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City of Las Cruces
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 10-205 Council District: N/A

For Meeting of February 16, 2010

(Adoption Date)

TITLE: A RESOLUTION APPROVING THE TRANSFER OF FORECLOSED PROPERTIES FROM THE CITY OF LAS CRUCES TO TIERRA DEL SOL HOUSING CORPORATION. THE PROPERTIES ARE AT 4752 DIAMANTE COURT AND 2913 ONATE ROAD IN LAS CRUCES. THEY WERE PURCHASED UNDER THE AUTHORITY OF RESOLUTION 10-009 BY THE CITY MANAGER FOR THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP).

PURPOSE(S) OF ACTION: To transfer two City-Owner NSP Properties to Tierra del Sol.

Name of Drafter: Jerry Nachison <i>JN</i>		Department: Community Development <i>N/A</i>		Phone: 528-3208	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>NW</i>	528-3067	Budget	<i>Richard Y. ...</i>	541-2300
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: In July 2008, President Bush signed the Housing and Economic Recovery Act of 2008 (HERA). HERA was created to provide neighborhood stabilization to communities throughout the United States due to rising foreclosures and abandoned residential properties due to tough economic times. HERA appropriated \$3.92 billion in funding as part of a special allocation of Community Development Block Grant (CDBG) funds for distribution to States and Local governments. The State of New Mexico received a total allocation of \$19.6 million. Las Cruces received \$1.5 million from the State of New Mexico Department of Finance and Administration, Local Government Division.

In summary, the City's NSP Plan primarily focuses through partner agencies in two areas to (1) acquire, rehab, and resale abandoned or foreclosed properties or build new housing on acquired, vacant parcels for homeownership to serve persons between 50% and 120% of Area Median Income (AMI); and (2) acquire, rehab, and donate to qualified non-profit agencies as rental housing for persons below 50% of AMI, primarily for those with special needs. All properties must be foreclosed and available or vacant, abandoned, blighted and unused, with owners willing to sell.

The properties at 4752 Diamante Court and 2913 Onate Road represent two foreclosed properties with a completed transaction and owned by the City. Resolution 10-009 approved by the City Council on July 6, 2009, delegated authority to the City Manager to purchase only those eligible, foreclosed properties. With approval of this Resolution, the City Council will

(Continued on Page 2)

direct staff to transfer these properties to Tierra del Sol, consistent with its grant approved by Council Resolution 10-097. Tierra del Sol will then rehabilitate the properties consistent with City and NSP procedures and resell the properties as affordable housing using normal lending procedures. Sales proceeds will be returned to the City for recycling to purchase additional NSP properties.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
HUD Special Projects – Fund 2010/20184230-722190-12005	N/A	N/A

1. Resolution
2. Exhibit "A" – Transfer Documents for 4752 Diamante Court
3. Exhibit "B" – Transfer Documents for 2913 Onate Road
4. Attachment "C" – Resolution 10-009
5. Attachment "D" – Resolution 10-097

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution approving the transfer of these properties under the NSP. This will allow City staff to transfer the properties to Tierra del Sol.
2. Vote NO and disapprove the Resolution, thus not approving the transfer of the properties to Tierra del Sol. This means that staff will need guidance from the City Council on how to proceed. Staff may or may not be able to complete the City's obligations under the NSP grant from the State of New Mexico.
3. Modify the Resolution and vote YES to approve the modified Resolution. This action will be based on the Council's discretion. The Council will need to provide guidance to staff, consistent with #2 above.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff. Tabling or postponing the transfer initially will delay rehabilitation and other processes. The Council will need to provide guidance to staff, consistent with #2 above.

RESOLUTION NO. 10-205

A RESOLUTION APPROVING THE TRANSFER OF FORECLOSED PROPERTIES FROM THE CITY OF LAS CRUCES TO TIERRA DEL SOL HOUSING CORPORATION. THE PROPERTIES ARE AT 4752 DIAMANTE COURT AND 2913 ONATE ROAD IN LAS CRUCES. THEY WERE PURCHASED UNDER THE AUTHORITY OF RESOLUTION 10-009 BY THE CITY MANAGER FOR THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP).

The City Council is hereby informed that:

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is charged with implementing the Housing and Economic Recovery Act of 2008 (HERA); and

WHEREAS, HERA funds are a special allocation of Community Development Block Grant (CDBG) funds, of which the City of Las Cruces is an entitlement community and HERA creates a national program henceforth called the Neighborhood Stabilization Program; and

WHEREAS, due to the urgency expressed under HERA, the entire allocation of HERA funding were awarded to the State of New Mexico Department of Finance and Administration, Local Government Division, and the City of Las Cruces submitted a plan for use of the Neighborhood Stabilization Program within the corporate limits of the City; and

WHEREAS, the City of Las Cruces has received an allocation of \$1,500,000 for its Neighborhood Stabilization Program from the State of New Mexico; and

WHEREAS, part of the City's Neighborhood Stabilization Program calls for the purchase of foreclosed, abandoned, and/or vacant residential properties for the development of affordable owner-occupied housing through Tierra del Sol Housing Corporation, a local non-profit housing developer.

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

(I)

THAT the City of Las Cruces' staff is hereby authorized to transfer the properties at 4752 Diamante Court and 2913 Onate Road as shown in Exhibits

"A" and "B," attached hereto and made part of this resolution, to the ownership of Tierra del Sol and such transfers are hereby approved.

(II)

THAT the City Manager of the City of Las Cruces is hereby authorized to sign all necessary closing documents for the properties as identified in paragraph (I) above, on the City's behalf.

(III)

THAT the properties are to be rehabilitated, as appropriate, to the NSP standards under Tierra del Sol direction and, upon completion, they will be resold to eligible homeowners as affordable housing consistent with Tierra del Sol's grant approved by the Council under resolution 10-097 and the City's approved NSP Plan.

(IV)

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.

APPROVED:

(SEAL)

Mayor

ATTEST:

VOTE:

City Clerk

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Moved by: _____

Councillor Pedroza: _____

Councillor Small: _____

Seconded by: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

CONTRACT COVER FORM

Date: 01/21/2010 Sales Representative Tim Lightfoot
 REO# D090T2N Loan # 1706717652 Closing Date 03/08/2010
 Owner Occupant or Investor Purchase Price \$ 150,000
 All Cash to Seller yes or Fannie Mae financing _____
 Property Address:
 Street: 4752 Diamante Court
 City/State/Zip: Las Cruces, NM 88012
 County: Dona Ana
 Complete Name(s) in which title is to be taken: City of Las Cruces

LISTING BROKER INFORMATION

Listing Agent Name: Grady Oxford Company: Steinborn GMAC Real Estate
 Company Address: Street: 141 Roadrunner Pkwy, Suite 141
 City/State/Zip: Las Cruces, NM 88011
 Phone No. (no 800 numbers): (575) 522-3698 Fax No. (575) 522-4987

SELLING BROKER INFORMATION

Selling Agent Name: Lance Swarenjin Company: International Realty Plus NM
 Company Address: Street: 1705 N. Valley Drive, Suite 1
 City/State/Zip: Las Cruces, NM 88007
 Phone No. (no 800 numbers): (575) 522-0487 Fax No. (575) 524-4252

BUYER'S ATTORNEY (if applicable)

Name: _____ Company: _____
 Company Address: Street: _____
 City/State/Zip: _____
 Phone No. (no 800 numbers): (_____) _____ Fax No. (_____) _____

FINANCING LENDER INFORMATION

Contact Name: _____ Company: _____
 Company Address: Street: _____
 City/State/Zip: _____
 Phone No. (no 800 numbers): (_____) _____ Fax No. (_____) _____

CLOSING AGENT INFORMATION

Contact Name: Crystal LeMaster Company: Fidelity National Title
 Company Address: Street: 8500 Menaul NE Ste B150
 City/State/Zip: Albuquerque, NM 87112
 Phone No. (no 800 numbers): (505) 332-6211 Fax No. (505) 559-5087

1093 / Work Authorizations Still Needed: YES
 NONE NEEDED

\$\$ Amount	Purpose	Contractor
_____	_____	_____
_____	_____	_____
_____	_____	_____

Include a complete ordering packet for each job needed, & place on top of this contract packet before sending.

REO # 0690723

REAL ESTATE PURCHASE ADDENDUM

This Addendum is to be made part of, and incorporated into, the Real Estate Purchase Contract dated 1/18/2010, (the "Contract"), between Fannie Mae ("Seller") and City of Las Cruces ("Purchaser") for the property and improvements located at the following address: 4732 DIAMANTE COURT LAS CRUCES NM 88012 ("Property").

The Seller and the Purchaser agree as follows:

1. **Verbal Acknowledgement:** The essential terms of the purchase and sale of the Property have been verbally accepted by the Seller on or before 1/20/2010 (the "Verbal Acknowledgement Date") with a sales price of \$150,000.00. Notwithstanding such verbal acknowledgement, the Purchaser acknowledges and agrees that the Contract and this Addendum (together shall be referred to as the "Agreement") are subject to approval by the Seller's Management and must be signed by all parties in order to be binding. If applicable, upon execution, escrow will be opened by both parties immediately following the Seller's acceptance of this Agreement with a mutually acceptable escrow agent. The Purchaser's earnest money deposit of \$0.00 is to be placed in a trust account acceptable to the Seller within 24 hours of the Seller's acceptance. This Agreement signed by the Purchaser and reflecting the terms verbally accepted by the Seller must be received by the Seller within five (5) calendar days of the Verbal Acknowledgement Date. If the Seller does not receive the signed Agreement by such date, this Agreement shall be null and void. In addition, this Agreement shall be null and void if the signed Agreement is not received by the Seller before the Seller accepts a competing offer, or gives verbal notice of revocation either to the Purchaser, the Purchaser's agent or attorney, or the listing agent. As used in this paragraph, the term "received by the Seller" means actual receipt by the Seller of the Purchaser's written acceptance of these documents by the Seller's listing agent.

The Purchaser shall present proof, satisfactory to the Seller, of the Purchaser's prequalification for a mortgage loan in an amount and under terms sufficient for the Purchaser to perform its obligations under this Agreement. The prequalification shall include but is not limited to, a certification of prequalification or a mortgage loan commitment from a mortgage lender, a satisfactory credit report and/or proof of funds sufficient to meet the Purchaser's obligations under this Agreement. The Purchaser's submission of proof of prequalification is a condition precedent to the Seller's acceptance. The Seller may require the Purchaser to obtain, at no cost to the Purchaser, loan prequalification from a Seller approved third party lender. Notwithstanding any Seller required prequalification, the Purchaser acknowledges that Purchaser is free to obtain financing from any source.

2. **Time of the Escrow, Closing Date:**

(a) It is agreed that time is of the essence with respect to all dates specified in this Agreement and any addenda, riders or amendments thereto. This means that all deadlines are intended to be strict and absolute.

(b) The closing shall take place on or before 1/22/2010, or within five (5) days of final loan approval by the lender, whichever is earlier, unless the closing date is extended in writing signed by the Seller and the Purchaser or extended by the Seller under the terms of this Agreement. The closing shall be held in the offices of the Seller's attorney or agent, or at a place so designated and approved by the Seller, unless otherwise required by applicable law. If the closing does not occur by the date specified in this Section 2 of the Addendum, or in any extension, this Agreement is automatically terminated and the Seller shall retain any earnest money deposit as liquidated damages.

(c) In the event the Seller agrees to the Purchaser's request for a written extension of this Agreement, the Purchaser agrees to pay to the Seller a per diem of \$1.00 through and including the closing date specified in the written extension. If the sale does not close by the date specified in the written extension agreement, the Seller may retain the earnest money deposit and the accrued per diem payment as liquidated damages.

3. **Financing:** This Agreement (check one): () is, (X) is not, contingent on the Purchaser obtaining financing for the purchase of the Property. If this Agreement is contingent on financing, the type of financing shall be the following (check one):

- () Fannie Mae Special REO Financing from a participating lender
- () Conventional
- () FHA
- () VA
- () Other (specify:)

All Financing. (This paragraph applies to all financing, whether or not it is Fannie Mae Special REO or other financing.) If this Agreement is contingent on financing, the Purchaser shall apply for a loan in the amount of \$_____ with a term of _____ years, at prevailing rates, terms and conditions. The Purchaser shall complete and submit to a mortgage lender, of the Purchaser's choice, an application for a mortgage loan containing the terms set forth in this paragraph within five (5) calendar days of the Verbal Acknowledgement Date, and shall use diligent efforts to obtain a mortgage loan commitment by _____. If, despite the Purchaser's diligent efforts, the Purchaser cannot obtain a mortgage loan commitment by the specified date, then either the Purchaser or the Seller may terminate this Agreement by giving written notice to the other party. The Purchaser's notice must include a copy of the loan application, proof of the application date, and a copy of the denial letter from the prospective lender. In the event of a proper termination of this Agreement under this paragraph, the earnest money deposit shall be returned to the Purchaser and the parties shall have no further obligation to each other under this Agreement. The Purchaser agrees to cooperate and comply with all requests for documents and information from the Purchaser's chosen lender during the loan application process. Failure of the Purchaser to comply with such requests from the lender that results in the denial of the mortgage loan will be a breach of this Agreement and the Seller shall be entitled to retain any earnest money deposited by the Purchaser.

(a) The Purchaser is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by the Purchaser. Any change as to the terms or a change in the Purchaser's lender after negotiations have been completed will require renegotiation of all terms of this Agreement.

PURCHASER (initials) _____

SELLER (initials) _____

NRDC FORM 661 (01/2004)

(b) The Purchaser shall ensure that the lender selected by the Purchaser to finance the sale shall fund the settlement agent as of the date of settlement. The Purchaser shall further ensure that the selected lender shall provide all lender prepared closing documents to the settlement agent no later than 48 hours prior to settlement. Any delays in closing and funding as a result of the Purchaser's selected lender shall be the responsibility of the Purchaser.

4. Use of Property: The Purchaser (check one): () does, (X) does not, intend to use and occupy the Property as Purchaser's primary residence.

5. Inspections

(a) On or before 30 calendar days from the Verbal Acknowledgement Date, the Purchaser shall inspect the Property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the Property, or be deemed to have waived such inspection and any objections to the condition of the Property and to have accepted the Property. The Purchaser shall keep the Property free and clear of liens and indemnify and hold the Seller harmless from all liability claims, demands, damages, and costs related to the Purchaser's inspection and the Purchaser shall repair all damages arising from or caused by the inspections. The Purchaser shall not directly or indirectly cause any inspections to be made by any government, building or zoning inspector or government employees without the prior written consent of the Seller, unless required by law, in which case, the Purchaser shall provide reasonable notice to the Seller prior to any such inspection. If the Seller has winterized this Property and the Purchaser desires to have the Property inspected, listing agent will have the Property dewinterized prior to inspection and rewinterized after inspection. The Purchaser agrees to pay this expense in advance to the listing agent. The amount paid under this provision shall be nonrefundable.

Within five (5) calendar days of receipt of any inspection report prepared by or for the Purchaser, but not later than 10 days from the Verbal Acknowledgement Date, whichever first occurs, the Purchaser will provide written notice to the Seller of any items disapproved. The Purchaser's silence shall be deemed as acceptance of the condition of the Property. The Purchaser shall provide to the Seller, at no cost, upon request by the Seller, complete copies of all inspection reports upon which the Purchaser's disapproval of the condition of the property is based. In no event shall the Seller be obligated to make any repairs or replacements that may be indicated in the Purchaser's inspection reports. The Seller may, at its sole discretion, make such repairs to the Property under the terms described in Section 7 of this Addendum. If the Seller elects not to repair the Property, the Purchaser may cancel this Agreement and receive all earnest money deposited. If the Seller elects to make any such repairs to the Property, the Seller shall notify the Purchaser after completion of the repairs and the Purchaser shall have 5 days from the date of notice, to inspect the repairs and notify the Seller of any items disapproved. The Purchaser's silence shall be deemed as acceptance.

In situations that are applicable, a structural, electrical, mechanical or termite inspection report may have been prepared for the benefit of the Seller. Upon request, the Purchaser will be allowed to review the report to obtain the same information and knowledge the Seller has about the condition of the Property but the Purchaser acknowledges that the inspection reports were prepared for the sole use and benefit of the Seller. The Purchaser will not rely upon any such inspection reports obtained by the Seller in making a decision to purchase the Property.

(b) If the Property is a condominium or planned unit development or co-operative, unless otherwise required by law, the Purchaser, at the Purchaser's own expense, is responsible for obtaining and reviewing the covenants, conditions and restrictions and bylaws of the condominium, or planned unit development or cooperative within (10) days of execution of this Agreement by both parties pursuant to paragraph 1 hereof. The Seller agrees to use reasonable efforts, as determined at the Seller's sole discretion, to assist the Purchaser in obtaining a copy of the covenants, conditions and restrictions and bylaws. The Purchaser will be deemed to have accepted the covenants, conditions and restrictions and by laws if the Purchaser does not notify the Seller in writing, within 15 days of execution of this Agreement, of the Purchaser's objection to the covenants, conditions and restrictions and/or bylaws.

6. CONDITION OF PROPERTY: THE PURCHASER UNDERSTANDS THAT THE SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FOREFEITURE, TAX SALE, RIGHT OF EMINENT DOMAIN OR SIMILAR PROCESS AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY HIDDEN DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT. THE PURCHASER ACKNOWLEDGES THAT THE SELLER, ITS AGENTS AND REPRESENTATIVES HAVE NOT MADE AND THE SELLER SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN, IN RESPECT TO:

(A) THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY INCLUDING THE STRUCTURAL INTEGRITY OR THE QUALITY OR CHARACTER OF MATERIALS USED IN CONSTRUCTION OF ANY IMPROVEMENTS, AVAILABILITY AND QUANTITY OR QUALITY OF WATER, STABILITY OF THE SOIL, SUSCEPTIBILITY TO LANDSLIDE OR FLOODING, SUFFICIENCY OF DRAINAGE, WATER LEAKS, WATER DAMAGE, MOLD OR ANY OTHER MATTER AFFECTING THE STABILITY, INTEGRITY, OR CONDITION OF THE PROPERTY OR IMPROVEMENTS;

(B) THE CONFORMITY OF THE PROPERTY OR THE IMPROVEMENTS TO ANY ZONING, LAND USE OR BUILDING CODE REQUIREMENTS OR COMPLIANCE WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AUTHORITY, OR THE GRANTING OF ANY REQUIRED PERMITS OR APPROVALS, IF ANY, OF ANY GOVERNMENTAL BODIES WHICH HAD JURISDICTION OVER THE CONSTRUCTION OF THE ORIGINAL STRUCTURE, ANY IMPROVEMENTS AND/OR ANY REMODELING OF THE STRUCTURE; AND

(C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR IMPROVEMENTS INCLUDING HEDONIST VICES AND DEFECTS, APPARENT, NON APPARENT OR LATENT, WHICH NOW EXIST OR WHICH MAY HEREAFTER EXIST AND WHICH IF KNOWN TO THE PURCHASER WOULD CAUSE THE PURCHASER TO REFUSE TO PURCHASE THE PROPERTY.

PURCHASER (10/10/11)

SELLER (10/10/11)

61607019 (11/12/2011)

Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in this Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or elderly persons. Mold has also been reported to cause extensive damage to personal and real property. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. The Purchaser acknowledges that, if Seller, or any of Seller's employees, contractors, or agents cleaned or repaired the Property or remediated Mold contamination, that Seller does not in any way warrant the cleaning, repairs or remediation. Purchaser accepts full responsibility for all hazards that may result from the presence of Mold in or around the Property. The Purchaser is satisfied with the condition of the Property notwithstanding the past or present existence of Mold in or around the Property and Purchaser has, not, in any way, relied upon any representations of Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of Mold in or around the property.

In the event the Property is affected by an environmental hazard, as determined by the Seller, either party may terminate this Agreement. In the event the Seller decides to sell the Property to the Purchaser and the Purchaser agrees to purchase the Property, the Purchaser agrees to execute a general release at closing, in a form acceptable to Seller, releasing the Seller from any liability related to the environmental hazard or conditions of the Property. In the event the Purchaser elects not to execute the disclosure and release, at the Seller's discretion, this Agreement is automatically terminated.

In the event the Seller has received official notice that the Property is in violation of building codes or similar laws or regulations, the Seller may terminate this Agreement or delay the date of closing or the Purchaser may terminate this Agreement. In the event this Agreement is terminated by either Purchaser or Seller pursuant to this Section 6 of this Addendum, any earnest money deposit will be returned to the Purchaser. If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court or similar enforcement body, and neither the Purchaser nor the Seller terminate this Agreement, the Purchaser agrees (a) to accept the Property subject to the violations, (b) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceeding and (c) to resolve the deficiencies as soon as possible after the closing. The Purchaser agrees to execute any and all documents necessary or required for closing by any agency with jurisdiction over the Property. The Purchaser further agrees to indemnify the Seller from any and all claims or liability arising from the Purchaser's breach of this Section 6 of this Addendum.

