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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 7 Ordinance/Resolution# 10-171 Council District: 4

For Meeting of January 4, 2010

(Adoption Date)

**TITLE:** A RESOLUTION APPROVING AN AMENDED HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) GRANT AGREEMENT BETWEEN MESILLA VALLEY HABITAT FOR HUMANITY AND THE CITY OF LAS CRUCES FOR THE ACQUISITION AND NEW CONSTRUCTION OF PROPERTY FOR THE DEVELOPMENT OF AN OWNER-OCCUPIED, SINGLE-FAMILY AFFORDABLE HOUSING DWELLING UNIT.

**PURPOSE(S) OF ACTION:** Approve an Amended HOME Grant Agreement between Mesilla Valley Habitat for Humanity and the City of Las Cruces.

<b>Name of Drafter:</b> Jan Lauterbach JL		<b>Department:</b> Community Development DPA		<b>Phone:</b> 528-3134	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Community Development		528-3066	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program. The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs.

On May 5, 2008, the Las Cruces City Council considered and approved Resolution No. 08-267 adopting the 2008 Action Plan. The 2008 Action Plan outlines how the HOME and CDBG entitlement funds for Program Year 2008 (City Fiscal Year 2009) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan.

The 2008 Action Plan, as amended, allocated \$102,294.31 to Mesilla Valley Habitat for Humanity for the production of affordable housing units with the objective of increasing the supply of affordable, owner-occupied housing. Under Resolution 10-104, City Council approved \$21,124.15 to be used for the purchase of a vacant parcel located at 647 Third Street, Las Cruces, NM, for the construction of an owner-occupied, single-family affordable housing unit.

Mesilla Valley Habitat for Humanity has proposed to utilize an additional \$45,000.00 on HOME eligible construction costs for the dwelling being built on the property at 647 Third Street. The additional amount will be used to offset the actual construction expense to Habitat for Humanity

(Continued on page 2)

to build the dwelling unit; therefore, creating a more affordable unit to the future homeowner. In addition to the \$45,000.00 requested, use of HOME funds required an environmental assessment conducted on the property at a cost of \$4,359.50 for a total expenditure of \$70,483.65 to Habitat for Humanity (i.e. the original \$21,124.15 plus \$45,000 + \$4,359.50 for the environmental clearance).

In order to comply with HOME regulations, an Amended HOME Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," is required to be executed.

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
Property Acquisition- MV Habitat 2000-20184210-722190-11406	\$49,359.50	49,359.50

1. Resolution
2. Exhibit "A" – Amended HOME Agreement
3. Attachment "B" - Resolution #08-267
4. Attachment "C" – Resolution #10-104

**OPTIONS / ALTERNATIVES:**

1. Vote "YES" and approve the Resolution. Such action would approve the Amended Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity for the construction of affordable housing at 647 Third Street.
2. Vote "NO" and deny the Resolution. Such action would not provide funding for construction costs on the property enabling Mesilla Valley Habitat for Humanity to offer a more affordable housing product.
3. Modify the Resolution and vote YES to approve the modified Resolution. This action will be based on Council's decision.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff.

RESOLUTION NO. 10-171

**A RESOLUTION APPROVING AN AMENDED HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) GRANT AGREEMENT BETWEEN MESILLA VALLEY HABITAT FOR HUMANITY AND THE CITY OF LAS CRUCES FOR THE ACQUISITION AND NEW CONSTRUCTION OF PROPERTY FOR THE DEVELOPMENT OF AN OWNER-OCCUPIED, SINGLE-FAMILY AFFORDABLE HOUSING DWELLING UNIT.**

The City Council is informed that:

**WHEREAS**, the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs; and

**WHEREAS**, on May 5, 2008, the Las Cruces City Council considered and approved Resolution No. 08-267 adopting the 2008 Action Plan. The 2008 Action Plan, as amended, outlines how the HOME and Community Development Block Grant (CDBG) entitlement funds for Program Year 2008 (City Fiscal Year 2009) will be spent in accordance with the strategic goals as outlined in the City's adopted Consolidated Plan; and

