bring the site to a rough grade for construction and compare such site costs to what would be a normally expected cost for a site without impediments.
7. Based on the entitlements, restrictions and development conditions and assuming a development concept provided by RHA, prepare a computation of the capacity of the site for such development concept with the given entitlements and zoning requirements.

C. Determination of “In-Lieu Equivalency”

RHA is responsible for determining the “in-lieu equivalency” of all land donations, subject to approval by City staff.

To determine this equivalency, RHA will do the following:

1. Within 90 days of the expected date of the execution of the Fair Share Agreement, order an appraisal of the land (at RHA’s cost) to determine the then-current fair market value of the land assuming that zoning approvals and/or other necessary public approvals will be obtained as proposed in the development proposal and Fair Share Plan, and that all roads and underground utilities will be installed up to the site as represented in the Fair Share Plan. The proposed restriction of the donated parcel to affordable housing units will not be taken into account in the appraisal.
2. Divide the averaged in-lieu payment amount (see Appendix F above) into the fair market value of the land to determine the equivalent number of Fair Share Homes being provided through the land donation.
3. In the event that the equivalent number of Fair Share Homes determined by RHA is less than the number required by the Fair Share Program, the Fair Share Plan must provide for an additional in-lieu payment of cash or additional on-site Fair Share Home construction to make up the difference, whether that difference is a whole number or a fraction.
4. In the event that the equivalent number of Fair Share Homes determined by RHA is more than the number required by the Fair Share Program, no cash credit or other benefit will be due to the Developer. However, at RHA’s sole discretion or at the direction of City staff, RHA may negotiate with the Developer to reduce the size, boundaries and affordable homes unit yield of the proposed accordingly to meet the minimum Fair Share requirements.

Because the methods used to determine the in-lieu payment amounts are based on various dynamic market conditions (such as prevailing new home prices, interest rates, and median income), the average in-lieu payment amount may vary considerably from year-to-year. And, therefore, the determination of the number of Fair Share housing units’ equivalent to the value of the land donation can vary substantially from year to year.

The determination of equivalency will be based on the average in-lieu payment that is current at the time of execution of the Fair Share agreement. This number may have changed from the number that was current as of the time of preparing the Fair Share Plan, and if so, the Plan must be amended accordingly.

The equivalency calculation will be valid for two years following the recordation of the Fair Share agreement. See Section D-6 for more details.

D. Typical Terms of a Fair Share Agreement Regarding Land Donations

The typical terms of a Fair Share Agreement regarding land donations will include but not be limited to the following. RHA and/or City staff may include different terms, or additional terms, that have been agreed to by the Developer through negotiations and are consistent with the requirements and intent of the Fair Share program.

1. Agreement to convey - The Fair Share Agreement will unconditionally commit the Developer to transfer the property to RHA if the development is approved by the City.
 - a. The tract must be conveyed by warranty deed free and clear of all encumbrances except for possible easements.
 - b. The required timing of the transfer to RHA will be within 60 days after all required infrastructure is installed up to the site boundary, including finished road access to all required access points on the site.
2. If for any reason the site is not conveyed by the Developer as and when required, the land donation component of the Fair Share Plan will become null and void. Accordingly, the Developer will be required to build the originally required number of Fair Share Homes on the development site.
3. The Fair Share Agreement will incorporate by reference the entire Fair Share Plan including all components, terms, restrictions and disclosures related to the land donation.
4. The Developer will retain the right of design review of any future development of the donated site if the donated site is in or immediately adjacent to the Developer's market-rate development. If so, RHA and any designated Developer(s) of the tract are obligated to cooperate with this review and incorporate any suggestions by the Fair Share Developer that are reasonable and feasible to implement. (Each agreement is expected to incorporate specific and unique language regarding the process of design review and the process for resolving possible disputes.)
5. The Agreement will provide for any additional in-lieu payment of cash or requirement to construct additional Fair Share Homes on site, if required to meet minimum Fair Share requirements.
6. The Agreement will state that the donation of land must be completed within two years of the date of recordation of the Agreement, and if not, RHA Fair Share Plan and Agreement must be amended to incorporate a new equivalency calculation (as described in Section C of this appendix) based on a new appraisal of the land value and the then-current average in-lieu payment amount. The Developer must pay for any subsequent appraisal work.