The closing of this sale shall constitute acknowledgment by the Purchaser that Purchaser had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Purchaser. The Purchaser agrees that the Seller shall have no liability for any claims or losses the Purchaser or the Purchaser's successors or assigns may incur as a result of construction or other defects which may now or hereafter exist with respect to the Property.

The Seller is exempt from filing a disclosure statement as the Property was acquired through foreclosure, deed in lieu of foreclosure, forfeiture, tax sale, eminent domain or similar process. For Alaska transactions, the Seller and the Purchaser have previously executed a waiver of the disclosure provisions of Alaska statutes.

7. **Repairs.** All treatments for wood infesting organisms and other repairs will be completed by a vendor approved by the Seller, and will be subject to the Seller's satisfaction only. If the Seller has agreed to pay for treatment of wood infesting organisms, the Seller shall treat only active infestation. Neither the Purchaser, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to closing without the prior written consent of the Seller. To the extent that the Purchaser or its representatives makes repairs and/or treatments to the Property prior to closing, the Purchaser hereby agrees to release and indemnify the Seller from and against any and all claims related in any way to the repairs and/or treatments and further agrees to execute a release and indemnification in a form acceptable to the Seller prior to the commencement of any such repairs or treatments. The Purchaser acknowledges that all repairs and treatments are done for the benefit of the Seller and not for the benefit of the Purchaser and that the Purchaser has inspected or has been given the opportunity to inspect repairs and treatments. Any repairs or treatments made or caused to be made by the Seller shall be completed prior to the closing. Under no circumstances shall the Seller be required to make any repairs or treatments after the Closing Date. The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's reaffirmation that the Purchaser is satisfied with the condition of the Property and with all repairs and treatments to the Property and waives all claims related to such condition and to the quality of the repairs or treatments to the Property. Any repairs or treatments shall be performed for functional purposes only and exact restoration of appearance or cosmetic items following any repairs or treatments shall not be required. The Seller shall not be obligated to obtain or provide to the Purchaser any receipts for repairs, or treatments, written statements indicating dates or types of repairs and/or treatments or copies of such receipts or statements nor any other documentation regarding any repairs and treatments to the Property. **THE SELLER DOES NOT WARRANT OR GUARANTEE ANY WORK, REPAIRS OR TREATMENTS TO THE PROPERTY.**

8. **Occupancy Status of Property:** The Purchaser acknowledges that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's reaffirmation that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. The Seller, its representatives, agents or assigns, shall not be responsible for evicting or relocating any tenants, occupants or personal property at the Property prior to or subsequent to closing unless otherwise noted in Section 38 of this Addendum.

The Purchaser further acknowledges that, to the best of the Purchaser's knowledge, the Seller is not holding any security deposits from former or current tenants and has no information as to such security deposits as may have been paid by the former or current tenants to anyone and agrees that no sums representing such tenant security deposits shall be transferred to the Purchaser as part of this transaction. The Purchaser further agrees to assume full responsibility and liability for the refund of such security deposits to the tenants pursuant to the provisions of applicable laws and regulations. All rents, due and payable and collected from tenants for the month in which closing occurs will be prorated according to the provisions of Section 10 of this Addendum.

The Purchaser acknowledges that this Property may be subject to the provisions of local rent control ordinances and regulations. The Purchaser agrees that upon closing all eviction proceedings and other duties and responsibilities of a property owner and landlord.

PURCHASER (initials)

SELLER (initials)

SPDC FORM 601 (1/1/2007)

including but not limited to, those proceedings required for compliance with such local rent control ordinances and regulations, will be the Purchaser's sole responsibility.

9. **Personal Property:** Items of personal property, including but not limited to window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes and garage door openers, unit or hereafter located on the Property are not included in this sale or the purchase price unless the personal property is specifically described and referenced in Section 38 of this Addendum. Any personal property at or on the Property may be subject to claims by third parties and, therefore, may be removed from the Property prior to or after the Closing Date. The Seller makes no representation or warranty as to the condition of any personal property, title thereto, or whether any personal property is encumbered by any liens. The Purchaser assumes responsibility for any personal property remaining on the Property at the time of closing.
10. **Closing Costs and Adjustments:**
- (a) The Purchaser and the Seller agree to prorate the following expenses as of closing and funding: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. In determining prorations, the funding date shall be allocated to the Purchaser. Payment of special assessment district bonds and assessments, and payment of homeowner's association or special assessments shall be paid current and prorated between the Purchaser and the Seller as of closing date with payments not yet due and owing to be assumed by the Purchaser without credit toward purchase price. The Property taxes shall be prorated based on an estimate or actual taxes from the previous year on the Property. All prorations shall be based upon a 30-day month and all such prorations shall be final. The Seller shall not be responsible for any amounts due, paid or to be paid after closing, including but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised value of the Property. In the event the Seller has paid any taxes, special assessments or other fees and there is a refund of any such taxes, assessments or fees after closing, and the Purchaser as current owner of the Property receives the payment, the Purchaser will immediately submit the refund to the Seller. If the Property is heated by or has storage tanks for fuel oil, liquefied petroleum gases or similar fuels, the Purchaser will buy the fuel in the tank at closing at the current price as calculated by the supplier.
- (b) Regardless of local custom, requirements or practice, the Purchaser shall pay any and all realty transfer taxes due as a result of the conveyance of the Property. The Purchaser shall pay all other costs and fees incurred in the transfer of the Property, including cost of any survey, title policy, escrow or closing fees and lender required fees, except as expressly assumed by the Seller in Section 38 of this Addendum.
- (c) If Fannie Mae is the owner and the Seller hereunder, the Purchaser acknowledges that Fannie Mae is a congressionally chartered corporation and is exempt from realty transfer taxes pursuant to 12 U.S.C. 1723e(e)(2).
- (d) The Seller shall pay the real estate commission per the listing agreement between the Seller and the Seller's listing broker.
11. **Delivery of Funds:** Regardless of local custom, requirements, or practice, upon delivery of the deed by the Seller to the Purchaser, the Purchaser shall deliver all funds due the Seller from the sale in the form of cash, bank check, certified check or wire transfer. An attorney's trust fund check shall not be sufficient to satisfy this provision unless the bank holding the account on which the trust fund check is drawn certifies the trust fund check.
12. **Certificate of Occupancy:** If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification or any similar certification or permit ("Certificate of Occupancy") or any form of improvement or repair to the Property to obtain such Certificate of Occupancy necessary for the Property to be occupied, the Purchaser understands that the Seller requires the Certificate of Occupancy to be obtained by the Purchaser at the Purchaser's sole cost and expense. The Purchaser shall make application for all Certificates of Occupancy within ten (10) days of the Verbal Acknowledgment Date. The Purchaser shall not have the right to delay the closing due to the Purchaser's failure or inability to obtain any required Certificate of Occupancy. Failure of the Purchaser to obtain and furnish the Certificate of Occupancy shall be a material breach of the Agreement. Neither the Purchaser, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to closing without the prior written consent of the Seller. To the extent that the Purchaser or its representatives makes repairs and/or treatments to the Property prior to closing, the Purchaser hereby agrees to release and indemnify the Seller from and against any and all claims related in any way to the repairs and/or treatments and further agrees to execute a release and indemnification in a form acceptable to the Seller prior to the commencement of any such repairs or treatments.
13. **Delivery of Possession of Property:** The Seller shall deliver possession of the Property to the Purchaser at closing and funding of sale. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 8 of this Addendum. If the Purchaser alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to closing and funding without the prior written consent of the Seller, such event shall constitute a breach by the Purchaser under this Agreement and the Seller may terminate this Agreement and the Purchaser shall be liable to the Seller for damages caused by any such alteration or occupation of the Property prior to closing and funding and waives any and all claims for damages or compensations for improvements made by the Purchaser to the Property including, but not limited to, any claims for unjust enrichment.

PURCHASER (to hold)

SELLER (to hold)

HPDO FORM 651 (09/12/2021)

14. **Deed:** The deed to be delivered at closing shall be a deed that covenants (but grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which deed may be known as a Special Warranty, Limited Warranty, Quit Claim or Bargain and Sale Deed). Any reference to the term "Deed" or "Special Warranty Deed" herein shall be construed to refer to such form of deed.

() (check if applicable) Seller's deed shall include the following deed restriction:

GRANTEE HEREIN SHALL BE PROHIBITED FROM CONVEYING CAPTIONED PROPERTY TO A BONA FIDE PURCHASER FOR VALUE FOR A SALES PRICE OF GREATER THAN \$_ FOR A PERIOD OF _ MONTH(S) FROM THE DATE OF THIS DEED. GRANTEE SHALL ALSO BE PROHIBITED FROM ENCUMBERING SUBJECT PROPERTY WITH A SECURITY INTEREST IN THE PRINCIPAL AMOUNT OF GREATER THAN \$_ FOR A PERIOD OF _ MONTH(S) FROM THE DATE OF THIS DEED. THESE RESTRICTIONS SHALL RUN WITH THE LAND AND ARE NOT PERSONAL TO GRANTEE.

THIS RESTRICTION SHALL TERMINATE IMMEDIATELY UPON CONVEYANCE AT ANY FORECLOSURE SALE RELATED TO A MORTGAGE OR DEED OF TRUST

15. **Defects in Title:** If the Purchaser raises an objection to the Seller's title to the Property, which, if yielded, would make title to the Property uninsurable, the Seller shall have the right unilaterally to terminate this Agreement by giving written notice of the termination to the Purchaser. However, if the Seller is able to correct the problem through reasonable efforts, as the Seller determines, at its sole and absolute discretion, prior to the closing date set forth in this Agreement, including any written extensions, or if title insurance is available from a reputable title insurance company at regular rates containing affirmative coverage for the title objections, then this Agreement shall remain in full force and the Purchaser shall perform pursuant to the terms set in this Agreement. The Seller is not obligated to remove any exception or to bring any action or proceeding or bear any expense in order to convey title to the Property or to make the title marketable and/or insurable but any attempt by the Seller to remove such title exceptions shall not impose an obligation upon the Seller to remove those exceptions. The Purchaser acknowledges that the Seller's title to the Property may be subject to court approval of foreclosure or to mortgagor's right of redemption. In the event the Seller is not able to (a) make the title insurable or correct any problem or (b) obtain title insurance from a reputable title insurance company, all as provided herein, the Purchaser may terminate this Agreement and any earnest money deposit will be returned to the Purchaser as the Purchaser's sole remedy at law or equity.

16. **Representations and Warranties:**

The Purchaser represents and warrants to the Seller the following:

- (a) The Purchaser is purchasing the Property solely in reliance on its own investigation and inspection of the Property and not on any information, representation or warranty provided or to be provided by the Seller, its servants, representatives, brokers, employees, agents or assigns;
- (b) Neither the Seller, nor its servants, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or expressed, relating to the condition of the Property or the contents thereof, except as expressly set forth in Section 18 of this Addendum;
- (c) The Purchaser has not relied on any representation or warranty from the Seller regarding the nature, quality or workmanship of any repairs made by the Seller; and
- (d) The Purchaser will not occupy or cause or permit others to occupy the Property prior to closing and funding and, unless and until any necessary Certificate of Occupancy has been obtained from the appropriate governmental entity, will not occupy or cause or permit others to occupy the Property after closing;
- (e) The Purchaser [] has [X] has not previously purchased a Fannie Mae owned property.

17. **WAIVERS:**

AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER WAIVES THE FOLLOWING:

- (A) ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST THE SELLER FOR SPECIFIC PERFORMANCE;
- (B) RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;
- (C) RIGHT TO INVOKE ANY OTHER EQUITABLE REMEDY THAT MAY BE AVAILABLE THAT IF INVOKED, WOULD PREVENT THE SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY PURCHASER;
- (D) ANY AND ALL CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING;
- (E) ANY CLAIMS FOR FAILURE OF CONSIDERATION AND/OR MISTAKE OF FACT AS SUCH CLAIMS RELATE TO THE PURCHASE OF THE PROPERTY OR ENTERING INTO OR EXECUTION OF OR CLOSING UNDER THIS AGREEMENT;
- (F) ANY REMEDY OF ANY KIND, INCLUDING BUT NOT LIMITED TO RESCISSION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 19 OF THIS ADDENDUM, TO WHICH THE PURCHASER MIGHT OTHERWISE BE

PURCHASER (initials)

SELLER (initials)

WFOC F041001 (01/11/2001)

ENTITLED AT LAW OR EQUITY WHETHER BASED ON MUTUAL MISTAKE OF FACT OR LAW OR OTHERWISE;

- (G) TRIAL BY JURY, EXCEPT AS PROHIBITED BY LAW, IN ANY LITIGATION ARISING FROM OR CONNECTED WITH OR RELATED TO THIS AGREEMENT;
- (H) ANY CLAIMS OR LOSSES THE PURCHASER MAY INCUR AS A RESULT OF CONSTRUCTION ON, REPAIR TO, OR TREATMENT OF THE PROPERTY, OR OTHER DEFECTS, WHICH MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY;
- (I) ANY CLAIMS OR LOSSES RELATED TO ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY INCLUDING, BUT NOT LIMITED TO, MOLD, LEAD PAINT, FUEL OIL, ALLERGENS, OR OTHER TOXIC SUBSTANCES OF ANY KIND;
- (J) ANY RIGHT TO AVOID THIS SALE OR REDUCE THE PRICE OR HOLD THE SELLER RESPONSIBLE FOR DAMAGES ON ACCOUNT OF THE CONDITION OF THE PROPERTY, LACK OF SUITABILITY AND FITNESS, OR REDHIBITORY VICES AND DEFECTS, APPARENT, NONAPPARENT OR LATENT, DISCOVERABLE OR NONDISCOVERABLE; AND
- (K) ANY CLAIM ARISING FROM ENCHROACHMENTS, EASEMENTS, SHORTAGES IN AREA OR ANY OTHER MATTER WHICH WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS.

References to the "Seller" in this Section 17 of the Addendum shall include the Seller and the Seller's servicers, representatives, agents, brokers, employees, or assigns.

In the event that the Purchaser breaches any of the warranties described or contemplated under this Section 17 of this Addendum and a court finds that such action is without merit, the Purchaser shall pay all reasonable attorneys fee and cost incurred by the Seller in defending such action, and the Purchaser shall pay Five Thousand Dollars (\$5,000) as liquidated damages for breach of this Section 17 of the Addendum, which amount shall be in addition to any liquidated damages held or covered by the Seller pursuant to Section 19 of this Addendum.

18. Conditions to the Seller's Performance: The Seller shall have the right, at the Seller's sole discretion, to extend the closing date or to terminate this Agreement if
- full payment of any mortgage insurance claim related to the loan previously secured by the Property is not confirmed prior to the closing date or the mortgage insurance company exercises its right to acquire title to the Property;
 - The Seller determines that it is unable to convey good and marketable title to the Property insurable by a reputable title insurance company at regular rates;
 - The Seller has requested that the servicing lender, or any other party, repurchase the loan previously secured by the Property;
 - a third party with rights related to the sale of the property does not approve the sale terms.
 - full payment of any property, fire or hazard insurance claim is not confirmed prior to the closing or date set forth herein for closing;
 - any third party, whether tenant, homeowner's association, or otherwise, exercises rights under a right of first refusal to purchase the Property;
 - the Purchaser is the former mortgagor of the Property whose interest was foreclosed, or is related to or affiliated in any way with the former mortgagor, and the Purchaser has not disclosed this fact to the Seller prior to the Seller's acceptance of this Agreement. Such failure to disclose shall constitute default under this Agreement, entitling the Seller to exercise any of its rights and remedies, including, without limitation, retaining the earnest money deposit; or
 - the Seller, at the Seller's sole discretion, determines that the sale of the Property to the Purchaser or any related transactions are in any way associated with illegal activity of any kind.

In the event the Seller elects to terminate this Agreement as a result of (a), (b), (c), (d), (e) or (g) above, the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.

19. Remedies for Default:

- In the event of the Purchaser's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Seller, at its option, may retain the earnest money deposit and any other funds then paid by the Purchaser as liquidated damages and/or invoke any other remedy expressly set out in this Agreement and the Seller is automatically released from the obligation to sell the Property to the Purchaser and neither the Seller nor its representatives, agents, attorneys, successors, or assigns shall be liable to the Purchaser for any damages of any kind as a result of the Seller's failure to sell and convey the Property.
- In the event of the Seller's default or material breach under the terms of this Agreement or if the Seller terminates this Agreement as provided under the provisions of this Agreement, the Purchaser shall be entitled to the return of the earnest money deposit or Purchaser's sole and exclusive remedy at law and/or equity. Any reference to a return of the Purchaser's earnest money deposit contained in the Agreement shall mean a return of the earnest money deposit less any escrow cancellation fees applicable to the Purchaser under this Agreement and less fees and costs payable for services and products provided during escrow at the Purchaser's request. The Purchaser waives any claims that the Property is unique and the Purchaser acknowledges that a return of its earnest money deposit can adequately and fairly compensate the Purchaser. Upon return of the earnest money deposit to the Purchaser, this Agreement shall be terminated, and the Purchaser and the Seller shall have no further liability, no further

PURCHASER (Print Name)

SELLER (Print Name)

SPDC FORM 001 (1/17/2007)

obligation, and no further responsibility each to the other and the Purchaser and the Seller shall be released from any further obligation each to the other in connection with this Agreement.

- (c) The Purchaser agrees that the Seller shall not be liable to the Purchaser for any special, consequential or punitive damages whatsoever, whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle, including but not limited to any cost or expense incurred by the Purchaser in selling or surrendering a lease on a prior residence, obtaining other living accommodations, moving, storage or relocation expenses or any other such expense or cost arising from or related to this Agreement or a breach of this Agreement.
- (d) Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.
- (e) In the event either party elects to exercise its remedies as described in this Section 19 of this Addendum and this Agreement is terminated, the parties shall have no further obligation under this Agreement except as to any provision that survives the termination of this Agreement pursuant to Section 24 of this Addendum.
20. **Indemnification:** The Purchaser agrees to indemnify and fully protect, defend, and hold the Seller, its officers, directors, employees, shareholders, servants, representatives, agents, attorneys, tenants, brokers, successors or assigns harmless from and against any and all claims, costs, liens, loss, damages, attorney's fees and expenses of every kind and nature that may be sustained by or made against the Seller, its officers, directors, employees, shareholders, servants, representatives, agents, attorneys, tenants, brokers, successors or assigns, resulting from or arising out of:
- inspections or repairs made by the Purchaser or its agents, employees, contractors, successors or assigns
 - the imposition of any fine or penalty imposed by any governmental entity resulting from the Purchaser's failure to timely obtain any Certificate of Occupancy or to comply with equivalent laws and regulations;
 - claims for amounts due and owed by the Seller for taxes, homeowner association dues or assessment or any other items prorated at closing under Section 10 of this Addendum, including any penalty or interest or other charges, arising from the proration of such amounts for which the Purchaser received a credit at closing under Section 10 of this Addendum and
 - the Purchaser's or the Purchaser's tenants, agents or representatives use and for occupancy of the Property prior to closing and/or issuance of required certificates of occupancy.
21. **Risk of Loss:** The Purchaser assumes all risk of loss related to damage to the Property. In the event of fire, destruction or other casualty loss to the Property after the Seller's acceptance of this Agreement and prior to closing and funding, the Seller may, at its sole discretion, repair or restore the Property, or the Seller may terminate this Agreement. If the Seller elects to repair or restore the Property, then the Seller may, at its sole discretion, limit the amount to be expended. If the Seller elects to repair or restore the Property, the Purchaser's sole and exclusive remedy shall be either to acquire the Property in its then condition at the Purchase Price with no reduction thereof by reason of such loss or terminate this Agreement and receive a refund of any earnest money deposit.
22. **Eminent Domain:** In the event that the Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain or shall be in the process of being taken on or before the closing date, either party may terminate this Agreement and the earnest money deposit shall be returned to the Purchaser and neither party shall have any further rights or liabilities hereunder except as provided in Section 24 of this Addendum.
23. **Keys:** The Purchaser understands that if the Seller is not in possession of keys, including but not limited to, mailbox keys, reservation area keys, gate cards, or automatic garage remote controls, then the cost of obtaining the same will be the responsibility of the Purchaser. The Purchaser also understands that if the Property includes an alarm system, the Seller cannot provide the access code and/or key and that the Purchaser is responsible for any costs associated with the alarm and/or changing the access code or obtaining keys. If the Property is presently on a Master Key System, the Seller will re-key the exterior doors to the Property prior to closing and funding at the Purchaser's expense. The Purchaser authorizes and instructs escrow holder to charge the account of the Purchaser at closing for the rekey.
24. **Survival:** Delivery of the deed to the Property to the Purchaser by the Seller shall be deemed to be full performance and discharge of all of the Seller's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 6, 7, 8, 10, 12, 13, 16, 17, 19, 20, 21, 22, and 24 of this Addendum, as well as any other provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive the closing, funding and the delivery of the deed and/or termination of this Agreement by any party and continue in full force and effect.
25. **Further Assurances:** The Purchaser agrees to execute and deliver to the Seller at closing, or otherwise as requested by the Seller, documents including Fannie Mae's NPDC Form 4 (Waiver and Release Regarding Property Condition at Closing), NPDC Form 5 (Tax Proration Agreement) or documents that are substantially the same, and to take such other action as reasonably may be necessary to further the purpose of this Agreement. Copies of referenced documents are available from the Seller's listing agent upon request by the Purchaser.
26. **Severability:** The invalidity, illegality or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.
27. **Assignment of Agreement:** The Purchaser shall not assign this Agreement without the express written consent of the Seller. The Seller may assign this Agreement at its sole discretion without prior notice to, or consent of, the Purchaser.
28. **EFFECT OF ADDENDUM:** THIS REAL ESTATE PURCHASE ADDENDUM AMENDS AND SUPPLEMENTS THE CONTRACT AND, IF APPLICABLE, ESCROW INSTRUCTIONS. IN THE EVENT THERE IS ANY CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT OR ESCROW INSTRUCTIONS OR NOTICE OR OTHER DOCUMENTS ATTACHED AND MADE A PART OF THIS AGREEMENT, THE TERMS OF THIS ADDENDUM TAKE PRECEDENCE AND SHALL PREVAIL, EXCEPT AS OTHERWISE PROVIDED BY LAW. The undersigned, if executing this Agreement on behalf of a Seller and/or the Purchaser (who is a corporation,

PURCHASER (Signature)

SEE LEM (4/10/15)

NPDC FORM 501 (8/10/2015)

partnership, trust or other entity, represents and warrants that he/she is authorized by that entity to enter into this Agreement and bind the entity to perform all duties and obligations stated in this Agreement.