**WHEREAS**, the 2008 Action Plan, as amended, allocated \$102,294.31 in HOME funds to Mesilla Valley Habitat for Humanity for the production of affordable housing units with the objective in increasing the supply of affordable, owner-occupied housing; and

**WHEREAS**, the City Council approved Resolution No. 10-104 authorizing the expenditure of \$21,124.15 to Habitat for Humanity for the acquisition of a vacant parcel located at 647 Third Street, Las Cruces, NM for affordable housing development; and

**WHEREAS**, Mesilla Valley Habitat for Humanity has proposed to utilize an additional \$45,000.00 on HOME eligible construction costs for the dwelling being built on the property at 647 Third Street, Las Cruces which will create a more affordable unit to the future homeowner; and

**WHEREAS,** HOME regulations required an environmental assessment completed on the subject property in the amount of \$4,359.50 for a total expenditure of \$70,483.65 into the subject property; and

**WHEREAS,** in order to comply with HOME regulations, the Amended HOME Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity is required to be executed.

**NOW, THEREFORE,** Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Amended HOME Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE and APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Mayor

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

**Exhibit "A"**

**AMENDMENT TO THE  
HOME INVESTMENT PARTNERSHIPS PROGRAM  
GRANT AGREEMENT BETWEEN  
THE CITY OF LAS CRUCES  
AND  
MESILLA VALLEY HABITAT FOR HUMANITY**

This amended **GRANT AGREEMENT** and **Attachments** is an amendment to, but not in lieu of the **original GRANT AGREEMENT** and **original Attachments**, executed on October 21, 2009, under the Authority of City of Las Cruces Resolution 10-104, in its entirety.

This amended **GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a mailing address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City" or "Lender") and **MESILLA VALLEY HABITAT FOR HUMANITY**, a Non-Profit Organization, whose address is 720 Santa Fe Street, Las Cruces, New Mexico, 88001 (hereinafter referred to as "Sub-recipient").

**WITNESSETH:**

**WHEREAS**, the City is an entitlement recipient of the federal HOME Investment Partnerships Program (hereinafter referred to as "HOME") in furtherance of its goal of encouraging the production of decent, safe, sanitary affordable housing for the citizens of Las Cruces;

**WHEREAS**, the City has allocated through its 2008 Action Plan, as amended, a total of One Hundred Two Thousand Two Hundred Ninety Four Dollars and Thirty-One Cents (\$102,294.31 Non-CHDO entitlement) to Mesilla Valley Habitat for Humanity, a Community Housing Development Organization (CHDO), partnering with the City of Las Cruces in the production of affordable housing;

**WHEREAS**, the Sub-recipient submitted a proposal which was approved under the authority of City of Las Cruces Resolution 10-104, to utilize Twenty One Thousand One Hundred Twenty Four Dollars and Fifteen Cents (\$21,124.15) of the total 2008 HOME funds allocation for acquisition of a vacant parcel located at 647 Third Street, Las Cruces, NM, 88005 located on the property more specifically described on the attached **Attachment "A"** (hereinafter referred to as "Property");

**WHEREAS**, the use of HOME funds required an environmental assessment in the amount of \$4,359.50 to be completed on the subject property; and

**WHEREAS**, the acquisition and new construction of property for affordable single-family owner-occupied housing unit is an eligible activity under the HOME Program; and

**WHEREAS**, the parties desire to enter into this Agreement in order to allocate additional HOME funding in the amount of \$45,000.00 to Mesilla Valley Habitat for Humanity for HOME eligible construction costs on the subject property and to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Sub-recipient regarding the use of funds to benefit low-income persons, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), a copy of which document for the current year is attached hereto as **Attachment "B"** and is incorporated herein by this reference.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the City and the Sub-recipient agree as follows:

1. The following additions, corrections, clarifications, deletions, or other amendments as identified by Section are hereby made:

**SECTION 1. DEFINITIONS:** the following is amended

As used herein, the following words and terms, whether capitalized or not, shall have the following meanings, unless the context demands otherwise:

2. Affordable or Affordability – means as defined in Section 3, Paragraph 3 of this Agreement is 15 years.
8. Grant Documents – means this Amendment, the Agreement, the Note, Deed Restrictions and Covenant and all agreements, certificates, schedules, notes, statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the grant contemplated hereby.
13. Project – means the acquisition and new construction of land that will be developed for owner occupied, single family residence that shall be owned and occupied by Low Income or Moderate Income Persons.

**SECTION 2. GRANT AMOUNT AND USE OF FUNDS:** the following additions, corrections, clarifications, deletions, or other amendments as identified are hereby made:

2. The Grant: Under the terms and conditions of this amended Agreement, the City agrees to grant the Sub-recipient an amount of Forty Five

Thousand Dollars and No Cents (\$45,000.00) for HOME eligible construction costs in addition to the original awarded amount of Twenty One Thousand One Hundred Twenty Four Dollars and Fifteen Cents (\$21,124.15) for the acquisition of the Property and the Four Thousand Three Hundred Fifty Nine Dollars and Fifty Cents (\$4,359.50) for the environmental assessment completed for a total Grant amount of Seventy Thousand Four Hundred Eighty Three Dollars and Sixty Five Cents (\$70,483.65). The grant to the Sub-recipient shall be in the form of a grant on the terms set forth in this Agreement and Deed Restrictions and Covenants to the owner, as required by the City. The Sub-recipient shall execute the Allonge to the original promissory note in favor of the City substantially in the form attached hereto as **Attachment "C,"** (The "Note"), and incorporated herein by this reference. The Note shall be secured by a Deed Restrictions and Covenant on the Property executed by the owner (the "Lien") substantially in the form attached hereto and incorporated herein by reference as **Attachment "D"**.

9. Payment Requests: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$70,486.65. Payment requests are due by the fifteenth (15<sup>th</sup>) day of each month. If no payment request is needed for a particular month, the Sub-recipient must submit in writing that no payment request is required for that particular month. The Sub-recipient agrees to use the Payment Request form as referenced in **Attachment "F"** Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 24 CFR Part 84, Subpart C, "Financial and Program Management."

**SECTION 3. GENERAL TERMS AND CONDITIONS:** the following additions, corrections, clarifications, deletions, or other amendments, as identified are hereby made:

3. Period of Affordability/Restrictive Covenant: The HOME-assisted unit shall be maintained as affordable housing for the fifteen year Affordability Period. In order to ensure compliance with this fifteen year Affordability Period, the owner shall execute a Deed Restrictions and Covenant, a copy of which is attached hereto as **Attachment "D"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any grant or mortgage or the transfer of ownership. The Sub-recipient does hereby acknowledge that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Deed Restrictions and Covenant which requires that the Property be made available for subsequent purchase only to a buyer

whose household qualifies as a low-income family, as defined by the United States Department of Housing and Urban Development, and will use the Property as its principal residence.

4. Property Standards: The sub-recipient shall comply with the property standards requirements set forth in 24 CFR §92.251. The sub-recipient and/or owner shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, zoning ordinances, and HUD's Section 8 Housing Quality Standards (HQS), as per 24 CFR §982.401. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973. Covered multi-family dwellings, as defined in 24 CFR §100.201, must meet the design and construction requirements set forth in 24 CFR §100.205, which implements the Fair Housing Act. The Sub-recipient and/or owner shall maintain the Property in compliance with state and local codes, as well as HQS as per 24 CFR §982.401 for the 15-year Affordability Period.
5. Attachment "C" Original Promissory Note, shall remain in full force and effect as reflected in the First Allonge to Promissory Note.
6. Attachment "D" Original Deed Restrictions and Covenant is replaced with Attachment "D" of this Amendment to reflect the total dollar amount allocated to the project for acquisition and construction of the property located at 647 Third Street, Las Cruces, NM 88005.
7. All other sections, Exhibits, and or Attachments shall remain as originally agreed to and shall remain in full force and effect.