29. **Entire Agreement:** This Agreement, including the disclosure of information on lead based paint and/or lead based paint hazards or the Seller Disclosure and Release Addendum or other disclosure forms or notices required by law, constitutes the entire agreement between the Purchaser and the Seller concerning the subject matter hereof and supersedes all previous communications, understandings, representations, warranties, covenants or agreements, either written or oral and there are no oral or other written agreements between the Purchaser and the Seller. **NO ORAL PROMISES, REPRESENTATIONS (EXPRESSED OR IMPLIED), WARRANTIES OR AGREEMENTS MADE BY THE SELLER AND/OR BROKERS OR ANY PERSON ACTING ON BEHALF OF THE SELLER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT.** All negotiations are merged into this Agreement. The Seller is not obligated by any other written or verbal statements made by the Seller, the Seller's representatives, or any real estate licensee.
30. **Modification:** No provision, term or clause of this Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by the Purchaser and the Seller.
31. **Rights of Others:** This Agreement does not create any rights, claims or benefits inuring to any person or entity, other than Seller's successors and/or assigns, that is not a party to this Agreement, nor does it create or establish any third party beneficiary to this Agreement.
32. **Counterparts:** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement.
33. **Headings:** The titles in the sections and headings of various paragraphs of this Agreement are placed for convenience of reference only and in case of conflict, the text of this Agreement, rather than such titles or headings shall control.
34. **Gender:** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such nouns or pronouns and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.
35. **Force Majeure:** Except as provided in Section 21 to the Addendum, no party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and causal reasonably be circumvented by such party through use of alternate sources, work-around plans or other means.
36. **Attorney Review:** The Purchaser acknowledges that Purchaser has had the opportunity to consult with its legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be construed against any party because that party drafted this Agreement or construed in favor of any Party because that Party failed to understand the legal effect of the provisions of this Agreement.
37. **Notices:** Any notices required to be given under this Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery, or five (5) days after mailing by first class mail, postage paid, or by fax with confirmation of transmission to the numbers below. All notices to the Seller will be deemed sent or delivered to the Seller when sent or delivered to Seller's listing broker or agent or Seller's attorney, at the address or fax number shown below. All notices to the Purchaser shall be deemed sent or delivered when sent or delivered to the Purchaser or the Purchaser's attorney or agent at the address or fax number shown below.
38. **Additional Broker Commissions:**
Seller to contribute up to \$2,650.00 towards Buyer's Closing Costs, Points, and/or Prepaids.

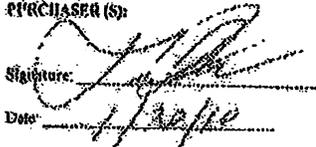
PURCHASER (initials)

SELLER (initials)

SPDC FORM 661 (11/1/2011)

IN WITNESS WHEREOF, the Purchaser and the Seller have entered into this Agreement as of the date first set forth above.

PURCHASER (S):

Signature: 

Date: 1/25/10

Print Name: TERRENCE MOORE

Address: P.O. Box 20000

Telephone: _____

Fax: _____

Signature: _____

Date: _____

Print Name: _____

Address: _____

Telephone: _____

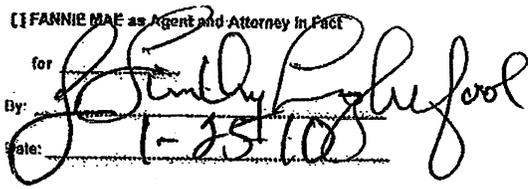
Fax: _____

SELLER:

FANNIE MAE:

FANNIE MAE as Agent and Attorney in Fact

for

By: 

Date: 1-25-10

PURCHASER'S AGENT:

Brokerage Firm: International Realty Plus NM

Purchaser's Agent Name: Lance Swarandh

Address: 1705 N. Voley Dr., Suite 1

Las Cruces: NM 88007

Telephone: 575-522-0487 ()

Fax: 575-524-4252

Email Address: _____

SELLER'S AGENT:

Brokerage Firm: STEINBORN INC. REALTORS

Seller's Agent Name: GRADY OXFORD

Address: 141 ROADRUNNER PKWY STE 141

Las Cruces NM 88011

Telephone: 575-522-3698 ()

Fax: 575-522-4987

Email Address: goxford@znet.com

PURCHASER'S ATTORNEY:

Name: _____

Address: _____

Telephone: _____

Fax: _____

SELLER'S ATTORNEY:

Name: _____

Address: _____

Telephone: _____

PURCHASER (Initials)

SELLER (Initials)

SPUC FORM 601 (11/17/2007)

SUPPLEMENT TO THE REAL ESTATE PURCHASE ADDENDUM

REO D090T2NAddress 4752 Diamante Court, Las Lunas, NM 88012

"The Purchaser represents that the Purchaser is eligible for Neighborhood Stabilization Program (NSP) funds through

[insert name of NSP funding entity or designated partner] (the "Agency").

The purchase price for a property acquired with Agency NSP funds must be not more than _____% (the "Agency NSP Discount Percentage") less than the appraised value of the Property (the "NSP Appraised Value"), as determined by a URA appraisal or other evidence of value acceptable to the Agency and obtained by the Purchaser at no expense to the Seller (the "NSP Appraisal"). The NSP Appraised Value less an amount equal to the Agency NSP Discount Percentage is the "Agency Maximum Purchase Price". Accordingly, the following additional provisions apply to this Contract:

- (a) Promptly following the Purchaser's execution of this Agreement, the Purchaser shall provide to Seller or Seller's agent evidence of (i) the Purchaser's eligibility to receive NSP funds through the Agency and (ii) the NSP Appraised Value, each in such form as the Seller shall reasonably require, and shall provide a copy of the NSP Appraisal to the Seller or to the Seller's agent upon request.
- (b) If the Purchase Price stated in the Contract is less than the Agency Maximum Purchase Price, the Purchase Price stated in the Contract shall be the Purchase Price for the Property. If the Purchase Price stated in the Contract is more than the Agency Maximum Purchase Price, the Purchaser shall have until the earlier of (i) 5 days after the Purchaser's receipt of the NSP Appraisal or (ii) 15 days after the date of this Agreement (the "Purchase Price Negotiation Deadline") in which to negotiate a modified purchase price that conforms to Agency NSP requirements.
- (c) If (i) the Purchaser does not obtain a NSP Appraisal prior to the Purchase Price Negotiation Deadline or (ii) the Purchase Price stated in the Agreement is more than the Agency Maximum Purchase Price and the Purchaser and the Seller are unable to agree upon a modified purchase price prior to the Purchase Price Negotiation Deadline, either the Purchaser or the Seller shall have the right to terminate the Contract as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.
- (d) The Seller's obligations under this Agreement are contingent upon the Seller's and the Purchaser's voluntary approval of the Purchase Price as negotiated pursuant to this Addendum. If the Purchase Price negotiated on the basis of the NSP Appraised Value (the "Appraisal Price") differs from the Purchase Price offered by the Purchaser in the original Contract, and the Seller and the Purchaser approve the Appraisal Price, the Seller and the Purchaser shall sign an amendment to this Contract stating that the Appraisal Price is the Purchase Price (the "Purchase Price Amendment"), and the Purchase Price shall be as

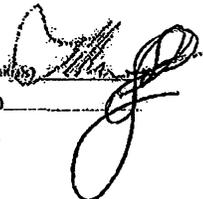
PURCHASER (Initials)

SELLER (Initials)

NSP PE 8-4-2009

stated in the Purchase Price Amendment. If the Seller does not approve the Appraisal Price, or if either the Seller or the Purchaser does not sign the Purchase Price Amendment, the Seller shall have the right to terminate this Contract as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum. If the Appraisal Price is the same as or greater than the Purchase Price offered by the Purchaser in the original Contract, no Purchase Price Amendment will be required and the parties will proceed to closing on the original Contract terms using the Purchase Price as stated in the Purchaser's original offer.

- (e) The Seller acknowledges that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, as evidenced by both parties' execution and delivery of the Purchase Price Amendment, the acquisition will not take place. The Seller is familiar with NSP, understands its appraisal and pricing requirements, and agrees voluntarily to any purchase price discount negotiated pursuant to clause (b) of this Section 38. The Seller further acknowledges that the Purchaser is acquiring the Property voluntarily and is not using any power of eminent domain to acquire the Property.
- (f) At or prior to closing, the Purchaser shall deliver to the Seller a Statement of NSP Eligibility issued by the Agency. The Purchaser is responsible for satisfaction of all Agency requirements to maintain NSP eligibility. The Seller's obligations under this Agreement are contingent upon the Purchaser's NSP eligibility, provided, however, that if the Purchaser does not receive NSP funds at closing, the Purchaser will have the right to close using non-NSP funds. If the Purchaser does not receive NSP funds and does not elect to close using other funds, the Seller shall have the right to terminate this Agreement as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.
- (g) If the Seller terminates this Agreement for any reason permitted under the Contract or this Addendum, the Seller shall have no obligation to pay or reimburse the Purchaser for the Purchaser's Closing Costs or for the cost of the NSP Appraisal or for any other costs associated with NSP."

PURCHASER (initials) 

SELLER (initials) _____

NSP PE 8-4-2009



**REALTORS® ASSOCIATION OF NEW MEXICO
BROKER DUTIES - 2010**

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. **Disclosure:** The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Associate Broker or Qualifying Broker shall disclose in writing to their prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- (A) Honesty and reasonable care as set forth in the provisions of this section;
- (B) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission Rules and other applicable local, state, and federal laws and regulations;
- (C) Performance of any and all oral or written agreements made with the Customer or Client;
- (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction;

If the Broker in a transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;

(E) Acknowledgment by the Broker that there may be matters related to the Transaction that are outside the Associate Broker's or Qualifying Broker's knowledge or expertise and that the Associate Broker or Qualifying Broker will suggest that the Customer or Client seek expert advice on these matters;

(F) Prompt accounting for all monies or property received by the Broker;

(G) Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; and or (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; (3) other Brokerage Relationship options available in New Mexico;

(H) Disclosure of any adverse material facts actually known by the Associate Broker or Qualifying Broker about the Property or the Transaction, or about the financial ability of the parties to the Transaction to complete the Transaction. Adverse material facts do not include data from a sex offender registry or the existence of group homes;

(I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;

(J) Unless otherwise authorized in writing, an Associate Broker or Qualifying Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Associate Broker's or Qualifying Broker's Customer or Client to remain confidential, unless disclosure is required by law.

Signature _____ Date _____ Time _____ Signature: *[Handwritten Signature]* Date: *7/6/10* Time _____
 City of Las Cruces By Terrence Moore - City Manager

**REALTORS® ASSOCIATION OF NEW MEXICO
BROKER DUTIES - 2010**

Effective January 1, 2007, the New Mexico Real Estate Commission requires the disclosure of the following brokerage relationships (as quoted from 16.61.19.9 NMAC, 1-1-2004):

16.61.19.9 BROKERAGE RELATIONSHIPS: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to an exclusive agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

B. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

C. Transaction Broker: The non-fiduciary relationship created by Broker: 61.29.2A14 NMSA 1978, wherein a brokerage provides real estate services without entering into an agency relationship.





**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010
PART I – BROKER DUTIES**

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. **Disclosure:** The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Associate Broker or Qualifying Broker shall disclose in writing to their prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- (A) Honesty and reasonable care as set forth in the provisions of this section;
 - (B) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission Rules and other applicable local, state, and federal laws and regulations;
 - (C) Performance of any and all oral or written agreements made with the Customer or Client;
 - (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction;
- If the Broker in a transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;
- (E) Acknowledgment by the Broker that there may be matters related to the Transaction that are outside the Associate Broker's or Qualifying Broker's knowledge or expertise and that the Associate Broker or Qualifying Broker will suggest that the Customer or Client seek expert advice on these matters;
 - (F) Prompt accounting for all monies or property received by the Broker;
 - (G) Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; and or (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; (3) other Brokerage Relationship options available in New Mexico;
 - (H) Disclosure of any adverse material facts actually known by the Associate Broker or Qualifying Broker about the Property or the Transaction, or about the financial ability of the parties to the Transaction to complete the Transaction. Adverse material facts do not include data from a sex offender registry or the existence of group homes;
 - (I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;
 - (J) Unless otherwise authorized in writing, an Associate Broker or Qualifying Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Associate Broker's or Qualifying Broker's Customer or Client to remain confidential, unless disclosure is required by law.

REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010
PART II

BROKERAGE RELATIONSHIPS DISCLOSURE: Transaction Broker, Exclusive Agency, and Dual Agency are brokerage relationships available in New Mexico. Brokers may, but are not required to, disclose unwritten agreements with Buyers and Sellers. However, Brokers must disclose written agreements.

1. John Lance Swarengin ("Buyer's Broker") is working with the Buyer in this transaction as a:
[] Transaction Broker without a written agreement.
[] Transaction Broker with a written agreement (RANM Form 1206, Buyer Broker Agreement).
[] Agent with a written agreement (RANM Form 1206, Buyer Broker Agreement with Agency Addendum).

2. IN-HOUSE TRANSACTION:
[] A. Buyer's Broker is licensed under the same Qualifying Broker in the same Brokerage as Seller's Broker. Seller's Broker has a written listing agreement with the Seller as [] Transaction Broker [] Agent.
[] B. Buyer's Broker is also Seller's Broker for the property in this Transaction. Seller's Broker has a written listing agreement with Seller as [] Transaction Broker [] Agent.

3. [] DUAL REPRESENTATION DISCLOSURE AND CONSENT: Brokerage is representing both Buyer and Seller by means of written agreements with each of them, without creating Dual Agency. If there are two written agreements, Buyer and Seller hereby consent to this dual representation.

4. [] DUAL AGENCY DISCLOSURE: Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them, and Designated Brokerage has not been chosen by the Qualifying Broker, thus creating Dual Agency. Prior to writing or presenting this offer, Broker must obtain written consent from the Buyer Client and Seller Client (RANM Form 1301, Agency Agreement - Dual).

5. Buyer's Broker does [X] does not [] have a material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party: Contracted as a Buyers Broker for the City of Las Cruces

If the Brokerage or Qualifying Broker has a material interest or relationship of a business, personal, or family nature in the transaction, that interest or relationship must also be disclosed separately.

6. [] Buyer [] Seller is a licensed New Mexico real estate Broker.

The BROKERAGE RELATIONSHIPS DISCLOSURE is acknowledged by the parties below:

BUYER

Buyer Signature: [Signature] Date: 1/25/10 Time:
City of Las Cruces
Buyer: Terrence Moore - City Manager

SELLER

Seller Signature: [Signature] Date: 1-25-10 Time:
Seller: [Signature]

BUYER'S BROKER

International Realty Plus NM
Buyer's Brokerage Firm

Broker [X] is [] is not a REALTOR®

Broker Signature John Lance Swarengin Date Time

SELLER'S BROKER

Seller's Brokerage Firm

Broker [] is [] is not a REALTOR®

Broker Signature Date Time



REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT - RESIDENTIAL RESALE - 2010



OFFER DATE: 1-6-2010

1. PARTIES. City of Las Cruces, By Terrence Moore-City Manager
("Buyer") agrees to buy from Seller and ("Seller") agrees to sell and convey to Buyer the Property described in paragraph 4 with a Settlement/Signing Date of See Addendum #2 (described in paragraph 5 below).

2. PURCHASE PRICE. \$ 150,000.00
A. APPROXIMATE CASH DOWN PAYMENT \$ 1,000.00
(Including Earnest Money referred to in paragraph 3)
B. AMOUNT OF THE LOAN(S) described in paragraph 7 below. \$

3. EARNEST MONEY. Buyer will deliver \$ 1,000.00
Earnest Money in the form of [X] check [] cash [] note dated , to be escrowed upon mutual acceptance of this Agreement by Buyer and Seller with Southwestern Abstract and Title Co, in accordance with New Mexico law. Earnest Money will be applied to Purchase Price and/or closing costs upon Funding Date.

4. PROPERTY.
A. 4752 Diamante Ct. Las Cruces NM 88012
Address City State/Zip Code

Lot 140, Block C, Los Enamorados Estates Replat #2
Legal Description
or see metes and bounds or other legal description attached as Exhibit Dona Ana
County, New Mexico. If the legal description of the Property is not complete or is inaccurate, this Agreement will not be invalid and the legal description will be completed or corrected to meet the requirements of the title company which will issue the title policy.

B. TYPE: [X] site built [] manufactured housing [] modular [] off site built [] other:
(See RANM Form 2305 for further information.)

C. Description or explanation of any known mineral or water rights appurtenant to the Property and whether they will be included in the sale:
If water or mineral rights are identified as being included in the sale of the Property, Buyer is advised to seek expert and legal advice and assistance to ensure that those rights are properly transferred at closing.

D. The Property will include the following, if existing on the Property, unless excluded below, free of liens: smoke, fire, security and water conditioning systems (if owned by Seller); heating, ventilating and air conditioning systems, landscaping; sprinklers/irrigation equipment; storm windows and doors, screens, window coverings and rods; TV antennas, satellite dishes and receiver with access card (if owned by Seller and if transferable); light fixtures; ceiling fans; range; oven; dishwasher; garbage disposal; attached mirrors; attached floor coverings; awnings; mailboxes; fireplace grate and screen; garage door openers and controls; pool and spa equipment; and outdoor plants and trees (other than in movable containers). The following additional existing personal property, if checked, shall remain with the property:

- [] Refrigerator [] Decorative mirrors above bath vanities
[] Microwave [] Built-in/attached speakers and sub woofers
[] Washer [] TV
[] Dryer [] Audio components
[X] Other Stove and Dishwasher [] Other

The above additional existing personal property included shall not be considered part of the premises and shall be transferred with no monetary value, and free and clear of all liens and encumbrances.

REALTORS® Association of New Mexico (RANM) makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form the parties agree to the limitations set forth in this paragraph. The parties hereby release RANM, the real estate brokers, their Agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity, or consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®, REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to the Association's strict Code of Ethics.

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

E. The following items are excluded from the sale: _____

5. CLOSING. "Closing" is defined as a series of events by which Buyer and Seller satisfy all of their obligations in the Agreement. Closing is not completed until all parties have completed all requirements as stated below, as well as completing all other obligations under this Agreement. If either party elects to extend either of the following dates, they must do so in a writing signed by both parties. No extension is binding unless agreed to in writing by both parties. The parties further acknowledge that Seller will not receive the proceeds of sale until all the events stated under "Funding Date" have been completed.

A. Settlement/Signing date: See Addendum #2 (as described in paragraph 1)

1. Buyer and Seller agree to sign and deliver to the responsible closing officer all documents required to complete the transaction and to perform all other closing obligations of this Agreement on or before the above date.

2. Buyer and Seller agree to provide for the delivery of all required funds, exclusive of Lender funds, if any, using wired, certified or other "ready" funds acceptable to the closing officer, on or before the above date.

B. Funding Date (Completion of Closing): on or before see addendum #2 para #3. The Funding Date is the date that the closing officer has funds available to disburse to all parties after recording all documents required to complete the transaction.

1. It is Buyer's responsibility to ensure that Buyer's lender, if any, makes available to the closing officer, wired certified or other "ready" funds with written instructions to disburse funds, on or before the Funding Date as set forth above.

2. Buyer and Seller acknowledge that possession of the Property will be in accordance with the terms of paragraph 6 below.

Unless otherwise agreed to in writing, failure to perform any of the above items by either party shall constitute a default under this Agreement.

6. POSSESSION.

A. Buyer and Seller agree that Seller will give possession of the Property to Buyer upon:

1. "Funding Date" as set forth above at 5:00 p.m.; or,

2. Other: _____

B. If possession date is other than "Funding Date" as set forth above, then Buyer and Seller shall execute a separate written Occupancy Agreement. (See RANM Forms 2201 and 2202)

7. FINANCED OR CASH PURCHASE.

A. LOANS. This Agreement is contingent upon Buyer's ability to obtain a loan in the amount stated above in paragraph 2B of the following type: Conventional FHA VA Deed of Trust Other: _____

1. Buyer has made written application for a loan, or agrees to make written application for a loan no later than _____ days after the Date of Acceptance ("Loan Application Period"). Buyer agrees to provide Seller with a letter of Preliminary Loan Approval from a lender no later than _____ days after the Date of Acceptance ("Financing Approval Period").

2. Preliminary Loan Approval must stipulate that: (1) a loan application has been made; (2) a credit report has been obtained and reviewed by a lender; (3) a preliminary loan commitment has been secured from the same lender; (4) financing equal to the loan amount provided in paragraph 2B is available to complete the transaction with no contingencies except those provided for in this Agreement.

3. If there are changes to the loan, loan program, financing terms, or a change in lender at any time after the Financing Approval Period which adversely affect Buyer's ability to obtain a loan, increase Seller's costs or delay Closing, Buyer shall have the obligation to notify Seller in writing within 2 days of such occurrence. In that event, within days of receipt of Buyer's notification, Seller may notify Buyer in writing of: (1) Seller's approval of such changes, or (2) Seller's decision to terminate the Agreement. If Seller does not notify Buyer within the 5 day period provided, Seller will be deemed to have waived Seller's right to terminate and shall proceed to Closing.

4. If Buyer cannot obtain Preliminary Loan Approval within the Financing Approval Period, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer unless the parties agree in writing to an extension.

5. Buyer further agrees to provide Seller with written notification of Final Loan Approval from Buyer's lender with all loan contingencies removed _____ days before the Settlement/Signing Date ("Final Loan Approval"). In the event of a written rejection by the lender prior to Final Loan Approval, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

B. SELLER FINANCING: The approximate balance of \$ _____ shall be financed by Seller and shall be secured by: Real Estate Contract Mortgage Deed of Trust. Terms and conditions of the above instrument shall be attached as Addendum _____. If RANM Real Estate Contract (RANM Form 2401) is selected, a completed Addendum to Purchase Agreement - Real Estate Contract (RANM Form 2402) shall be attached.

Buyer shall provide Seller with: a current and complete financial statement and/or a current credit report no later than _____ days after the Date of this Agreement. Seller shall have the right to object to either of these documents within _____ days after receipt from Buyer (Financial Review Period). If Seller does not approve Buyer's qualifications during the Financial Review Period, Seller has the option to terminate this Agreement and Earnest Money shall be refunded to Buyer. If Seller does not object in writing to Buyer's qualifications within the Financial Review Period, Seller will be deemed to have waived Seller's right to object to Buyer's qualifications. Seller may not unreasonably withhold approval.

C. CASH PURCHASE: Buyer agrees to purchase the subject property for cash. No later than _____ days after the Date of Acceptance, Buyer agrees to provide Seller with verification of funds and proof satisfactory to Seller that Buyer has in Buyer's possession or control, the funds necessary to complete the transaction. This Agreement shall terminate in the event of failure of Buyer to provide timely proof of funds and Earnest Money shall shall not be refunded to Buyer.

D. CONTINGENT SALE: This Agreement is contingent on the future Closing of Buyer's property. Buyer's Sale Contingency - RANM Form 2503 is is not attached.

8. APPRAISAL

A. CONVENTIONAL OR OTHER NON-FHA/VA LOAN: (describe): _____
It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty for forfeiture of Earnest Money if the Purchase Price exceeds the current estimated market value ("Appraisal") as established by a real estate appraiser approved by the lender.

B. FHA: It is expressly agreed that, notwithstanding any other provisions of this contract, Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Buyer has been given, in accordance with HUD/FHA or VA requirement, a written statement by the Federal Housing Commissioner or a Direct Endorsement Lender setting forth the appraised value of the property, or a VA Certificate of Reasonable Value (excluding closing costs) of not less than \$ _____ (Purchase Price). The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. Buyer should satisfy himself that the price and condition of the property are acceptable.

C. VA: It is expressly agreed that, notwithstanding any other provisions of this contract, Buyer shall not incur any penalty by forfeiture of Earnest Money or otherwise be obligated to complete the purchase of the real estate described herein, if the contract Purchase Price or cost exceeds the reasonable value of the real estate established by the Veterans Administration.

D. CASH OR SELLER FINANCED: It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty by forfeiture of Earnest Money if the Purchase Price exceeds the current estimated market value ("Appraisal") as established by a real estate appraiser engaged by and paid by Buyer Seller.

E. In the event the conventional appraisal, the FHA appraisal, the VA certificate of reasonable value, or an appraisal for a cash or seller financed transaction is less than the agreed upon Purchase Price, Buyer may still proceed with the consummation of this Agreement without regard to the amount of appraisal or certificate of reasonable value, provided Buyer delivers written notice to Seller of such election within 3 days of the receipt of said notice of value. If Buyer does not deliver written notice of such election within 3 days, Buyer shall be deemed to have elected not to proceed. If Buyer elects not to proceed, Seller and Buyer may agree to a Purchase Price acceptable to both parties within 5 days after receipt of said notice to both parties. If the parties cannot agree, this Agreement shall terminate and Earnest Money shall be refunded to Buyer.

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

9. COSTS TO BE PAID. Buyer or Seller will pay the following marked items:

Loan Related Costs and Fees	Buyer	Seller	Not Required	Title Company Closing Costs	Buyer	Seller	Not Required
				Closing Fee	1/2	1/2	
Appraisal Fee	X			Legal Document Preparation			X
Appraisal Reinspection Fee	X			Special Assessment Search			X
Credit Report			X	Buyer Recording Fees	X		
Loan Assumption/Transfer			X	Seller Recording Fees		X	
Loan Documentation Preparation			X	Policy Premiums			
Origination Fee			X	Title Commitment		X	
Points - Buydown			X	Standard Owner's Policy		X	
Points - Discount			X	Mortgagee's Policy			X
Tax Service Fee			X	Mortgagee's Policy Endorsements			X
Underwriting Review Fee			X	Other:			
Flood Zone Certification		X		Miscellaneous			
Other:				Survey (§ 16C)		X	
Other:				Impact Fees			
Prepays Required by Lender				Home Warranty contract (§ 17)			
Flood Insurance			X	Transfer Fees (e.g. HOA, etc.)			
Hazard Insurance			X	HOA Fees (e.g. processing)			
Interest			X	Other:			
PMI or MIP			X	Escrow Fees			
Taxes			X	Set up			
Other:				Periodic			
Other:				Close Out			
				Other:			

Buyer agrees to pay all other allowed direct loan costs.

10. IRS 1031 TAX-DEFERRED EXCHANGE. Buyer Seller intends to use this property to accomplish a 1031 tax-deferred exchange. The parties agree to cooperate with one another in signing and completing any documents required. The exchanging party agrees that the other party will bear no additional expense.

11. PRORATIONS. Seller will be responsible for disclosing all applicable property-specific fees, or lease agreements, private memberships and/or association fees or dues, taxes and contract service agreements, all of which are to be prorated through Settlement/Signing Date. Any equipment rental or contract service agreement (e.g. alarm system, satellite system, propane and tank, private refuse collection, road maintenance, etc.) will be handled directly between the Buyer and Seller, and title company will not be responsible for proration thereof.

12. ASSESSMENTS. Buyer will assume all bonds, impact fees and assessments that are part of or paid with the property tax bill. If other bonds, impact fees or assessments are a lien upon the Property, the current installment will be prorated through Settlement/Signing Date. Buyer will assume future installments. This Agreement is conditioned upon both parties verifying and approving in writing the amount of all bonds, impact fees, or assessments to be assumed or paid within 10 days after receipt of the title commitment ("Approval Date"). In the event of disapproval, the disapproving party may terminate this Agreement by giving written notice to the other on or before the Approval Date. Future assessments for improvements such as, but not limited to, sidewalks, driveway cuts or roads will be paid by Buyer.

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

13. EXAMINATION OF TITLE; LIENS; DEED.

A. Buyer Seller shall order a title commitment from Southwestern Abstract and Title Co. (Title Company) within 5 bus days after the Date of Acceptance. Buyer will have 5 bus days ("Review Period") to review and object to title exceptions after receipt of the title commitment and all documents referred to therein. Exceptions to the title, including the standard exceptions, shall be deemed approved unless written objection is delivered to the Seller within this Review Period. If Seller is unwilling or unable to remove such exception before Settlement/Signing Date, Seller shall provide written notice to Buyer within 5 bus days after receipt of Buyer's objections. Buyer may choose to close subject to exceptions, remove them at Buyer's expense or terminate this Agreement. If Buyer terminates this Agreement, the Earnest Money will be refunded to Buyer.

B. Seller will satisfy any judgments and liens, including but not limited to, all mechanics' and materialmen's liens of record on or before Settlement/Signing Date and will indemnify and hold Buyer harmless from any liens filed of record after Settlement/Signing Date and which arise out of any claim related to the providing of materials or services to improve the Property as authorized by Seller or Seller's agents, unless otherwise agreed to by the parties in writing.

C. Seller will convey the Property by General Warranty Deed other deed _____ subject only to any matters identified in the title commitment and not objected to by Buyer as provided in paragraph 13A. The legal description contained in the deed shall be the same legal description contained in the title commitment and any survey required under paragraph 16C.

14. FOREIGN SELLERS. The disposition of a U.S. Real Property interest by a Foreign Person is subject to Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA applies if Seller is a Foreign Person, Foreign Corporation or Partnership, or non-resident Alien, unless BOTH the purchase price is \$300,000 or less AND Buyer intends to use the property as Buyer's primary residence. Federal Law requires that if Seller is a Foreign Person, then Buyer must withhold ten percent (10%) of the amount realized from the sale of the Property and remit it to the Internal Revenue Service (IRS) within 20 days of Closing unless the Seller provides written confirmation from the IRS that Seller is not subject to withholding. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate. If Seller is Non-Foreign, the Seller must provide proof of Non-Foreign status by fully executing an Affidavit of Non-Foreign Seller (RANM Form 2303) and deliver it to either the Buyer or to a Qualified Substitute. Under FIRPTA, if Seller is a Foreign Person and Buyer fails to withhold taxes, the Buyer may be held liable for the tax, in addition to other fines and penalties and the Buyer's Broker may be fined up to the amount of their commission.

Buyer's offer is is not contingent upon the Seller completing the FIRPTA response box in the Acknowledgement by Seller Section of this Purchase Agreement, and providing the documents indicated there in no later than 10 days after Date of Acceptance. If Seller is providing an Affidavit of Non-Foreign Seller, Buyer agrees that Seller may, at Seller's option, provide this Affidavit either to Buyer or to a Qualified Substitute as provided by FIRPTA. If a Qualified Substitute is used, Buyer will not receive a copy of Seller's Affidavit.

For further information on FIRPTA, see the FIRPTA Information Sheet (RANM Form 2304), and consult with an attorney and/or tax professional.

15. INSURANCE CONTINGENCY/APPLICATION.

A. Buyer agrees to make application for insurance within _____ days after Date of Acceptance of this Agreement. If Buyer fails to make application within the agreed time, this insurance contingency shall be deemed waived. This Agreement is conditioned upon Buyer's ability to obtain a homeowner's or property insurance binder on the Property at normal and customary premium rates. **Buyer understands that an insurance company may cancel or change the terms of a homeowner's insurance policy/binder for any reason prior to close of escrow or within sixty days after issuance of the homeowner's policy/binder (which generally occurs at close of escrow).**

B. This insurance contingency shall be deemed satisfied, unless within _____ days after Date of Acceptance of this Agreement, Buyer gives notice of inability to obtain a binder for insurance or if Buyer gives notice that Buyer is unable to obtain a homeowner's or property insurance binder on the Property at normal and customary premium rates. If Buyer is unable to obtain such a binder for insurance after making a good faith effort and gives timely notice of such inability, then the Purchase Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

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Unless otherwise agreed in writing, the Buyer will select the inspector. Whether or not the transaction closes, the following inspections will be paid for by:

INSPECTIONS	Buyer Pays	Seller Pays	Delivery Deadline	Objection Deadline	Resolution Deadline
Home	X		Due Diligence	Due Diligence	Due Diligence
Electrical	X		Due Diligence	Due Diligence	Due Diligence
Heating/Air Conditioning	X		Due Diligence	Due Diligence	Due Diligence
Plumbing	X		Due Diligence	Due Diligence	Due Diligence
Roof	X		Due Diligence	Due Diligence	Due Diligence
Structural	X		Due Diligence	Due Diligence	Due Diligence
Lead-Based Paint Evaluation					
Risk Assessment					
Paint Inspection					
Combination Risk Assessment/Inspection					
Other:					
Well Equipment (pump, pressure tank, lines)					
Well Water Potability Tests					
Well Water Yield Tests					
Well Water Nitrate Tests					
Pool/Spa/Hot Tub Equipment					
Wood-Destroying Insects	X		Due Diligence	Due Diligence	Due Diligence
Dry Rot	X		Due Diligence	Due Diligence	Due Diligence
Radon					
Mold					
Square-Foot Measurement:					
Sewer Line Inspections					
Ducts (type):					
Phase One Environmental Inspection					
Soil Test					
Other:					
Other:					

C. SURVEYS OR IMPROVEMENT LOCATION REPORT. Buyer has the right to have performed the item selected below or the right to accept an existing one. Unless otherwise agreed in writing the party paying for the item will select the surveyor and order the survey or report.

SURVEY/IMPROVEMENT LOCATION REPORT	Delivery Deadline	Objection Deadline	Resolution Deadline
Improvement Location	30 Days After Acceptance	32 Days After Acceptance	40 Days After Acceptance
Metes and Bounds Description			
Staked Boundary	30 Days After Acceptance	32 Days After Acceptance	40 Day After Acceptance
American Land Title Association Survey (ALTA)			
Flood Plain Designation	30 Days After Acceptance	32 Days After Acceptance	40 Days After Acceptance
Other:			

Each party is responsible for payment as shown above for any inspection or surveys ordered and performed whether or not the transaction closes.

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D. BUYER'S OBJECTIONS.

1. The Buyer may make any reasonable objections to any report or unsatisfactory condition disclosed by any document (16A), inspections (16B), survey or Improvement Location Report (16C) by submitting them in writing to Seller no later than applicable Objection Deadline. Any objections to any inspection, survey or report must be accompanied by a copy of the report. If Seller is responsible for ordering a report or document, and if Buyer does not receive that report or document by the Delivery Deadline, Buyer and Seller may agree to extend the Objection Deadline and Resolution Deadline or Buyer may terminate the Agreement. If Buyer is responsible for ordering a report or document, and fails to do so in a timely manner, Buyer may not use the failure to receive the report or document as cause to terminate the Agreement.

2. Upon objection, Buyer can request that Seller cure the objections or Buyer can terminate this Agreement. If no written objection or termination is delivered to Seller in writing by Objection Deadline, the contingency shall be deemed removed.

E. RESOLUTION. If Buyer makes specific objections and requests Seller to cure, Buyer and Seller may negotiate a resolution. If the objections are not resolved by the Resolution Deadline, this Agreement shall be terminated.

F. COST OF REPAIRS. Seller agrees to complete or pay for any repairs required by a FHA, VA, conventional lender, or with respect to any objections made by Buyer as a result of the above reports, at an aggregate cost not to exceed \$ _____. If the cost to cure the objections exceeds this amount, such excess costs may be negotiated and if no agreement is reached, the Agreement shall terminate.

G. OBJECTIONS COMPLETION. Seller agrees to cure objections not later than _____ days prior to Settlement/ Signing Date.

H. REFUND OF EARNEST MONEY. If this Agreement is terminated pursuant to this paragraph, the Earnest Money will be refunded to Buyer.

I. REASONABLE ACCESS; DAMAGES. Seller agrees to provide reasonable access to Buyer and any inspectors. The party selecting the inspector is responsible for and shall pay for any damages which occur to the Property as a result of such Inspection.

17. HOME WARRANTY CONTRACT. If provided for in paragraph 9, a home warranty service contract will be purchased from _____. The parties acknowledge that the home warranty service contract provides for limited coverage and for only limited components of the Property. In addition, the home warranty service contract contains specific exclusions and/or certain deductibles. Neither the Seller nor the Broker is responsible for home warranty coverage or lack thereof. The parties acknowledge that a home warranty service contract provider may or may not conduct an inspection of the Property. Any inspection report made available by the provider is not meant as a representation as to the condition of the Property, and is only a report used by the provider to determine the conditions under which the Property may be warranted.

18. DISCLAIMER. The Property is sold in its current condition including, but not limited to, the nature, location, amount, sufficiency or suitability of its: current or future value; future income to be derived therefrom or as to its current or future production; condition; size; location of utility lines; location of sewer, water and other utility lines or availability of utility services or the possibility of extending improvements (paving, sewer, water, utilities, access) to the Property; easements with which it is burdened or benefited; lot boundaries; adjacent property zoning; physical and legal access; soil conditions; permits, zoning, or code compliance; lot size or acreage; and improvements or their square footage; and water rights. Broker has not investigated and is not responsible for the foregoing aspects of the Property, among which lot size, acreage, and square footage may have been approximated, but are not warranted as accurate. Buyer will have had full and fair opportunity to inspect and judge all aspects of the Property with professional assistance of Buyer's choosing prior to settlement and is purchasing Property based solely upon Buyer's inspection and judgment and not by reason of any representation made to Buyer by Seller or Broker unless expressly set forth in this Agreement or Disclosure Statements. Buyer and Seller acknowledge that Brokers' only role in this transaction is to provide real estate advice to Broker's client and/or customer and real estate information to the parties. For all other advice or information that may affect this transaction, including but not limited to financial and legal, the parties must rely on other professionals.

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19. RELEASE. The parties hereby release the REALTORS® Association of New Mexico, all local REALTOR® Boards, Broker and the agents and employees of the foregoing from any liability arising out of use of this Purchase Agreement form. Buyer and Seller acknowledge that they are hereby advised to consult their own respective attorneys, accountants, or other advisors as to the legal and tax effect of this Agreement prior to signing.

20. MAINTENANCE. Seller agrees that until Seller gives possession of the Property to Buyer, the heating, air conditioning, electrical, solar, septic systems, well and well equipment, gutters and downspouts, sprinklers, plumbing systems including the water heater, pool and spa systems, as well as appliances and other mechanical apparatus, will be in the same condition as the Date of Acceptance, normal wear and tear excepted. Until the Property is delivered, Seller will maintain all structures, landscaping, grounds and pool. Seller agrees to deliver the Property with all debris and personal belongings removed. The following items are specifically excepted from the above: _____

21. PRE-CLOSING WALK-THROUGH. Within 2 days prior to Settlement/Signing Date, Buyer shall have the right to verify the Property is in the same condition as on the Date of Acceptance, reasonable wear and tear excepted, and all agreed upon improvements have been completed.

22. FLOOD HAZARD ZONE. If the Property is located in an area which is designated as a special flood hazard area, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government.

23. DEFINITIONS. BROKER includes Buyer's and Seller's brokers. **DAYS** means calendar days excluding weekends and bank holidays, unless otherwise specified. **DATE OF ACCEPTANCE** is the date this Agreement is fully executed and delivered. **DELIVERED** means personally delivered, delivered by facsimile, mailed postage prepaid, or by any method where there is evidence of receipt. The facsimile or e-mail transmission of a copy of this or any related document will constitute delivery of that document. The facsimile, e-mail or electronically transmitted signature shall have the same force and effect as an original signature. Delivery to the real estate Broker who is working with or who represents the Buyer or Seller will constitute delivery to the Buyer or Seller respectively, except if the same Broker works for or represents both Buyer and Seller, in which case, delivery to the principal is required. The **MASCULINE** includes the feminine. The **SINGULAR** includes the plural.

24. RISK OF LOSS. Prior to Funding Date, risk of fire or other casualty will be on Seller, and in the event of loss, Buyer will have the option (to be exercised by written notice to Seller within 5 days after receipt of notice of loss) of canceling this Agreement and receiving back the Earnest Money or closing and receiving assignment of Seller's portion of the insurance proceeds, if any, at Funding Date. If Buyer fails to timely notify Seller of Buyer's election, Buyer will be deemed to have elected to close.

25. MEDIATION. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint a mediator and will share equally the costs of the mediation. If a mediator cannot be agreed on or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law.