**IN WITNESS WHEREOF** the parties have executed this Agreement, each upon the date set forth next to his/her name.

**SIGNATURES ON THE NEXT PAGE**

**SUB-RECIPIENT**

**MESILLA VALLEY HABITAT FOR HUMANITY**

\_\_\_\_\_  
Ed Johnson, Executive Director

\_\_\_\_\_  
Date

**CITY OF LAS CRUCES**

\_\_\_\_\_  
Terrence Moore, City Manager  
City of Las Cruces

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

**Lot 4, PALMERS SUBDIVISION REPLAT NO. 12, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on August 9, 2005, in Book 21 Page (s) 288-289 of Plat Records.**

## ATTACHMENT "B"

**STANDARDS OF ELIGIBILITY - 2009 INCOME LIMITS****PERSONS ELIGIBLE AND QUALIFIED TO RECEIVE SAID SERVICES AS ESTABLISHED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) 2009**

<b>HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size</b>					
<b>EFFECTIVE DATE, March 19, 2009</b>					
<b>MEDIAN FAMILY INCOME (MFI): \$43,000</b>					
<b>FAMILY SIZE * # OF PERSONS</b>	<b>EXTREMELY LOW INCOME (30% of Median)</b>	<b>VERY LOW INCOME (50% of Median)</b>	<b>LOW INCOME (80% of Median)</b>	<b>MODERATE INCOME (100% of Median)</b>	
1	\$9,300	\$15,450	\$24,700	\$30,100	
2	\$10,600	\$17,650	\$28,250	\$34,400	
3	\$11,950	\$19,850	\$31,750	\$38,700	
4	\$13,250	\$22,050	\$35,300	\$43,000	
5	\$14,300	\$23,800	\$38,100	\$46,440	
6	\$15,350	\$25,600	\$40,950	\$49,880	
7	\$16,450	\$27,350	\$43,750	\$53,320	
8	\$17,500	\$29,100	\$46,600	\$56,760	

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2009 Income limits from website at <http://www.huduser.org/datasets/il/il09/index.html>

Income limits for families with more than eight-persons, 8% of the four person base should be added to the either person income limit.

Income limits are rounded to the nearest \$50. For simplicity, this is optional for income limits for nine-plus person families.

## ATTACHMENT "C"

## PROMISSORY NOTE

\$21,124.15

Las Cruces, New Mexico  
Oct 21, 2009

FOR VALUE RECEIVED, the undersigned MESILLA VALLEY HABITAT FOR HUMANITY. ("Maker"), a non-profit corporation, with its address at 720 Santa Fe, Las Cruces, New Mexico, 88001, promise to pay, in the event of default, as defined in Section 4 of the Grant Agreement, to the order of the CITY OF LAS CRUCES ("Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, with an mailing address of PO Box 20000, Las Cruces, New Mexico, 88004, or its assigns, the principal sum of TWENTY ONE THOUSAND ONE HUNDRED TWENTY FOUR DOLLARS AND FIFTEEN CENTS (\$21,124.15), or so much thereof as shall have been advanced by the City of behalf of the Maker by Holder from time to time, together with all charges as provided herein and in the Deed Restrictions and Covenant (as hereinafter defined) the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

On the 21 day of Oct, 2009, the Maker and the Holder entered into a certain HOME Grant Agreement, which provided for the grant by the Holder to the Maker of an amount not to exceed the Principal Sum of this Note. All capitalized terms used in this Note have the meaning provided in the Grant Agreement.

The grant authorized shall be for TEN (10) years or until the Maker sells or refinances the Project, whichever occurs first. This Note shall not bear any interest. The Grant to the Maker and Co-Maker shall be in the form of a forgivable grant amortized over the 10 year period beginning July 1, 2010. The Grant will be forgiven each year by an amount equal to 1/10<sup>th</sup> of the total grant amount for the duration of the affordability period of ten (10) years.

The proceeds of the grant evidenced by this City Note may be assigned, upon written consent of the City, to any successors, assignees or purchasers of the Project who agree in writing to assume all of the obligations of Maker, its successors and assigns under the Agreement, this City Note and the Deed Restrictions and Covenant and the Maker shall thereupon be released from all future liability hereunder.

The entire principal balance shall become immediately due and payable upon: (1) default under the terms of the HOME Grant Agreement (2) the bankruptcy or reorganization of the Maker under the Bankruptcy Code or the Internal Revenue Code of 1954, as amended; or (3) the dissolution or liquidation of the Maker prior

HOME Agreement - Habitat for Humanity, PY 2008 Third St

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to the permitted assignment of Maker's rights and assumption of its obligation hereunder.

If at any time during the term of this City Note, any material portion of the improvements or equipment situated on the Project site shall be removed, demolished or materially altered without prior written consent of Holder, the entire principal balance of the grant, shall become immediately due and payable; provided, however, that Maker shall have the right, without such consent to remove and dispose of (free from any lien of Holder) such equipment as from time to time has become worn out or obsolete, provided that simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or other encumbrance not otherwise permitted herein or in the Deed Restrictions and Covenant. By such removal and replacement, Maker shall be deemed to have subjected such equipment to the lien of Holder.

All cash payments hereunder shall be payable in lawful money of the United States, which shall be legal tender for public and private debts at the time of payment, at the office of the City Accountant, or at such other place as the Holder hereof may from time to time give notice in writing to the Maker.

Notwithstanding any of the provisions contained herein or any of the Grant Documents, the Grant shall be non-recourse to the Owner.

This City Note is secured by a Deed Restrictions and Covenant and security agreement of even date herewith between the City of Las Cruces and Mesilla Valley Habitat for Humanity, granted by the Maker to the Holder, conveying a mortgage and security interest in the Project and the real property constituting the site therefore, which Deed Restrictions and Covenant is to be filed for record in the Office of the County Clerk of Dona Ana County, New Mexico. All of the provisions of the Deed Restriction and Covenant are incorporated herein by reference.

If (1) default be made, as defined in Section 4 of the Grant Agreement, the entire principal balance hereunder is due after receipt of written notice at once or at any time thereafter during the continuance of such default, at the option of the Holder, thereof, become due and payable. The undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing remedies under this Note and the Deed Restrictions and Covenant to collect any sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

If (2) default be made, and not timely cured, under the terms of any Mortgage loan to which the Deed Restrictions and Covenant is subordinate; (3) Maker shall dissolve or otherwise fail to maintain its status as a New Mexico non-profit corporation; (4) Maker sells or conveys the Project to a third party without the

prior written consent of the Holder; (5) Maker sells or conveys the Project to a third party who does not agree in writing to assume all of obligations of Maker, its successors and assigns under the Agreement, this City Note and the Deed Restrictions and Covenant; or (6) default be made in the performance of any of the other covenants contained in this City Note, the Grant Agreement or in the Deed Restrictions and Covenant, and such default shall continue for a period in excess of that time provided for remedy thereunder, then, in any such event, the whole unpaid principal balance shall, upon ten (10) days written notice to the Maker, at once or at any time thereafter during the continuance of such default, at the option of the Holder thereof, become due and payable. The undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and the Deed Restrictions and Covenant to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions.

The Maker waives presentment for payment, protest, notice of protest and notice of dishonor. The Maker consents to any number of renewals or extensions of the time of payment hereof. Any such renewals or extensions may be made without notice to Maker and without affecting its liability.