26. EARNEST MONEY DISPUTE. Notwithstanding any termination of this Agreement, in the event that a controversy arises between Buyer and Seller, and the controversy cannot be resolved, the Holder of the Earnest Money may take no action or may choose to file an **Interpleader** action. **Interpleader** is a legal proceeding whereby the Holder of the Earnest Money names Buyer and Seller as defendants and deposits the funds in question with an appropriate court. Once the funds have been disbursed by final determination of the court, the prevailing party and the Holder of the Earnest Money shall be entitled to request recovery of all court costs and reasonable attorneys' fees related to the dispute from the non-prevailing party. Parties to all Earnest Money disputes are urged to review RANM Form 2310, "Earnest Money Dispute Information Sheet," and to consult a licensed attorney to fully understand all their rights and remedies.

27. DEFAULT. Time is of the essence. If any payment or any other condition hereof is not made, tendered or performed by either Seller or Buyer as required, then this Agreement may be terminated at the option of the party who is not in default. If the non-defaulting party elects to treat this Agreement as terminated, the non-defaulting party may elect to retain the Earnest Money and pursue any additional remedies allowable by law. In the event, however, the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party will have all rights and remedies available under this Agreement. Buyer and Seller acknowledge and agree that Broker will not in any circumstances be responsible for any breach by either party to this Agreement. Should any aspect of this Agreement result in dispute, litigation, or settlement, the prevailing party of such action including Broker shall be entitled to an award of reasonable attorneys' fees and court costs.

**REALTORS® ASSOCIATION OF NEW MEXICO
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28. FAIR HOUSING. Seller and Buyer understand that the Fair Housing Act and the New Mexico Human Rights Act prohibit discrimination in the sale or financing of housing on the basis of race, age, color, religion, sex, sexual orientation, gender identity, familial status, spousal affiliation, physical or mental handicap, serious medical condition, national origin or ancestry.

29. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original, and all of which will together constitute one and the same instrument.

30. GOVERNING LAW. This Agreement will be interpreted in accordance with the laws of the State of New Mexico.

31. SEVERABILITY. If any portion of this agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement will remain in full force and effect.

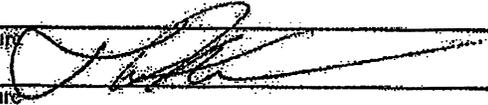
32. ENTIRE AGREEMENT. The parties understand that this offer, if accepted in writing by Seller and delivered to Buyer, constitutes a legally binding contract. This Agreement together with the following addenda and any exhibits referred to in this Agreement contains the entire agreement of the parties and supersedes all prior agreements or representations with respect to the Property which are not expressly set forth herein. This Agreement may be modified or canceled only by a writing signed and dated by both parties.

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. _____ (5101) | <input type="checkbox"/> Occupancy Agreement – Buyer/Seller (2201/2202) |
| <input type="checkbox"/> Buyer's Sale Contingency
(Right of First Refusal) Addendum (2503) | <input type="checkbox"/> Real Estate Contract Addendum (2402) |
| <input type="checkbox"/> Lead-Based Paint Addendum (5112) | <input type="checkbox"/> Residential Resale Condominium Addendum (2302) |
| <input checked="" type="checkbox"/> Other: <u>Addendum #1-NSP Letter</u> | <input checked="" type="checkbox"/> Other: <u>Exhibit #1-Tax Levy Form</u> |
| <input checked="" type="checkbox"/> Other: <u>Addendum #2</u> | <input type="checkbox"/> Other: <u>Exhibit #2-MLS Doc.</u> |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |

33. EXPIRATION OF OFFER. This offer will expire unless acceptance is delivered in writing to Buyer or Buyer's Broker on or before January 13, 2010, at 5:00 am pm Mountain Time. If not accepted, this offer can be withdrawn at any time before the expiration date.

OFFER BY BUYER:

Buyer acknowledges that Buyer has read the entire Purchase Agreement and understands the provisions thereof.

Buyer Signature		Offer Date	Time
Buyer Signature		<u>1/13/10</u>	
City of Las Cruces, By Terrence Moore-City Manager		Offer Date	Time
Buyer Names (Print)		Email Address	
Buyer Address	<u>Las Cruces</u>	<u>NM</u>	<u>88001</u>
	City	State	Zip Code
Buyer Home Phone	Buyer Cell Phone	Buyer Business Phone	Buyer Fax

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

ACKNOWLEDGEMENT BY SELLER:

With regard to Paragraph 14, FOREIGN SELLERS, Seller agrees to;

Execute an Affidavit of Non-Foreign Seller (RANM Form 2303), or
 Provide written documentation from the IRS that withholding is not required.

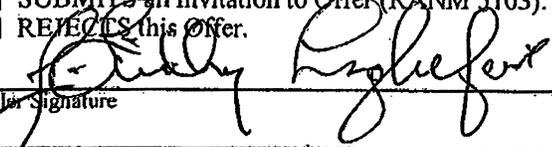
If Seller does not provide the Affidavit of Non-Foreign Seller (if applicable) within the time-frame provided, Buyer, in his sole discretion, may choose to terminate this Agreement or to proceed to Settlement/Signing. If Buyer chooses to terminate, Earnest Money will be returned to Buyer. If Seller fails to provide either of the above documents prior to the Settlement/Signing date, Buyer may still proceed with the consummation of this Agreement and may in his sole discretion, instruct the Title Company closing this transaction to withhold ten percent (10%) of the amount realized from the sale of the Property to be remitted to the IRS on Buyer's behalf. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate.

By signature hereto, Seller hereby acknowledges Buyer's obligations under FIRPTA and in the event Seller fails to provide the necessary documentation as provided for in this Agreement authorizes the Title Company closing this transaction to withhold ten percent (10%) of the amount realized from the sale of the Property to be remitted to the IRS on Buyer's behalf.

Seller acknowledges that Seller has read the entire Purchase Agreement and understands the provisions thereof.

Seller (select one):

- ACCEPTS this Offer and agrees to sell the Property for the price and on the terms and conditions specified in this Agreement.
- REJECTS this Offer and submits a Counteroffer (RANM 5102).
- SUBMITS an Invitation to Offer (RANM 5103).
- REJECTS this Offer.

Seller Signature  Date 1-25-10 Time _____

Seller Signature _____ Date _____ Time _____

Seller Names (Print) _____ Email Address _____

Seller Address _____ City _____ State _____ Zip Code _____

Seller Home Phone _____ Seller Cell Phone _____ Seller Business Phone _____ Seller Fax _____

BUYER'S BROKER

International Realty Plus NM 1705 N. Valley Dr. Ste 1, Las Cruces, NM 88007 (575) 522-0487 (575) 524-4252

Buyer's Brokerage Firm Address Office Phone Fax

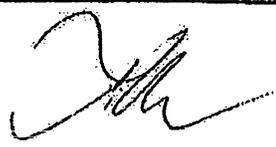
John Lance Swarengin _____ Broker is is not a REALTOR®

By (Print) _____ Email Address _____

SELLER'S BROKER

Seller's Brokerage Firm _____ Address _____ Office Phone _____ Fax _____

By (Print) _____ Email Address _____ Broker is is not a REALTOR®





City of Las Cruces

ADDENDUM _____

January 6, 2010
L-10-002

Federal National Mortgage Association
14221 Dallas Parkway Ste 1000
Dallas, TX 75254-2916

Gentlemen:

The City of Las Cruces is interested in acquiring property you own at 4752 Diamante Ct., Las Cruces, NM 88012, for a proposed project which will receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) through the State of New Mexico, Local Government Division (LGD) under the Neighborhood Stabilization Program (NSP).

Please be advised that the City of Las Cruces possesses eminent domain authority to acquire property. However, in the event we cannot reach an amicable agreement for the voluntary purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not intended, planned, or in a designated project area where substantially all of the property within the area is to be acquired.

We are offering you \$150,000 to purchase your property (see attached formal offer). We believe this amount represents the Fair Market Value (FMV) of your property. FMV will be confirmed through a formal appraisal after an offer is negotiated or accepted. The FMV price must then be discounted by one percent (1%) to meet the requirements of the NSP at Article IX.C, as amended, of the grant agreement from the State of New Mexico, Local Government Division, to the City of Las Cruces.

If you have any questions about this notice or the proposed project, please contact me at 575-528-3060 or email at ddollahon@las-cruces.org.

Sincerely,

David Dollahon, AICP
Neighborhood Services Administrator

cc: David Weir, Community Development Director
Ray Sartin, Home Rehabilitation Coordinator
Grantee File

Seller's Initials



REALTORS® ASSOCIATION OF NEW MEXICO
GENERAL ADDENDUM No. 2 2010

This Addendum is part of the Residential Resale Form-2104 Agreement (the "Agreement")
dated January 6, 2010, between City of Las Cruces
and Seller relating to the following Property:

4752 Diamante Ct. Las Cruces 88012
Address City Zip Code

Lot 140, Block C, Los Enamorados Estates Replat #2
Legal Description

or see metes and bounds description attached as Exhibit _____, Dona Ana County, New Mexico.
The following is added to the Agreement:

1. Settlement/Signing Date shall be on or before 59 days after acceptance of the agreement.
2. The Buyer has 21 working days Due Diligence to receive bids and reach a conclusion on feasibility of the purchase of the property.
3. The funding shall be on or before 60 days after acceptance of the offer.

If there is any conflict between the provisions of the Agreement and this Addendum, the provisions of this Addendum will control. The remaining provisions of the Agreement will remain in effect.

Signature [Signature] City Las Cruces Date 1/6/10 Time _____
Signature [Signature] City Terrence Moore Date 1/6/10 Time _____
City Manager

Signature _____ Date _____ Time _____
Signature _____ Date _____ Time _____

REALTORS® Association of New Mexico (RANM) makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form the parties agree to the limitations set forth in this paragraph. The parties hereby release RANM, the real estate brokers, their agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity, or consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to the Association's strict Code of Ethics.



**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
ESTIMATED PROPERTY TAX LEVY DISCLOSURE – 2010**

PURPOSE: The Property tax levied on a residential Property for the current year may be a misleading guide to property tax levies in the years following the sale of that Property. Therefore, New Mexico law provides that prospective Buyer needs information regarding the Property tax obligation in the year following the Property's sale to properly judge the affordability of a contemplated purchase.

SELLER OR SELLER'S BROKER OBLIGATIONS: Prior to accepting an Offer to Purchase, the Property Seller or the Seller's Broker must request from the County Assessor of the county in which the Property at issue is located the Estimated Property Tax Levy with respect to the Property and provide a copy of the Assessor's response in writing to the prospective Buyer or Buyer's Broker.

BASIS FOR ESTIMATED PROPERTY TAX LEVY: The listed price shall be provided to the County Assessor and shall be used as the value of the Property for purposes of calculating the Estimated Property Tax Levy.

BUYER'S BROKER OBLIGATIONS: A Buyer's Broker must provide the Estimated Property Tax Levy to the prospective Buyer immediately upon receiving the estimate from the Seller or Seller's Broker and receive in writing the prospective Buyer's acknowledgment of receipt of the Estimated Property Tax Levy.

BUYER'S OPTION TO WAIVE RIGHT TO RECEIVE DISCLOSURE: The prospective Buyer may waive the disclosure requirements by signing a written document prior to the time the Offer to Purchase is to be made in which the Buyer acknowledges that the required Estimated Property Tax Levy is not readily available and waives disclosure of the Estimated Property Tax Levy.

COUNTY ASSESSOR'S OBLIGATIONS: Upon request, a County Assessor must furnish in writing an Estimated Property Tax Levy with respect to a residential Property in the County, calculated at a Property value specified by the requestor. The County Assessor must comply with the request by the close of business of the business day following the day the request is received. A County may satisfy this obligation through an internet site or other automated format that allows a user to print the requested Estimated Property Tax Levy.

USE OF ESTIMATE IN FUTURE VALUATIONS: A document associated with the request is not a public record or a valuation record. County Assessors are prohibited from using the information provided with a request, including the specified value, to assess the valuation of the Property. Neither the County nor any jurisdiction levying a tax against residential Property in the County is bound in any way by the estimate given.

CONTENTS OF DOCUMENT PROVIDED BY COUNTY ASSESSOR: The County Assessor's Estimated Property Tax Levy must contain the following: 1) the actual amount of Property tax levied for the Property for the current calendar year if the tax rates for the current year have been imposed or in all other cases, the amount

REALTORS® Association of New Mexico (RANM) makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages resulting from its use. By use of this form the parties agree to the limitations set forth in this paragraph. The parties hereby release RANM, the real estate brokers, their agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity, or consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to the Association's strict Code of Ethics.



**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET
ESTIMATED PROPERTY TAX LEVY DISCLOSURE – 2010**

of Property tax levied with respect to the Property for the prior calendar year; 2) the Estimated Property Tax Levy for the calendar year following the year in which the transaction takes place; and 3) a disclaimer similar to the following.

"The Estimated Property Tax Levy is calculated using the stated price and estimates of the applicable tax rates. The County Assessor is required by law to value the Property at its current and correct value, which may differ from the listed price. Further the estimated tax rates may be higher or lower than those that will actually be imposed. Accordingly, the actual Property tax levied may be higher or lower than the estimated amount. New Mexico law requires your real estate Broker or agent to provide you an Estimate Property Tax Levy on the Property on which you have submitted or intend to submit an Offer to Purchase. All real estate Brokers and agents who have complied with these disclosure requirements shall be immune from liability arising from suit relating to the Estimated Property Tax Levy."

SELLER AND REAL ESTATE BROKER LIABILITY: All Property Sellers and real estate Brokers and agents who have complied with these provisions are immune from suit and liability arising from or relating to the Estimated Property Tax Levy.

Exhibit # 1



Steinborn GMAC Real Estate
141 N. Roadrunner Pkwy. Ste. 141
Las Cruces, NM 88011
FAX: 575-522-4987



REALTORS® ASSOCIATION OF NEW MEXICO
COUNTY ASSESSOR'S PROPERTY TAX LEVY
REQUEST AND CERTIFICATE - 2009

Grady Oxford / Jodi Sullivan, Listing Broker, on behalf of
Seller
requests that the County Tax Assessor furnish the following information for the list price of
\$ 159,000 in accordance with the New Mexico Estimated Property Tax Levy Disclosure with respect to the
following property:

Property Address: 4752 Diamante Ct.
Parcel ID: 02-242716
Legal Description: Lot 10, Block C, Las Encinas Estates

New Mexico law requires that upon request, a County Assessor must furnish in writing an Estimated Property Tax Levy with respect
to a residential Property in the County, calculated at a Property value specified by the requestor. The County Assessor must comply
with the request by the close of business of the business day following the day the request is received. A County may satisfy this
obligation through an internet site or other automated format that allows a user to print the requested Estimated Property Tax Levy.

REQUESTED BY SELLER:

Seller: Jodi Sullivan Date: 12-28-09 Time:
Broker: STEINBORN GMAC REAL ESTATE Date: Time:

PLEASE RETURN VIA FAX TO THE ABOVE BROKER AT: (575) - 522-4987
Or via email to:

PROPERTY TAX LEVY CERTIFICATE
(To be completed by the County Assessor's Office)

The following items are required to be provided by the County Assessor:

Actual amount of Property tax levied for the current calendar year: \$ 11032.72 (or if not available) the amount of
Property tax levied for the prior calendar year: \$ 11019.93

The ESTIMATED Property Tax Levy for the year following the current tax year based upon the above list price:
\$ 14417.60

The Estimated Property Tax Levy is calculated using the stated price and estimates of the applicable tax rates. The County Assessor
is required by law to value the Property at its "current and correct" value, which may differ from the listed price. Further, the
estimated tax rate may be higher or lower than those that will actually be imposed. Accordingly, the actual tax levy may be higher or
lower than the estimated amount. New Mexico law requires your real estate broker or agent to provide you an Estimated Property
Tax Levy on the Property you have submitted or intended to submit an Offer to Purchase. All real estate brokers and agents who
have complied with these disclosure requirements shall be immune from suit and liability from suit relating to the Estimated Property
Tax Levy.

County Tax Assessor Representative

12/29/09 Date: Time:

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REALTORS® ASSOCIATION OF NEW MEXICO
CERTIFICATION OF DELIVERY AND ACKNOWLEDGMENT
OF RECEIPT OF ESTIMATED PROPERTY TAX LEVY - 2010

TAX YEAR 2008

Buyer(s) City of Las Cruces, By Terrence Moore-City Manager

Seller(s) _____

Property Address 4752 Diamante Ct., Las Cruces, NM 88012

Parcel ID 02-34376

COUNTY ASSESSOR'S ESTIMATED PROPERTY TAX LEVY IS ATTACHED.

I, Seller's Broker, provided a copy of the Assessor's response to my request for the Estimated Property Tax Levy on the above-identified Property to Buyer Buyer's Broker on this _____ day of _____, _____.

Seller's Broker _____

Date _____

I, Buyer's Broker, do hereby acknowledge that I received an Estimated Property Tax Levy on the above referenced Property from Seller Seller's Broker on the 30th day of December, 2009 and that I provided the same to Buyer on the 6 day of January, 2010.

John Lance Swearingin
Buyer's Broker John Lance Swearingin

1-6-10
Date

I, Buyer, hereby acknowledge receipt of the Estimated Property Tax Levy provided to me by Buyer's Broker Seller's Broker on this 6 day of January, 2010.

City of Las Cruces, By Terrence Moore-City Manager
Buyer(s) City of Las Cruces, By Terrence Moore-City Manager

1/6/10
Date

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[Signature]
Untitled

ALL FIELDS DETAIL

159
Exhibit # 2a



MLS #	810651	# Bedrooms	3
Status	Active	# Baths	2
Type	House	# Fireplaces	1
Address	4752 DIAMANTE COURT	Year Built	2007
Address 2		Garage Capacity	2
City	LAS CRUCES	Carport Capacity	0
State	NM		
Zip	88012		
Area	Jornada-Ls Col		
Class	RESIDENTIAL		
Asking Price	\$159,000		
Sale/Rent	For Sale		
IDX Include	Yes		

GENERAL

County	Dona Ana	New Vs. Resale	Regale
Agent	GRADY OXFORD - Offic: (575) 522-3698	Listing Office 1	Steinborn GMAC Real Estate - main; (575) 522-3698
Listing Agent 2	JODI A JULIANA - CELL: (575) 496-0394	Listing Office 2	Steinborn GMAC Real Estate - main; (575) 522-3698
Entry Only Listing	No	Limited Service Listing	No
Code	3	Listing Date	12/24/2009
Expiration Date	3/23/2010	Owner	FNMA
Phone Number		Phone Type	
Subdivision	Los Enamorados Estates Replat #2.	Type of Structure	Site Built Home
Style	Southwestern	How to Show	Foreign LB
Alarm Activated	No	SQFT Source	Public Records
Appx House Sq Footage	1689	Bedroom Size	
Kitchen Size		Living Room Size	
Dining Room Size		Family Room Size	
Age	1 to 2 years	Garage Type	Attached
Carport Type	None	Lot Size	.0 to .24 AC
Actual Lot Size	5489 sf	Actual Lot Size Source	Public Records
Impact Fees	Yes	Parcel ID	02-34376
Add Parcel ID		Associated Document Count	1
Legal	Lot140, Block C	Landscaping	low maintenance
Association/Condo Fee	No	Earnest Money Payable To	Fidelity National Bank
3rd Party Approval	No	Short Sale	No
Automated Valuation	Yes	Blogging	Yes
Court Approval	No	Builder	
Cumulative DOM	210	Cumulative DOMLS	206
Mapping		Tax ID	
Update Date	12/29/2009	Status Date	12/28/2009
HotSheet Date	12/28/2009	Price Date	12/28/2009
Input Date	12/28/2009 5:17:00 PM	Off Market Date	
Original Price	\$159,000	Contingency Remarks	
Days On Market	6	Price/Apx SQFT	\$94.14 <i>150,000</i>
Days On MLS	2		

FEATURES

FENCE	MASTER BATHROOM	LAUNDRY ROOM	WINDOWS
Rock Wall	Double Sinks	Utility Room	Double Pane
POSSESSION	Shower Stall	OTHER ROOMS	Low E
Closing	Tile Floor	Entry/Foyer	FLOORING/FOUNDATION
LIVING ROOM	Glass Block	INTERIOR FEATURES	Concrete Slab
Ceiling Fan	Garden Tub	Alarm System	PORCH/PATIO/DECK
Fireplace	MASTER BEDROOM	Smart Wired	Covered Patio
Sliding Glass Door	Blinds	Open Floor Plan	Covered Porch
Carpet	Ceiling Fan	HEATING	CONSTRUCTION
DINING ROOM	Walk-In Closet	Forced Air	Frame
Bay Window	Carpet	Gas	Stucco
Blinds	BEDROOMS/OTHER	COOLING	ROOF
Chandelier	Blinds	Refrigerated Central	Pitched
Tile Floor	Carpet	WATER HEATER	Shingle
KITCHEN	BATHROOMS/OTHER	Gas	OTHER AMENITIES
Tile Floor	Sky Light	UTILITIES	View Mountains