Failure to accelerate the indebtedness evidenced hereby by reason of default in the payment of an installment of principal, or the acceptance of a past due installment of the same, shall not be construed as a novation of this City Note or as a waiver of the right of the Holder to thereafter insist upon strict compliance with the terms of this City Note without previous notice of such intention being given to the Maker. This City Note shall not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

As used herein, the terms "Maker" and "Holder" shall be deemed to include their respective successors, legal representatives and assigns, whether voluntary by action of the parties or involuntary by operation of law. This City Note shall be construed according to the laws of the State of New Mexico.

Any and all references in the City Note to any other document or documents shall be references to such document or documents as the same may from time to time be modified, amended, renewed, consolidated or extended.

Subject to the qualification otherwise set forth herein, time is of the essence in the performance of this Note.

The representative of Maker subscribing below represents that he has full power, authority and legal right to execute and deliver this Note and that the debt evidenced hereby constitutes a valid and binding obligation of Maker.

HOME Agreement – Habitat for Humanity, PY 2008 Third St

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**ATTACHMENT "C-1"**  
**ALLONGE TO PROMISSORY NOTE**

For attachment to that certain **Promissory Note** ("Note") dated October 21, 2009, made by Mesilla Valley Habitat for Humanity, a non-profit corporation, in the amount of **\$21,124.15**. This Allonge is acknowledged to be supported by consideration and is to be read together with and is hereby incorporated by reference to the attached Note and constitutes an integral part thereof.

1. The first paragraph of the Note is hereby replaced with the following sentence:

"FOR VALUE RECEIVED, the undersigned MESILLA VALLEY HABITAT FOR HUMANITY, ("Maker"), a non-profit corporation, with its address at 720 Santa Fe, Las Cruces, New Mexico, 88001, promises to pay, in the even of default, as defined in Section 4 of the Grant Agreement, to the order of the CITY OF LAS CRUCES (" Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, with a mailing address of PO Box 20000, Las Cruces, New Mexico, 88004, or its assigns, the principal sum of SEVENTY THOUSAND FOUR HUNDRED EIGHTY THREE DOLLARS AND SIXTY FIVE CENTS (70.483.65), or so much thereof as shall have been advanced by the City on behalf of the Maker by Holder from time to time, together with all charges as provided herein and in the Deed Restrictions and covenant (as hereinafter defined) the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.."

2. The third paragraph of the Note is hereby replaced with the following sentence:

The grant authorized shall be for FIFTEEN (15) years or until the Maker sells or refinances the Project, whichever occurs first. This Note shall not bear any interest. The Grant to the Maker shall be in the form of a forgivable grant amortized over the 15 year period beginning on the execution date of the Deed Restrictions and Covenant. The \$4,359.50 spent on the environmental assessment will be forgiven in full at the end of the first year; the remaining balance of \$66,124.15 grant will be forgiven each year by an amount equal to 1/15<sup>th</sup> of the total grant amount for the duration of the affordability period of fifteen (15) years.

- 3. All other aspects of the note are to remain the same.

In Witness Whereof, the undersigned has executed this Allonge effective as of the \_\_\_ day of \_\_\_\_\_, 2010.

MESILLA VALLEY HABITAT FOR HUMANITY

By: \_\_\_\_\_

Name: Ed Johnson

Title: Executive Director

STATE OF NEW MEXICO )

) ss.

COUNTY OF DONA ANA )

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2010, by Ed Johnson, Executive Director of Mesilla Valley Habitat for Humanity.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

ATTACHMENT "D"

**CITY OF LAS CRUCES****DEED RESTRICTIONS AND COVENANT****Deed Restrictions of Property****Date:** \_\_\_\_\_, **2010**

\_\_\_\_\_, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having an mailing address of PO Box 20000, Las Cruces, NM, 88004 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of 647 Third Street, Las Cruces, NM 88005, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

**Deed Restrictions**

This Deed Restrictions and Covenants Agreement ("Agreement") secures the performance of the following obligations and is upon the statutory Deed Restrictions condition for the breach of which it is subject to foreclosure as provided by law:

- (a) The performance of all of Owner's obligations and agreements contained in this Agreement, and
- (b) The conditions and obligations imposed upon the use of the Property contained herein.
- (c) This instrument and these restrictions are subordinate to the rights and liens, if any, under any valid outstanding Deed of Trust, currently of record. Foreclosure of such prior recorded lien or transfer in lieu of foreclosure shall extinguish this instrument and these restrictions; However, if any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Affordability Period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner, or those with whom the former owner has family or business ties, in the Property the Affordability Period shall be revived according to its original terms.
- (d) In the event of a refinancing during the Affordability Period, the Property must continue to be subject to these deed restrictions, however, the initial date hereof will continue as the baseline for the Affordability Period.
- (e) The provisions of this instrument are hereby declared covenants running with the land and are fully finding on any successors, heirs,

and assigns of Owner who may acquire any rights, title, or interest in or to the Property, or any part of it. Owner, its successors, heirs, and assigns hereby agree and covenant to abide by and fully perform the provisions of this instrument.

This Agreement secures all future advances of funds to Owner by Lender in connection with this Agreement, and the lien of each such advance will relate back to the date of recordation of this Agreement.

### **Restrictive Covenants**

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity, in the amount of Seventy Thousand Four Hundred Eighty Three Dollars and Sixty Five Cents (\$70,483.65) ("Grant") for land acquisition, environmental assessment and construction costs. The Grant will be made to the Owner through the Lender's HOME Investment Partnerships Program pursuant to Title 24 of the Code of Federal Regulations Part 92, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the Grant and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Owner agree as follows:

- A. Affordability. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the date of this Agreement; if the subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of this Agreement; or if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of this Agreement. The Affordability Period will begin on the date of this Agreement.
- B. Owner Occupied. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose family qualifies as a low-income family, as defined by the United States Department of Housing and Urban Development, and will use the Property as its principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Grant was committed to the Property, through the Agent, Mesilla Valley Habitat for Humanity.

- C. Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Owner agrees that the entire Grant will be subject to the resale requirements referenced in Section 2-7 of the HOME Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity upon any such unapproved sale or transfer except as provided for in Paragraph (E).
- D. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Grant will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of law, (2) the transfer is to a member of Owner's immediate family ("Heir") (for purposes of this Agreement the term "immediate family" means parents, siblings or children only), (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Grant, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Grant and to otherwise comply with all the terms and conditions of this Agreement.
- E. Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed contemporaneously herewith, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the resale requirement to become effective immediately.
- F. Right of Redemption. If this Agreement is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

Owner(s) acknowledges having read all the provisions of this Deed Restrictions and Covenants Agreement, and agrees to its terms.

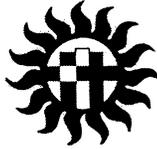
SIGNATURES ON THE NEXT PAGE



**ATTACHMENT "E"****SCOPE OF WORK, PROJECT SCHEDULE AND BUDGET**

Mesilla Valley Habitat for Humanity proposes to construct a new owner-occupied single family dwelling unit on the property located at 647 Third Street, Las Cruces, New Mexico, 88005. The HOME funds granted to Habitat will be used for land acquisition. The property will be offered for sale to a low-income household earning 50% or less of area AMI and working with Habitat through their homeownership processes. The construction of the dwelling unit will begin in the fall of 2009 to coincide with Habitats building season with the majority of the work to be completed by volunteers, with the selected household also sharing in the commitment of the building process by providing sweat equity to this and other properties Habitat has in the construction process.