MLS #: 810651

12/30/2009 05:27 PM

Page 1 of 2

#60
2b

FEATURES

Formica Counters	Tiled Floor	City Gas
Garbage Disposal	With Full Bath	City Sewer
Gas Range		City Water
Pantry		Impact Fees Apply
		Telephone
		El Paso Electric

SOLD STATUS

How Sold	Buyer Profile
Buyer From Location	Contract Date
Closing Date	Sold Price
Selling Agent 1	Selling Office 1
Selling Agent 2	Selling Office 2
Sale Concessions	

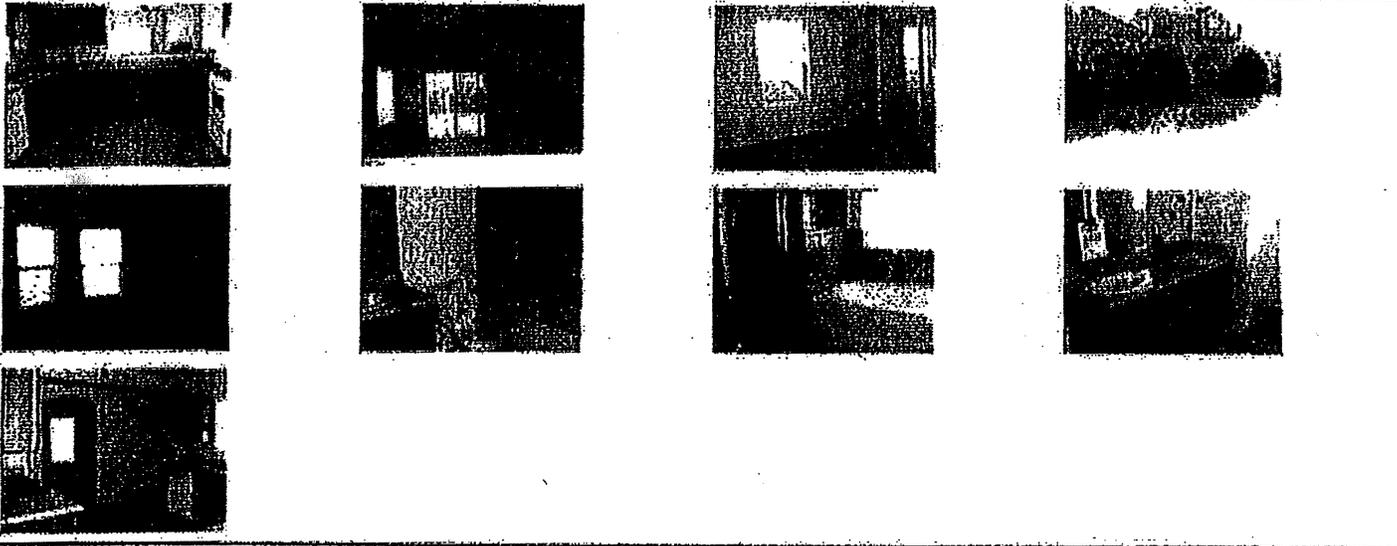
DIRECTIONS

Hwy 70, north on Mesa Grande, left on Engler, right on Jornada, left on Diamante Court.

REALTOR INFO

Sold as is. No warranties or disclosures. On combo lock box code 3893. Seller may not pay GRT. Brokers responsible for their own. This property is eligible for Home Path Financing. Call for details.

ADDITIONAL PICTURES



DISCLAIMER

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REALTORS® ASSOCIATION OF NEW MEXICO INFORMATION SHEET - FIRPTA – 2010

FIRPTA EXPLAINED. FIRPTA is the Foreign Investment in Real Property Tax Act of 1980 (26 USC §1445 et. Sec.) ("FIRPTA"). Under FIRPTA, nonresident Sellers are taxed similarly to U.S. real estate owners when selling their properties by placing the tax-remittance onus on the resident Buyer.

BUYER'S OBLIGATIONS UNDER FIRPTA. In transactions with foreign persons, the Buyer **MUST** submit ten percent (10%) of the amount realized from the sale of the property to the Internal Revenue Service ("IRS") within 20 days of closing. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate. The Buyer must determine the Seller's status as a foreign or non-foreign person. If the Seller is foreign, but an exemption applies, then the Buyer must obtain proof of qualification to avoid IRS sanctions. If a Seller asserts that he/she is a non-foreign person, the Buyer should obtain an Affidavit of Non-Foreign Seller (RANM Form 2303) or a Qualified Substitute Statement (RANM Form 2303A).

A "FOREIGN PERSON" UNDER FIRPTA. A foreign person includes: a nonresident alien individual; a foreign corporation, partnership, trust, or estate; and any other person that is not a U.S. person. A nonresident alien is defined as an individual who is neither a U.S. citizen nor a resident of the U.S. within the meaning of section 7701(b) of the Internal Revenue Code. Two tests apply. Under the "green-card" test, an alien individual is a resident of the U.S. if he/she has been admitted for U.S. permanent residence (i.e., has a green card) at any time during the calendar year. Under the substantial-presence test, an alien individual is a resident for U.S. federal tax purposes if the alien is physically present in the U.S. for 183 days or more during the current calendar year. Alternatively, if the alien is physically present for at least 31 days during the current year, the alien may be treated as a U.S. tax resident in the current year under a three-year look-back test which requires an analysis of the alien's presence over the preceding three years. If the alien is from a country that has an income tax treaty with the United States, the treaty may act to change these results.

EXCEPTIONS TO WITHHOLDING UNDER FIRPTA. The following are the most common: 1) the property is purchased for less than \$300,000 AND the Buyer is using the property as a primary residence; 2) the Seller has an IRS statement that specifies the Seller is exempt from withholding, is entitled to a reduced withholding amount, has provided adequate security for payment or has made arrangements with the IRS for payment; 3) the Seller provides the Buyer with a Non-Foreign Seller Affidavit (RANM Form 2303); 4) a Qualified Substitute provides the Buyer with a Qualified Substitute Statement (RANM Form 2303A); or 5) the Seller is participating in a SIMULTANEOUS Section 1031 Exchange. In order for the home to be considered the Buyer's "primary residence" for purposes of the exception, the Buyer or a member of the Buyer's family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.

AFFIDAVIT OF NON-FOREIGN SELLER (FORM 2303) AND QUALIFIED SUBSTITUTE STATEMENT (FORM 2303A). The Affidavit of Non-Foreign Seller (Seller's Affidavit) is a sworn statement completed and signed by the Seller which includes the Seller's tax identification number (most often a Social Security number) and in which the Seller states under Penalty of Perjury that the Seller is not a foreign person as defined under FIRPTA, and thus, is not subject to tax withholding under FIRPTA. The Seller can provide a completed and signed Seller's Affidavit directly to the Buyer or to a Qualified Substitute. A Qualified Substitute is a person or entity as defined under FIRPTA that

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**REALTORS® ASSOCIATION OF NEW MEXICO
INFORMATION SHEET - FIRPTA - 2010**

accepts a Seller's completed and signed Seller's Affidavit in the Buyer's stead. The Qualified Substitute retains the Seller's Affidavit and must provide the Buyer with a Qualified Substitute Statement. The Qualified Substitute Statement is a sworn statement made under Penalty of Perjury in which the Qualified Substitute states that the Qualified Substitute has a completed and signed Seller's Affidavit from the Seller. The Buyer must retain the Qualified Substitute Statement in his/her records. If the Buyer receives a Qualified Substitute Statement, the Buyer never receives the Seller's Affidavit, nor the Seller's tax identification number.

QUALIFICATIONS OF A "QUALIFIED SUBSTITUTE" UNDER FIRPTA. Under FIRPTA, the Buyer's Broker or any person (including an attorney or Title Company) responsible for closing the transaction may be a "Qualified Substitute". The Seller's Broker may NOT be a "Qualified Substitute".

EXCEPTION FOR NON-FOREIGN SELLERS DOES NOT APPLY IF THERE IS KNOWLEDGE OR NOTICE THAT THE SELLER'S AFFIDAVIT OR QUALIFIED SUBSTITUTE STATEMENT IS FALSE. In the case of any of the following, the Buyer must retain and remit ten percent (10%) of the amount realized from the sale of the property to the IRS within 20 days of closing (Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate):

- 1) The Buyer or Qualified Substitute has actual knowledge that either the Seller's Affidavit or the Qualified Substitute Statement is false;
- 2) The Buyer receives notice from the Seller's Broker, Buyer's Broker or the Qualified Substitute that the Seller's Affidavit or the Qualified Substitute Statement is false;
- 3) The Qualified Substitute receives notice from the Seller's Broker or Buyer's Broker that the Seller's Affidavit is false;
- 4) The United States Secretary of Treasury, by regulations, requires the Buyer or the Qualified Substitute to furnish a copy of the Seller's Affidavit or the Qualified Substitute Statement to the Secretary of Treasury and the Buyer or Qualified Substitute fails to furnish a copy of the Affidavit or Statement at the time and in the manner as required by the regulations.

AGENT TO THE TRANSACTION OR A QUALIFIED SUBSTITUTE LEARNS THE SELLER'S AFFIDAVIT OR QUALIFIED SUBSTITUTE STATEMENT, AS MAY BE THE CASE, IS FALSE. Such agent or Qualified Substitute MUST notify the Buyer at such time and in such manner as required by the regulations. If the Seller's Broker, Buyer's Broker or Qualified Substitute fails to provide notice of a false affidavit as required by the regulations, such agent or Qualified Substitute shall have the same duty to deduct and withhold that the Buyer would have had if the agent or Qualified Substitute had complied with the notice requirements. (See below for limitation on liability for agents, Brokers and Qualified Substitutes).

IRS PENALTIES FOR VIOLATIONS UNDER FIRPTA. Buyers who fail to withhold and fail to obtain proof of an approved exemption may be held liable for the Seller's tax that should have been withheld on the sale. In the event an agent or Qualified Substitute fails to notify a Buyer of a false Seller's Affidavit or false Qualified Substitute Statement as may be the case, the agent and/or Qualified Substitute may be liable for an amount up to the amount of compensation the agent or Qualified Substitute derived from the transaction. In addition to the above, criminal penalties and other civil penalties and interest may apply.

PARTIES SHOULD CONSULT WITH QUALIFIED PROFESSIONALS. Foreign Sellers and Buyers dealing with transactions involving Foreign Sellers should consult with the appropriate professional, i.e. an accountant and/or attorney.



REALTORS® ASSOCIATION OF NEW MEXICO
AFFIDAVIT -- NON-FOREIGN SELLER - 2010

NOTICE TO SELLER: If you need any assistance to understand the Foreign Investment in Real Property Act and its application to you, please consult with your own tax advisor. Real estate Brokers are not permitted to give advice with respect to such matters.

Section 1445 of the Internal Revenue Code provides that a Buyer of United States real property must withhold tax if Seller is a foreign person. To inform Buyer that withholding of tax is not required upon the disposition of the Property described below, the undersigned Seller executes this Affidavit. Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement may be punished by fine, imprisonment or both.

This Affidavit is executed in connection with the sale of the following Property:

4752 Diamante Ct. Las Cruces 88012
Address City Zip Code

Lot 140, Block C, Los Enamorados Estates Replat #2
Legal Description

or see metes and bounds description attached as Exhibit _____, Dona Ana County, New Mexico.

INDIVIDUAL SELLER

1. I am not a Foreign Person for purposes of United States income taxation.
2. My United States taxpayer identification number (Social Security Number) is: _____
3. My home address is: _____

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.

Name of Individual Seller Laura Mae

Signature [Signature]

Date 1-25-10 Time _____

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REALTORS® ASSOCIATION OF NEW MEXICO
AFFIDAVIT -- NON-FOREIGN SELLER - 2010

ENTITY SELLER

1. Lamine Mure ("Seller")
is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

2. Seller's United States employer identification number is _____

3. Seller's office address is _____

4. If a corporation, Seller's place of incorporation is _____

Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements in this Affidavit are true, correct, and complete, and that I have authority to sign this document on behalf of Seller.

Name of Entity _____

By [Signature]

Its _____

Date _____ Time _____

1-25-00

Buyer or Qualified Substitute, as applicable, must retain this Affidavit and make it available to the Internal Revenue Service upon request.

NOTICE TO SELLER OR BUYER: An affidavit should be signed by each individual or entity seller to whom or to which it applies. Any questions relating to the legal sufficiency of this form, or to whether it applies to a particular transaction, or to the definition of any of the terms used, should be referred to a certified public accountant, attorney, or other professional tax advisor, or to the Internal Revenue Service.

Received by Buyer Qualified Substitute

[Signature]
Signature _____ Date 1/6/10 Time _____
City of Las Cruces By Terrence Moore - City Manager

Part 5 Annual Income

Summary of Anticipated Annual Income *

ASSETS			
1. Household name:	Molina	Number of household members:	3
2. Household area:	Las Cruces, NM	Income limit:	\$31,750.00
Household Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
Jeannette Molina	Total Assets	\$0.69	\$0.00
Dae'Ja	Total Assets	\$0.00	\$0.00
Karissma	Total Assets	\$0.00	\$0.00
3. Net Cash Value of Assets.....		\$0.69	
4. Total Actual Income from Assets.....			\$0.00
5. If line 3 was greater than \$5,000 this amount is Line 3 times 2.0 percent (Passbook Rate)			n/a

ANTICIPATED ANNUAL INCOME					
Household Member	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Jeannette Molina	\$31,200.00	\$0.00	\$0.00	\$0.00	
Dae'Ja	\$0.00	\$0.00	\$0.00	\$0.00	
Karissma	\$0.00	\$0.00	\$0.00	\$0.00	
6. Totals	\$31,200.00	\$0.00	\$0.00	\$0.00	\$0.00
7. Total of items 6a. through 6e. This is Annual Income					\$31,200.00

Based upon the information submitted, the annual income of the **Molina** household has been determined to be **below** the income limit for the area.

* **NOTE:** This Summary of Anticipated Annual Income is NOT considered sufficient documentation of income for HOME monitoring and record-keeping purposes. HOME regulations require that you examine source documentation evidencing annual income for this family and maintain records demonstrating that the family is income eligible. See 24 CFR Part 92.203 and 92.508(a)(3)(v).

PREVIOUS

CONTRACT COVER FORM

Date: 01/21/2010 Sales Representative Tim Lightfoot
 REO # D090YVH Loan # 1703522249 Closing Date 03/05/2010
 Owner Occupant or Investor Purchase Price \$ 140,000
 All Cash to Seller yes or Fannie Mae financing _____
 Property Address:
 Street: 2913 Onate
 City/State/Zip: Las Cruces, NM 88007
 County: Dona Ana
 Complete Name(s) in which title is to be taken: City of Las Cruces

LISTING BROKER INFORMATION

Listing Agent Name: Grady Oxford Company: Steinborn GMAC Real Estate
 Company Address: Street: 141 Roadrunner Pkwy, Suite 141
 City/State/Zip: Las Cruces, NM 88011
 Phone No. (no 800 numbers): (575) 522-3698 Fax No. (575) 522-4987

SELLING BROKER INFORMATION

Selling Agent Name: Lance Swarengrin Company: International Realty Plus NM
 Company Address: Street: 1705 N. Valley Drive, Suite 1
 City/State/Zip: Las Cruces, NM 88007
 Phone No. (no 800 numbers): (575) 522-0487 Fax No. (575) 524-4252

BUYER'S ATTORNEY (if applicable)

Name: _____ Company: _____
 Company Address: Street: _____
 City/State/Zip: _____
 Phone No. (no 800 numbers): (_____) _____ Fax No. (_____) _____

FINANCING LENDER INFORMATION

Contact Name: _____ Company: _____
 Company Address: Street: _____
 City/State/Zip: _____
 Phone No. (no 800 numbers): (_____) _____ Fax No. (_____) _____

CLOSING AGENT INFORMATION

Contact Name: Crystal LeMaster Company: Fidelity National Title
 Company Address: Street: 8500 Menaul NE Ste B150
 City/State/Zip: Albuquerque, NM 87112
 Phone No. (no 800 numbers): (505) 332-6211 Fax No. (505) 559-5087

1093 / Work Authorizations Still Needed:

YES

NONE NEEDED

\$\$ Amount	Purpose	Contractor
_____	_____	_____
_____	_____	_____
_____	_____	_____

include a complete ordering packet for each job needed, & place on top of this contract packet before sending.

REO # D090YH

REAL ESTATE PURCHASE ADDENDUM

This Addendum is to be made part of, and incorporated into, the Real Estate Purchase Contract dated 1/18/2010, (the "Contract"), between Fannie Mae ("Seller") and City of Las Cruces ("Purchaser") for the property and improvements located at the following address: 2213 ONATE RD LAS CRUCES NM 88907 ("Property").

The Seller and the Purchaser agree as follows:

1. **Verbal Acknowledgment:** The essential terms of the purchase and sale of the Property have been verbally accepted by the Seller on or before 1/20/2010 (the "Verbal Acknowledgement Date") with a sales price of \$140,000.00. Notwithstanding such verbal acknowledgement, the Purchaser acknowledges and agrees that the Contract and this Addendum (together shall be referred to as the "Agreement") are subject to approval by the Seller's Management and must be signed by all parties in order to be binding. If applicable, upon execution, escrow will be opened by both parties immediately following the Seller's acceptance of this Agreement with a mutually acceptable escrow agent. The Purchaser's earnest money deposit of 30,000 is to be placed in a trust account acceptable to the Seller within 24 hours of the Seller's acceptance. This Agreement signed by the Purchaser and reflecting the terms verbally accepted by the Seller must be received by the Seller within five (5) calendar days of the Verbal Acknowledgement Date. If the Seller does not receive the signed Agreement by such date, this Agreement shall be null and void. In addition, this Agreement shall be null and void if the signed Agreement is not received by the Seller before the Seller accepts a competing offer, or gives verbal notice of revocation either to the Purchaser, the Purchaser's agent or attorney, or the listing agent. As used in this paragraph, the term "received by the Seller" means actual receipt by the Seller of the Purchaser's written acceptance of these documents by the Seller's listing agent.

The Purchaser shall present proof, satisfactory to the Seller, of the Purchaser's prequalification for a mortgage loan in an amount and under terms sufficient for the Purchaser to perform its obligations under this Agreement. The prequalification shall include but is not limited to, a certification of prequalification or a mortgage loan commitment from a mortgage lender, a satisfactory credit report and/or proof of funds sufficient to meet the Purchaser's obligations under this Agreement. The Purchaser's submission of proof of prequalification is a condition precedent to the Seller's acceptance. The Seller may require the Purchaser to obtain, at no cost to the Purchaser, loan prequalification from a Seller approved third party lender. Notwithstanding any Seller required prequalification, the Purchaser acknowledges that Purchaser is free to obtain financing from any source.

2. **Time of the Escrow Closing Date:**

(a) It is agreed that time is of the essence with respect to all dates specified in this Agreement and any addenda, riders or amendments hereto. This means that all deadlines are intended to be strict and absolute.

(b) The closing shall take place on or before 1/25/2010, or within five (5) days of final loan approval by the lender, whichever is earlier, unless the closing date is extended in writing signed by the Seller and the Purchaser or extended by the Seller under the terms of this Agreement. The closing shall be held in the offices of the Seller's attorney or agent, or at a place so designated and approved by the Seller, unless otherwise required by applicable law. If the closing does not occur by the date specified in this Section 2 of the Addendum, or in any extension, this Agreement is automatically terminated and the Seller shall retain any earnest money deposit as liquidated damages.

(c) In the event the Seller agrees to the Purchaser's request for a written extension of this Agreement, the Purchaser agrees to pay to the Seller a per diem of \$100 through and including the closing date specified in the written extension. If the sale does not close by the date specified in the written extension agreement, the Seller may retain the earnest money deposit and the accrued per diem payment as liquidated damages.

3. **Financing:** This Agreement (check one): () is, () is not, contingent on the Purchaser obtaining financing for the purchase of the Property. If this Agreement is contingent on financing, the type of financing shall be the following (check one):

- () Fannie Mae Special REO Financing from a participating lender
- () Conventional
- () FHA
- () VA
- () Other (specify:)

All Financing. (This paragraph applies to all financing, whether or not it is Fannie Mae Special REO or other financing.) If this Agreement is contingent on financing, the Purchaser shall apply for a loan in the amount of \$_____ with a term of _____ years, at prevailing rates, terms and conditions. The Purchaser shall complete and submit to a mortgage lender, of the Purchaser's choice, an application for a mortgage loan containing the terms set forth in this paragraph within five (5) calendar days of the Verbal Acknowledgement Date, and shall use diligent efforts to obtain a mortgage loan commitment by _____. If, despite the Purchaser's diligent efforts, the Purchaser cannot obtain a mortgage loan commitment by the specified date, then either the Purchaser or the Seller may terminate this Agreement by giving written notice to the other party. The Purchaser's notice must include a copy of the loan application, proof of the application date, and a copy of the denial letter from the prospective lender. In the event of a proper termination of this Agreement under this paragraph, the earnest money deposit shall be returned to the Purchaser and the parties shall have no further obligation to each other under this Agreement. The Purchaser agrees to cooperate and comply with all requests for documents and information from the Purchaser's chosen lender during the loan application process. Failure of the Purchaser to comply with such requests from the lender that results in the denial of the mortgage loan will be a breach of this Agreement and the Seller shall be entitled to retain any earnest money deposited by the Purchaser.

(d) The Purchaser is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by the Purchaser. Any change as to the terms or a change in the Purchaser's lender after negotiations have been completed will constitute a breach of all terms of this Agreement.

PURCHASER (initials)

SELLER (initials)

WFOC-POM001 0/1/10/00

(b) The Purchaser shall ensure that the lender selected by the Purchaser to finance the sale shall fund the settlement agent as of the date of settlement. The Purchaser shall further ensure that the selected lender shall provide all lender prepared closing documentation to the settlement agent no later than 48 hours prior to settlement. Any delays in closing and funding as a result of the Purchaser's selected lender shall be the responsibility of the Purchaser.

4. **Use of Property:** The Purchaser (check one): () does, (X) does not, intend to use and occupy the Property as Purchaser's primary residence.

5. **Inspections:**

(a) On or before 10 calendar days from the Verbal Acknowledgment Date, the Purchaser shall inspect the Property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the Property, or be deemed to have waived such inspection and any objections to the condition of the Property and to have accepted the Property. The Purchaser shall keep the Property free and clear of liens and indemnify and hold the Seller harmless from all liability claims, demands, damages, and costs related to the Purchaser's inspection and the Purchaser shall repair all damages arising from or caused by the inspections. The Purchaser shall not directly or indirectly cause any inspections to be made by any government building or zoning inspectors or government employees without the prior written consent of the Seller, unless required by law, in which case, the Purchaser shall provide reasonable notice to the Seller prior to any such inspection. If the Seller has winterized this Property and the Purchaser desires to have the Property inspected, listing agent will have the Property dewinterized prior to inspection and rewinterized after inspection. The Purchaser agrees to pay this expense in advance to the listing agent. The amount paid under this provision shall be nonrefundable.

Within five (5) calendar days of receipt of any inspection report prepared by or for the Purchaser, but not later than 10 days from the Verbal Acknowledgment Date, whichever first occurs, the Purchaser will provide written notice to the Seller of any items disapproved. The Purchaser's silence shall be deemed as acceptance of the condition of the Property. The Purchaser shall provide to the Seller, at no cost, upon request by the Seller, complete copies of all inspection reports upon which the Purchaser's disapproval of the condition of the property is based. In no event shall the Seller be obligated to make any repairs or replacements that may be indicated in the Purchaser's inspection reports. The Seller may, at its sole discretion, make such repairs to the Property under the terms described in Section 7 of this Addendum. If the Seller elects not to repair the Property, the Purchaser may cancel this Agreement and receive all earnest money deposited. If the Seller elects to make any such repairs to the Property, the Seller shall notify the Purchaser after completion of the repairs and the Purchaser shall have 5 days from the date of notice, to inspect the repairs and notify the Seller of any items disapproved. The Purchaser's silence shall be deemed as acceptance.

In situations that are applicable, a structural, electrical, mechanical or termite inspection report may have been prepared for the benefit of the Seller. Upon request, the Purchaser will be allowed to review the report to obtain the same information and knowledge the Seller has about the condition of the Property but the Purchaser acknowledges that the inspection reports were prepared for the sole use and benefit of the Seller. The Purchaser will not rely upon any such inspection reports obtained by the Seller in making a decision to purchase the Property.

(b) If the Property is a condominium or planned unit development or co-operative, unless otherwise required by law, the Purchaser, at the Purchaser's own expense, is responsible for obtaining and reviewing the covenants, conditions and restrictions and bylaws of the condominium, or planned unit development or cooperative within (10) days of execution of this Agreement by both parties pursuant to paragraph 1 hereof. The Seller agrees to use reasonable efforts, as determined at the Seller's sole discretion, to assist the Purchaser in obtaining a copy of the covenants, conditions and restrictions and bylaws. The Purchaser will be deemed to have accepted the covenants, conditions and restrictions and by laws if the Purchaser does not notify the Seller in writing, within 15 days of execution of this Agreement, of the Purchaser's objection to the covenants, conditions and restrictions and/or bylaws.

6. **CONDITION OF PROPERTY:** THE PURCHASER UNDERSTANDS THAT THE SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORFEITURE, TAX SALE, RIGHT OF EMINENT DOMAIN OR SIMILAR PROCESS AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY HIDDEN DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT. THE PURCHASER ACKNOWLEDGES THAT THE SELLER, ITS AGENTS AND REPRESENTATIVES HAVE NOT MADE AND THE SELLER SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN IN RESPECT TO:

(A) THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY INCLUDING THE STRUCTURAL INTEGRITY OR THE QUALITY OR CHARACTER OF MATERIALS USED IN CONSTRUCTION OF ANY IMPROVEMENTS, AVAILABILITY AND QUANTITY OR QUALITY OF WATER, STABILITY OF THE SOIL, SUSCEPTIBILITY TO LANDSLIDE OR FLOODING, SUFFICIENCY OF DRAINAGE, WATER LEAKS, WATER DAMAGE, MOLD OR ANY OTHER MATTER AFFECTING THE STABILITY, INTEGRITY, OR CONDITION OF THE PROPERTY OR IMPROVEMENTS;

(B) THE CONFORMITY OF THE PROPERTY OR THE IMPROVEMENTS TO ANY ZONING, LAND USE OR BUILDING CODE REQUIREMENTS OR COMPLIANCE WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AUTHORITY, OR THE GRANTING OF ANY REQUIRED PERMITS OR APPROVALS, IF ANY, OF ANY GOVERNMENTAL BODIES WHICH HAD JURISDICTION OVER THE CONSTRUCTION OF THE ORIGINAL STRUCTURE, ANY IMPROVEMENTS AND/OR ANY REMODELING OF THE STRUCTURE; AND

(C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR IMPROVEMENTS INCLUDING REDHIBITORY VICES AND DEFECTS, APPARENT, NON APPARENT OR LATENT, WHICH NOW EXIST OR WHICH MAY HEREAFTER EXIST AND WHICH IF KNOWN TO THE PURCHASER, WOULD CAUSE THE PURCHASER TO REFUSE TO PURCHASE THE PROPERTY.

PURCHASER (initials)

SELLER (initials)

WFOC FORM 001 (07/2003)

Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in this Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or elderly persons. Mold has also been reported to cause extensive damage to personal and real property. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. The Purchaser acknowledges that, if Seller, or any of Seller's employees, contractors, or agents cleaned or repaired the Property or remediated Mold contamination, that Seller does not in any way warrant the cleaning, repairs or remediation. Purchaser accepts full responsibility for all hazards that may result from the presence of Mold in or around the Property. The Purchaser is satisfied with the condition of the Property notwithstanding the past or present existence of Mold in or around the Property and Purchaser has not, in any way, relied upon any representations of Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of Mold in or around the property.

In the event the Property is affected by an environmental hazard, as determined by the Seller, either party may terminate this Agreement. In the event the Seller decides to sell the Property to the Purchaser and the Purchaser agrees to purchase the Property the Purchaser agrees to execute a general release at closing, in a form acceptable to Seller, releasing the Seller from any liability related to the environmental hazard or conditions of the Property. In the event the Purchaser elects not to execute the disclosure and release, at the Seller's discretion, this Agreement is automatically terminated.

In the event the Seller has received official notice that the Property is in violation of building codes or similar laws or regulations, the Seller may terminate this Agreement or delay the date of closing or the Purchaser may terminate this Agreement. In the event this Agreement is terminated by either Purchaser or Seller pursuant to this Section 6 of this Addendum, any earnest money deposit will be returned to the Purchaser. If there is an enforcement proceeding arising from allegations of such violations before an enforcement board, special master, court or similar enforcement body, and neither the Purchaser nor the Seller terminate this Agreement, the Purchaser agrees (a) to accept the Property subject to the violations, (b) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceeding and (c) to resolve the deficiencies as soon as possible after the closing. The Purchaser agrees to execute any and all documents necessary or required for closing by any agency with jurisdiction over the Property. The Purchaser further agrees to indemnify the Seller from any and all claims or liability arising from the Purchaser's breach of this Section 6 of this Addendum.

The closing of this sale shall constitute acknowledgement by the Purchaser that Purchaser had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Purchaser. The Purchaser agrees that the Seller shall have no liability for any claims or losses the Purchaser or the Purchaser's successors or assigns may incur as a result of construction or other defects which may now or hereafter exist with respect to the Property.

The Seller is exempt from filing a disclosure statement as the Property was acquired through foreclosure, deed in lieu of foreclosure, forfeiture, tax sale, eminent domain or similar process. For Alaska transactions, the Seller and the Purchaser have previously executed a waiver of the disclosure provisions of Alaska statutes.

7. **Repairs:** All treatments for wood infesting organisms and other repairs will be completed by a vendor approved by the Seller, and will be subject to the Seller's satisfaction only. If the Seller has agreed to pay for treatment of wood infesting organisms, the Seller shall treat only active infestation. Neither the Purchaser, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to closing without the prior written consent of the Seller. To the extent that the Purchaser or its representatives makes repairs and/or treatments to the Property prior to closing, the Purchaser hereby agrees to release and indemnify the Seller from and against any and all claims related in any way to the repairs and/or treatments and further agrees to execute a release and indemnification in a form acceptable to the Seller prior to the commencement of any such repairs or treatments. The Purchaser acknowledges that all repairs and treatments are done for the benefit of the Seller and not for the benefit of the Purchaser and that the Purchaser has inspected or has been given the opportunity to inspect repairs and treatments. Any repairs or treatments made or caused to be made by the Seller shall be completed prior to the closing. Under no circumstances shall the Seller be required to make any repairs or treatments after the Closing Date. The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's confirmation that the Purchaser is satisfied with the condition of the Property and with all repairs and treatments to the Property and waives all claims related to such condition and to the quality of the repairs or treatments to the Property. Any repairs or treatments shall be performed for functional purposes only and exact restoration of appearance or cosmetic items following any repairs or treatments shall not be required. The Seller shall not be obligated to obtain or provide to the Purchaser any receipts for repairs, or treatments, written statements indicating dates or types of repairs and/or treatments or copies of such receipts or statements nor any other documentation regarding any repairs and treatments to the Property. **THE SELLER DOES NOT WARRANT OR GUARANTEE ANY WORK, REPAIRS OR TREATMENTS TO THE PROPERTY.**

8. **Eviction Status of Property:** The Purchaser acknowledges that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's reaffirmation that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. The Seller, its representatives, agents or assigns, shall not be responsible for evicting or relocating any tenants, occupants or personal property at the Property prior to or subsequent to closing unless otherwise noted in Section 38 of this Addendum.

The Purchaser further acknowledges that, to the best of the Purchaser's knowledge, the Seller is not holding any security deposits from former or current tenants and has no information as to such security deposits as may have been paid by the former or current tenants to anyone and agrees that no sums representing such tenant security deposits shall be transferred to the Purchaser as part of this transaction. The Purchaser further agrees to assume all responsibility and liability for the refund of such security deposits to the tenants pursuant to the provisions of applicable laws and regulations. All rents, due and payable and collected from tenants for the month in which closing occurs will be prorated according to the provisions of Section 10 of this Addendum.

The Purchaser acknowledges that this Property may be subject to the provisions of local rent control ordinances and regulations. The Purchaser agrees to comply with all eviction proceedings and other duties and responsibilities of a property owner and landlord.

PURCHASER (Print) _____

SELLER (Print) _____

HPDC FORM 001 (1-17-2007)

including but not limited to, those proceedings required for compliance with such local rent control ordinances and regulations, will be the Purchaser's sole responsibility.

9. **Personal Property:** Items of personal property, including but not limited to window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes and garage door openers, now or hereafter located on the Property are not included in this sale of the purchase price unless the personal property is specifically described and referenced in Section 3B of this Addendum. Any personal property at or on the Property may be subject to claims by third parties and, therefore, may be removed from the Property prior to or after the Closing Date. The Seller makes no representation or warranty as to the condition of any personal property, title therein, or whether any personal property is encumbered by any liens. The Purchaser assumes responsibility for any personal property remaining on the Property at the time of closing.
10. **Closing Costs and Adjustments:**
- The Purchaser and the Seller agree to prorate the following expenses as of closing and funding: municipal water and sewer charges, utility charges, real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, co-operative fees, maintenance fees, and rents, if any. In determining prorations, the funding date shall be allocated to the Purchaser. Payment of special assessment district bonds and assessments, and payment of homeowner's association or special assessments shall be paid current and prorated between the Purchaser and the Seller as of closing date with payments not yet due and owing to be assumed by the Purchaser without credit toward purchase price. The Property taxes shall be prorated based on an estimate or actual taxes from the previous year on the Property. All prorations shall be based upon a 30-day month and all such prorations shall be final. The Seller shall not be responsible for any amounts due, paid or to be paid after closing, including but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised value of the Property. In the event the Seller has paid any taxes, special assessments or other fees and there is a refund of any such taxes, assessments or fees after closing, and the Purchaser as current owner of the Property receives the payment, the Purchaser will immediately submit the refund to the Seller. If the Property is heated by or has storage tanks for fuel oil, liquefied petroleum gases or similar fuels, the Purchaser will buy the fuel in the tank at closing at the current price as calculated by the supplier.
 - Regardless of local custom, requirements or practice, the Purchaser shall pay any and all realty transfer taxes due as a result of the conveyance of the Property. The Purchaser shall pay all other costs and fees incurred in the transfer of the Property, including cost of any survey, title policy, estrow or closing fees and lender required fees, except as expressly assumed by the Seller in Section 3B of this Addendum.
 - If Fannie Mae is the owner and the Seller hereunder, the Purchaser acknowledges that Fannie Mae is a congressionally chartered corporation and is exempt from realty transfer taxes pursuant to 12.U.S.C. 1723a(c)(2).
 - The Seller shall pay the real estate commission per the listing agreement between the Seller and the Seller's listing broker.
11. **Delivery of Funds:** Regardless of local custom, requirements, or practice, upon delivery of the deed by the Seller to the Purchaser, the Purchaser shall deliver all funds due the Seller from the sale in the form of cash, bank check, certified check or wire transfer. An attorney's trust fund check shall not be sufficient to satisfy this provision unless the bank holding the account on which the trust fund check is drawn certifies the trust fund check.
12. **Certificate of Occupancy:** If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification or any similar certification or permit ("Certificate of Occupancy") or any form of improvement or repair to the Property to obtain such Certificate of Occupancy necessary for the Property to be occupied, the Purchaser understands that the Seller requires the Certificate of Occupancy to be obtained by the Purchaser at the Purchaser's sole cost and expense. The Purchaser shall make application for all Certificates of Occupancy within ten (10) days of the Verbal Acknowledgment Date. The Purchaser shall not have the right to delay the closing due to the Purchaser's failure or inability to obtain any required Certificate of Occupancy. Failure of the Purchaser to obtain and furnish the Certificate of Occupancy shall be a material breach of the Agreement. Neither the Purchaser, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to closing, without the prior written consent of the Seller. To the extent that the Purchaser or its representatives makes repairs and/or treatments to the Property prior to closing, the Purchaser hereby agrees to release and indemnify the Seller from and against any and all claims related in any way to the repairs and/or treatments and further agrees to execute a release and indemnification in a form acceptable to the Seller prior to the commencement of any such repairs or treatments.
13. **Delivery of Possession of Property:** The Seller shall deliver possession of the Property to the Purchaser at closing and funding of sale. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 8 of this Addendum. If the Purchaser alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to closing and funding without the prior written consent of the Seller, such event shall constitute a breach by the Purchaser under this Agreement and the Seller may terminate this Agreement and the Purchaser shall be liable to the Seller for damages caused by any such alteration or occupation of the Property prior to closing and funding and waives any and all claims for damages or compensations for improvements made by the Purchaser to the Property including, but not limited to, any claims for unjust enrichment.

PURCHASER (initials)

SELLER (initials)

SPDC FORM 001 (01/2007)

14. Deed: The deed to be delivered at closing shall be a deed that covenants that grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which deed may be known as a Special Warranty, Limited Warranty, Quit-Claim or Bargain and Sale Deed). Any reference to the term "Deed" or "Special Warranty Deed" herein shall be construed to refer to such form of deed.

() (check if applicable) Seller's deed shall include the following deed restriction:

GRANTEE HEREIN SHALL BE PROHIBITED FROM CONVEYING CAPTIONED PROPERTY TO A BONAFIDE PURCHASER FOR VALUE FOR A SALES PRICE OF GREATER THAN \$ _ FOR A PERIOD OF _ MONTH(S) FROM THE DATE OF THIS DEED. GRANTEE SHALL ALSO BE PROHIBITED FROM ENCUMBERING SUBJECT PROPERTY WITH A SECURITY INTEREST IN THE PRINCIPAL AMOUNT OF GREATER THAN \$ _ FOR A PERIOD OF _ MONTH(S) FROM THE DATE OF THIS DEED. THESE RESTRICTIONS SHALL RUN WITH THE LAND AND ARE NOT PERSONAL TO GRANTEE.

THIS RESTRICTION SHALL TERMINATE IMMEDIATELY UPON CONVIYANCE AT ANY FORECLOSURE SALE RELATED TO A MORTGAGE OR DEED OF TRUST.

15. Defect in Title: If the Purchaser raises an objection to the Seller's title to the Property, which, if valid, would make title to the Property unmarketable, the Seller shall have the right unilaterally to terminate this Agreement by giving written notice of the termination to the Purchaser. However, if the Seller is able to correct the problem through reasonable efforts, as the Seller determines, at its sole and absolute discretion, prior to the closing date set forth in this Agreement, including any written extensions, or if title insurance is available from a reputable title insurance company of regular rates ~~with~~ affirmative coverage for the title objections, then this Agreement shall remain in full force and the Purchaser shall perform pursuant to the terms set in this Agreement. The Seller is not obligated to remove any exception or to bring any action or proceeding or bear any expense in order to convey title to the Property or to make the title marketable and/or insurable but any attempt by the Seller to remove such title exceptions shall not impose an obligation upon the Seller to remove those exceptions. The Purchaser acknowledges that the Seller's title to the Property may be subject to court approval of foreclosure or to mortgagor's right of redemption. In the event the Seller is not able to (a) make the title insurable or correct any problem or (b) obtain title insurance from a reputable title insurance company, all as provided herein, the Purchaser may terminate this Agreement and any earnest money deposit will be returned to the Purchaser as the Purchaser's sole remedy at law or equity.

16. Representations and Warranties:

The Purchaser represents and warrants to the Seller the following:

- (a) The Purchaser is purchasing the Property solely in reliance on its own investigation and inspection of the Property and not on any information, representation or warranty provided or to be provided by the Seller, its servants, representatives, brokers, employees, agents or assigns;
- (b) Neither the Seller, nor its servants, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or expressed, relating to the condition of the Property or the contents thereof, except as expressly set forth in Section 38 of this Addendum;
- (c) The Purchaser has not relied on any representation or warranty from the Seller regarding the nature, quality or workmanship of any repairs made by the Seller; and
- (d) The Purchaser will not occupy or cause or permit others to occupy the Property prior to closing and funding and, unless and until any necessary Certificate of Occupancy has been obtained from the appropriate governmental entity, will not occupy or cause or permit others to occupy the Property after closing.
- (e) The Purchaser has has not previously purchased a Fannie Mae owned property.

17. WAIVERS:

AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER WAIVES THE FOLLOWING:

- (A) ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST THE SELLER FOR SPECIFIC PERFORMANCE;
- (B) RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;
- (C) RIGHT TO INVOKE ANY OTHER EQUITABLE REMEDY THAT MAY BE AVAILABLE THAT IF INVOKED, WOULD PREVENT THE SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY PURCHASER;
- (D) ANY AND ALL CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING;
- (E) ANY CLAIMS FOR FAILURE OF CONSIDERATION AND/OR MISTAKE OF FACT AS SUCH CLAIMS RELATE TO THE PURCHASE OF THE PROPERTY OR ENTERING INTO OR EXECUTION OF OR CLOSING UNDER THIS AGREEMENT;

IN ANY REMEDY OF ANY KIND, INCLUDING BUT NOT LIMITED TO RESCISSION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 19 OF THIS ADDENDUM, TO WHICH THE PURCHASER MIGHT OTHERWISE BE

PURCHASER (name)

SELLER (name)

ENTITLED AT LAW OR EQUITY WHETHER BASED ON MUTUAL MISTAKE OF FACT OR LAW OR OTHERWISE.