PAYMENT REQUEST FORM



**City of Las Cruces**<sup>®</sup>  
PEOPLE HELPING PEOPLE

**INVOICE**

Date \_\_\_\_\_

Agency Name Mesilla Valley Habitat for Humanity

Project Name 647 Third Street, Las Cruces, NM

Contract balance amended **\$ 70,483.65**

Balance as of end of previous month \$45,000.00

Invoice Expenses:

\$  
\$

**GRAND TOTAL:** \$

Remaining Balance:

\$ \_\_\_\_\_

**Certification:**

I, \_\_\_\_\_, as \_\_\_\_\_

of \_\_\_\_\_,  
hereby certify that the information provided on this invoice is for reimbursement  
for acquisition expense incurred in the month of \_\_\_\_\_ for Mesilla Valley  
Habitat for Humanity, a Community Housing Development Organization.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

RESOLUTION NO. 08-267

A RESOLUTION APPROVING THE 2008 ACTION PLAN AS PART OF THE 2006-2010 CONSOLIDATED PLAN FOR THE CITY OF LAS CRUCES. THE RESOLUTION AUTHORIZES THE CITY STAFF TO SUBMIT THE 2008 ACTION PLAN TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND AUTHORIZES THE ACTION PLAN TO BE INCORPORATED INTO THE CITY'S BUDGET FOR FY 2008/09.

The City Council is informed that:

**WHEREAS**, the City of Las Cruces is an Entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs, and

**WHEREAS**, Entitlement communities are required to develop, adopt, and implement a Consolidated Plan every three to five years to address the City's housing and community development needs in order to continue to receive the CDBG and HOME funding, and

**WHEREAS**, for the 2008 Action Plan, the City will receive entitlement and program income for both the CDBG and HOME Programs from HUD in the amount of \$1,634,537.00 to address the City's affordable housing and community development needs for its low- and moderate-income areas and residents.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

**THAT** the 2008 Action Plan and all necessary support documentation, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved and adopted.

(II)

**THAT** Staff is hereby authorized to secure necessary signatures and transmit the 2008 Action Plan to the U.S. Department of Housing and Urban Development on the City's behalf.

(III)

THAT the 2008 Action Plan is hereby authorized to be incorporated into the City's FY 2008/09 budget, once developed.

(IV)

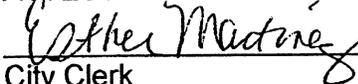
THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 5th day of May, 2008.

APPROVED:

  
\_\_\_\_\_  
Mayor Ken Miyagishima

ATTEST:

  
\_\_\_\_\_  
City Clerk  
(SEAL)

Moved by: Archuleta

Seconded by: Connor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

RESOLUTION NO. 10-104

**A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) GRANT AGREEMENT BETWEEN MESILLA VALLEY HABITAT FOR HUMANITY AND THE CITY OF LAS CRUCES FOR THE ACQUISITION OF PROPERTY FOR THE DEVELOPMENT AND CONSTRUCTION OF AN OWNER-OCCUPIED, SINGLE-FAMILY AFFORDABLE HOUSING DWELLING UNIT.**

The City Council is informed that:

**WHEREAS**, the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs; and

**WHEREAS**, on May 5, 2008, the Las Cruces City Council considered and approved Resolution No. 08-267 adopting the 2008 Action Plan. The 2008 Action Plan, as amended, outlines how the HOME and Community Development Block Grant (CDBG) entitlement funds for Program year 2008 will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

**WHEREAS**, the 2008 Action Plan, as amended, allocated \$102,294.31 in HOME funds to Mesilla Valley Habitat for Humanity for the production of affordable housing units with the objective in increasing the supply of affordable, owner-occupied housing; and

**WHEREAS**, the current project for Habitat for Humanity will expend \$21,124.15 of the \$102,294.31 allocated funding amount on a single-family owner-occupied dwelling to be located at 647 Third Street, Las Cruces, NM; and

**WHEREAS**, in order to comply with HOME regulations, the HOME Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity is required to be executed.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the HOME Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this 5th day of October, 2009.

(SEAL)

APPROVED:

  
Mayor

ATTEST:

  
City Clerk

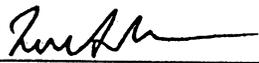
VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Archuleta

Seconded by: Connor

Approved as to Form:

  
City Attorney