- (G) TRIAL BY JURY, EXCEPT AS PROHIBITED BY LAW, IN ANY LITIGATION ARISING FROM OR CONNECTED WITH OR RELATED TO THIS AGREEMENT;
- (H) ANY CLAIMS OR LOSSES THE PURCHASER MAY INCUR AS A RESULT OF CONSTRUCTION ON, REPAIR TO, OR TREATMENT OF THE PROPERTY, OR OTHER DEFECTS, WHICH MAY NOW OR (HEREAFTER EXIST WITH RESPECT TO THE PROPERTY;
- (I) ANY CLAIMS OR LOSSES RELATED TO ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY INCLUDING, BUT NOT LIMITED TO, MOLD, LEAD PAINT, FUEL OIL, ALLERGENS, OR OTHER TOXIC SUBSTANCES OF ANY KIND;
- (J) ANY RIGHT TO AVOID THIS SALE OR REDUCE THE PRICE OR HOLD THE SELLER RESPONSIBLE FOR DAMAGES ON ACCOUNT OF THIS CONDITION OF THE PROPERTY, LACK OF SUITABILITY AND FITNESS, OR REINHIBITORY VICES AND DEFECTS, APPARENT, NONAPPARENT OR LATENT, DISCOVERABLE OR NONDISCOVERABLE; AND
- (K) ANY CLAIM ARISING FROM ENCHROACHMENTS, EASEMENTS, SHORTAGES IN AREA OR ANY OTHER MATTER WHICH WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS.

References to the "Seller" in this Section 17 of the Addendum shall include the Seller and the Seller's servicers, representatives, agents, brokers, employees, or assigns.

In the event that the Purchaser broaches any of the warranties described or contemplated under this Section 17 of this Addendum and a court finds that such action is without merit, the Purchaser shall pay all reasonable attorneys fee and cost incurred by the Seller in defending such action, and the Purchaser shall pay Five Thousand Dollars (\$5,000) as liquidated damages for breach of this Section 17 of the Addendum, which amount shall be in addition to any liquidated damages held or covered by the Seller pursuant to Section 19 of this Addendum.

18. Conditions to the Seller's Performance: The Seller shall have the right, at the Seller's sole discretion, to extend the closing date or to terminate this Agreement if:
- (a) full payment of any mortgage insurance claim related to the loan previously secured by the Property is not confirmed prior to the closing date or the mortgage insurance company exercises its right to acquire title to the Property;
 - (b) The Seller determines that it is unable to convey good and marketable title to the Property insurable by a reputable title insurance company at regular rates;
 - (c) The Seller has requested that the servicing lender, or any other party, repurchase the loan previously secured by the Property;
 - (d) a third party with rights related to the sale of the property does not approve the sale terms.
 - (e) full payment of any property, fire or hazard insurance claim is not confirmed prior to the closing or date set forth herein for closing;
 - (f) any third party, whether tenant, homeowner's association, or otherwise, exercises rights under a right of first refusal to purchase the Property.
 - (g) the Purchaser is the former mortgagor of the Property whose interest was foreclosed, or is related to or affiliated in any way with the former mortgagor, and the Purchaser has not disclosed this fact to the Seller prior to the Seller's acceptance of this Agreement. Such failure to disclose shall constitute default under this Agreement, entitling the Seller to exercise any of its rights and remedies, including, without limitation, retaining the earnest money deposit; or
 - (h) the Seller, at the Seller's sole discretion, determines that the sale of the Property to the Purchaser or any related transactions are in any way associated with illegal activity of any kind.

In the event the Seller elects to terminate this Agreement as a result of (a), (b), (c), (d), (e) or (g) above, the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.

19. Remedies for Default.

- (a) In the event of the Purchaser's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Seller, at its option, may retain the earnest money deposit and any other funds then paid by the Purchaser as liquidated damages and/or invoke any other remedy expressly set out in this Agreement and the Seller is automatically released from the obligation to sell the Property to the Purchaser and neither the Seller nor its representatives, agents, attorneys, successors, or assigns shall be liable to the Purchaser for any damages of any kind as a result of the Seller's failure to sell and convey the Property.
- (b) In the event of the Seller's default or material breach under the terms of this Agreement or if the Seller terminates this Agreement as provided under the provisions of this Agreement, the Purchaser shall be entitled to the return of the earnest money deposit as Purchaser's sole and exclusive remedy at law and/or equity. Any reference to a return of the Purchaser's earnest money deposit contained in the Agreement shall mean a return of the earnest money deposit less any escrow cancellation fees applicable to the Purchaser under this Agreement and less fees and costs payable for services and products provided during escrow at the Purchaser's request. The Purchaser waives any claims that the Property is unique and the Purchaser acknowledges that a return of its earnest money deposit can adequately and fairly compensate the Purchaser. Upon return of the earnest money deposit to the Purchaser, this Agreement shall be terminated, and the Purchaser and the Seller shall have no further liability, no further

PURCHASER (Printed): _____

SELLER (Printed): _____

MSG FORM 001 (01/2007)

obligation, and no further responsibility each to the other and the Purchaser and the Seller shall be released from any further obligation each to the other in connection with this Agreement.

- (c) The Purchaser agrees that the Seller shall not be liable to the Purchaser for any special, consequential or punitive damages whatsoever, whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle, including but not limited to any cost or expense incurred by the Purchaser in selling or surrendering a lease on a prior residence, obtaining other living accommodations, moving, storage or relocation expenses or any other such expense or cost arising from or related to this Agreement or a breach of this Agreement.
- (d) Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.
- (e) In the event either party elects to exercise its remedies as described in this Section 19 of this Addendum and this Agreement is terminated, the parties shall have no further obligation under this Agreement except as to any provision that survives the termination of this Agreement pursuant to Section 24 of this Addendum.
20. **Indemnification.** The Purchaser agrees to indemnify and fully protect, defend, and hold the Seller, its officers, directors, employees, shareholders, servants, representatives, agents, attorneys, tenants, brokers, successors or assigns harmless from and against any and all claims, costs, fees, loss, damage, attorney's fees and expenses of every kind and nature that may be sustained by or made against the Seller, its officers, directors, employees, shareholders, servants, representatives, agents, attorneys, tenants, brokers, successors or assigns, resulting from or arising out of:
- (a) inspections or repairs made by the Purchaser or its agents, employees, contractors, successors or assigns
- (b) the imposition of any fine or penalty imposed by any governmental entity resulting from the Purchaser's failure to timely obtain any Certificate of Occupancy or to comply with equivalent laws and regulations;
- (c) claims for amounts due and owed by the Seller for taxes, homeowner association dues or assessment or any other items provided at closing under Section 10 of this Addendum, including any penalty or interest and other charges, arising from the promotion of such amounts for which the Purchaser received a credit at closing under Section 10 of this Addendum and
- (d) the Purchaser's or the Purchaser's tenants, agents or representatives use and/or occupancy of the Property prior to closing and/or issuance of required certificates of occupancy.
21. **Risk of Loss:** The Purchaser assumes all risk of loss related to damage to the Property. In the event of fire, destruction or other casualty loss to the Property after the Seller's acceptance of this Agreement and prior to closing and funding, the Seller may, at its sole discretion, repair or restore the Property, or the Seller may terminate this Agreement. If the Seller elects to repair or restore the Property, then the Seller may, at its sole discretion, limit the amount to be expended. If the Seller elects to repair or restore the Property, the Purchaser's sole and exclusive remedy shall be either to acquire the Property in its then condition at the Purchase Price with no reduction thereof by reason of such loss or terminate this Agreement and receive a refund of any earnest money deposit.
22. **Eviction Claims:** In the event that the Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain or shall be in the process of being taken on or before the closing date, either party may terminate this Agreement and the earnest money deposit shall be returned to the Purchaser and neither party shall have any further rights or liabilities hereunder except as provided in Section 24 of this Addendum.
23. **Keys:** The Purchaser understands that if the Seller is not in possession of keys, including but not limited to, mailbox keys, recreation area keys, gate cards, or automatic garage remote controls, then the cost of obtaining the same will be the responsibility of the Purchaser. The Purchaser also understands that if the Property includes an alarm system, the Seller cannot provide the access code and/or key and that the Purchaser is responsible for any costs associated with the alarm and/or changing the access code or obtaining keys. If the Property is presently on a Master Key System, the Seller will re-key the exterior doors to the Property prior to closing and funding at the Purchaser's expense. The Purchaser authorizes and instructs escrow holder to charge the account of the Purchaser at closing for the rekey.
24. **Survival:** Delivery of the deed to the Property to the Purchaser by the Seller shall be deemed to be full performance and discharge of all of the Seller's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 6, 7, 8, 10, 12, 13, 16, 17, 19, 20, 21, 22, and 24 of this Addendum, as well as any other provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive the closing, funding and the delivery of the deed and/or termination of this Agreement by any party and continue in full force and effect.
25. **Further Assignments:** The Purchaser agrees to execute and deliver to the Seller at closing, or otherwise as requested by the Seller, documents including Fannie Mae's NPDC Form 4 (Waiver and Release Regarding Property Condition at Closing), NPDC Form 5 (Tax Proration Agreement) or documents that are substantially the same, and to take such other action as reasonably may be necessary to further the purpose of this Agreement. Copies of referenced documents are available from the Seller's listing agent upon request by the Purchaser.
26. **Severability:** The invalidity, illegality or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.
27. **Assignment of Agreement:** The Purchaser shall not assign this Agreement without the express written consent of the Seller. The Seller may assign this Agreement at its sole discretion without prior notice to, or consent of, the Purchaser.
28. **EFFECT OF ADDENDUM:** THIS REAL ESTATE PURCHASE ADDENDUM AMENDS AND SUPPLEMENTS THE CONTRACT AND, IF APPLICABLE, ESCROW INSTRUCTIONS. IN THE EVENT THERE IS ANY CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT OR ESCROW INSTRUCTIONS OR NOTICE OR OTHER DOCUMENTS ATTACHED AND MADE A PART OF THIS AGREEMENT, THE TERMS OF THIS ADDENDUM TAKE PRECEDENCE AND SHALL PREVAIL EXCEPT AS OTHERWISE PROVIDED BY LAW. This Agreement is being assigned, if executing this Agreement on behalf of a Seller and/or the Purchaser that is a corporation.

PURCHASER (name)

SELLER (name)

NPDC FORM 001 (11/17/2007)

partnership, trust or other entity, represents and warrants that he/she is authorized by that entity to enter into this Agreement and bind the entity to perform all duties and obligations stated in this Agreement.

29. **Entire Agreement:** This Agreement, including the disclosure of information on lead based paint and/or lead based paint hazards or the Seller Disclosure and Release Addendum or other disclosure forms or notices required by law, constitutes the entire agreement between the Purchaser and the Seller concerning the subject matter hereof and supersedes all previous communications, understandings, representations, warranties, covenants or agreements, either written or oral and there are no oral or other written agreements between the Purchaser and the Seller. **NO ORAL PROMISES, REPRESENTATIONS (EXPRESSED OR IMPLIED), WARRANTIES OR AGREEMENTS MADE BY THE SELLER AND/OR BROKERS OR ANY PERSON ACTING ON BEHALF OF THE SELLER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT.** All negotiations are merged into this Agreement. The Seller is not obligated by any other written or verbal statements made by the Seller, the Seller's representatives, or any real estate licensee.
30. **Modification:** No provision, term or clause of this Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by the Purchaser and the Seller.
31. **Rights of Others:** This Agreement does not create any rights, claims or benefits inuring to any person or entity, other than Seller's successors and/or assigns, that is not a party to this Agreement, nor does it create or establish any third party beneficiary to this Agreement.
32. **Counterparts:** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement.
33. **Headings:** The titles to the sections and headings of various paragraphs of this Agreement are placed for convenience of reference only and in case of conflict, the text of this Agreement rather than such titles or headings shall control.
34. **Gender:** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such nouns or pronouns and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.
35. **Force Majeure.** Except as provided in Section 21 to the Addendum, no party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such party through use of alternate sources, work-around plans or other means.
36. **Attorney Review.** The Purchaser acknowledges that Purchaser has had the opportunity to consult with its legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be construed against any party because that party drafted this Agreement or construed in favor of any Party because that Party failed to understand the legal effect of the provisions of this Agreement.
37. **Notices:** Any notices required to be given under this Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery, or five (5) days after mailing by first class mail, postage paid, or by fax with confirmation of transmission to the numbers below. All notices to the Seller will be deemed sent or delivered to the Seller when sent or delivered to Seller's listing broker or agent or Seller's attorney, at the address or fax number shown below. All notices to the Purchaser shall be deemed sent or delivered when sent or delivered to the Purchaser or the Purchaser's attorney or agent at the address or fax number shown below.
38. **Additional Terms or Conditions:**
Seller to contribute up to \$1,500.00 towards Buyer's Closing Costs, Points, and/or Prepaids.

PURCHASER (initials) _____

SELLER (initials) _____

AMDC FORM 661 (10/2007)

IN WITNESS WHEREOF, the Purchaser and the Seller have entered into this Agreement as of the date first set forth above.

PURCHASER (S):

Signature: 

Date: 1/28/10

Print Name: Terrence Moore

Address: P.O. Box 20000

Telephone: _____

Fax: _____

Signature: _____

Date: _____

Print Name: _____

Address: _____

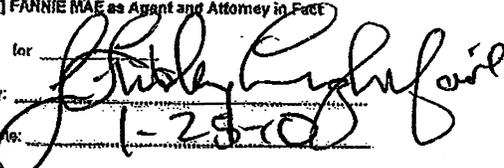
Telephone: _____

Fax: _____

SELLER:

FANNIE MAE:

FANNIE MAE as Agent and Attorney in Fact

for 
By: _____
Date: 1-28-10

PURCHASER'S AGENT:

Brokerage Firm: International Realty Plus NM

Purchaser's Agent Name: Larica Siverdson

Address: 1705 N. Valley Dr.

Las Cruces, NM 88007

Telephone: 575-522-0407 ()

Fax: 575-522-4282

Email Address: _____

SELLER'S AGENT:

Brokerage Firm: STEINBORN INC. REALTORS

Seller's Agent Name: GRADY OXFORD

Address: 111 ROADRUNNER PKWY STE 141

LAS CRUCES NM 88011

Telephone: 575-522-3698 ()

Fax: 575-522-4987

Email Address: gxford@zjanel.com

PURCHASER'S ATTORNEY:

Name: _____

Address: _____

Telephone: _____

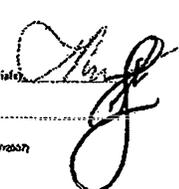
Fax: _____

SELLER'S ATTORNEY:

Name: _____

Address: _____

Telephone: _____

PURCHASER (Initials) 

SELLER (Initials)

SUPPLEMENT TO THE REAL ESTATE PURCHASE ADDENDUM

RHO D090YVH
 Address 2913 Onate Rd Las Cruces, NM 88007

"The Purchaser represents that the Purchaser is eligible for Neighborhood Stabilization Program (NSP) funds through _____

(insert name of NSP funding entity or designated partner) (the "Agency").

The purchase price for a property acquired with Agency NSP funds must be not more than _____ % (the "Agency NSP Discount Percentage") less than the appraised value of the Property (the "NSP Appraised Value"), as determined by a URA appraisal or other evidence of value acceptable to the Agency and obtained by the Purchaser at no expense to the Seller (the "NSP Appraisal"). The NSP Appraised Value less an amount equal to the Agency NSP Discount Percentage is the "Agency Maximum Purchase Price". Accordingly, the following additional provisions apply to this Contract:

- (a) Promptly following the Purchaser's execution of this Agreement, the Purchaser shall provide to Seller or Seller's agent evidence of (i) the Purchaser's eligibility to receive NSP funds through the Agency and (ii) the NSP Appraised Value, each in such form as the Seller shall reasonably require, and shall provide a copy of the NSP Appraisal to the Seller or to the Seller's agent upon request.
- (b) If the Purchase Price stated in the Contract is less than the Agency Maximum Purchase Price, the Purchase Price stated in the Contract shall be the Purchase Price for the Property. If the Purchase Price stated in the Contract is more than the Agency Maximum Purchase Price, the Purchaser shall have until the earlier of (i) 5 days after the Purchaser's receipt of the NSP Appraisal or (ii) 15 days after the date of this Agreement (the "Purchase Price Negotiation Deadline") in which to negotiate a modified purchase price that conforms to Agency NSP requirements.
- (c) If (i) the Purchaser does not obtain a NSP Appraisal prior to the Purchase Price Negotiation Deadline or (ii) the Purchase Price stated in the Agreement is more than the Agency Maximum Purchase Price and the Purchaser and the Seller are unable to agree upon a modified purchase price prior to the Purchase Price Negotiation Deadline, either the Purchaser or the Seller shall have the right to terminate the Contract as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.
- (d) The Seller's obligations under this Agreement are contingent upon the Seller's and the Purchaser's voluntary approval of the Purchase Price as negotiated pursuant to this Addendum. If the Purchase Price negotiated on the basis of the NSP Appraised Value (the "Appraisal Price") differs from the Purchase Price offered by the Purchaser in the original Contract, and the Seller and the Purchaser approve the Appraisal Price, the Seller and the Purchaser shall sign an amendment to this Contract stating that the Appraisal Price is the Purchase Price (the "Purchase Price Amendment"), and the Purchase Price shall be as

PURCHASER (Initials) _____

SELLER (Initials) _____

NSP PE 8-4-2009

stated in the Purchase Price Amendment. If the Seller does not approve the Appraisal Price, or if either the Seller or the Purchaser does not sign the Purchase Price Amendment, the Seller shall have the right to terminate this Contract as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum. If the Appraisal Price is the same as or greater than the Purchase Price offered by the Purchaser in the original Contract, no Purchase Price Amendment will be required and the parties will proceed to closing on the original Contract terms using the Purchase Price as stated in the Purchaser's original offer.

- (e) The Seller acknowledges that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, as evidenced by both parties' execution and delivery of the Purchase Price Amendment, the acquisition will not take place. The Seller is familiar with NSP, understands its appraisal and pricing requirements, and agrees voluntarily to any purchase price discount negotiated pursuant to clause (b) of this Section 38. The Seller further acknowledges that the Purchaser is acquiring the Property voluntarily and is not using any power of eminent domain to acquire the Property.
- (f) At or prior to closing, the Purchaser shall deliver to the Seller a Statement of NSP Eligibility issued by the Agency. The Purchaser is responsible for satisfaction of all Agency requirements to maintain NSP eligibility. The Seller's obligations under this Agreement are contingent upon the Purchaser's NSP eligibility, provided, however, that if the Purchaser does not receive NSP funds at closing, the Purchaser will have the right to close using non-NSP funds. If the Purchaser does not receive NSP funds and does not elect to close using other funds, the Seller shall have the right to terminate this Agreement as provided in Section 18 of this Addendum, in which event the Seller shall return the Purchaser's earnest money deposit and the parties shall have no further obligation under this Agreement except as to any provision that survives termination pursuant to Section 24 of this Addendum.
- (g) If the Seller terminates this Agreement for any reason permitted under the Contract or this Addendum, the Seller shall have no obligation to pay or reimburse the Purchaser for the Purchaser's Closing Costs or for the cost of the NSP Appraisal or for any other costs associated with NSP."

PURCHASER (Initials) _____

SELLER (Initials) _____

NSP FY: 3-4-2009



**REALTORS® ASSOCIATION OF NEW MEXICO
BROKER DUTIES - 2010**

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. **Disclosure:** The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Associate Broker or Qualifying Broker shall disclose in writing to their prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- (A) Honesty and reasonable care as set forth in the provisions of this section;
- (B) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission Rules and other applicable local, state, and federal laws and regulations;
- (C) Performance of any and all oral or written agreements made with the Customer or Client;
- (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction;

If the Broker in a transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;

(E) Acknowledgment by the Broker that there may be matters related to the Transaction that are outside the Associate Broker's or Qualifying Broker's knowledge or expertise and that the Associate Broker or Qualifying Broker will suggest that the Customer or Client seek expert advice on these matters;

(F) Prompt accounting for all monies or property received by the Broker;

(G) Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; and or (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; (3) other Brokerage Relationship options available in New Mexico;

(H) Disclosure of any adverse material facts actually known by the Associate Broker or Qualifying Broker about the Property or the Transaction, or about the financial ability of the parties to the Transaction to complete the Transaction. Adverse material facts do not include data from a sex offender registry or the existence of group homes;

(I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;

(J) Unless otherwise authorized in writing, an Associate Broker or Qualifying Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Associate Broker's or Qualifying Broker's Customer or Client to remain confidential, unless disclosure is required by law.

Signature	Date	Time	Signature	Date	Time
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City of Las Cruces

By Terrence Moore - City Manager

RANM Form 1401 (2010) Page 1 of 2

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**REALTORS® ASSOCIATION OF NEW MEXICO
BROKER DUTIES - 2010**

Effective January 1, 2007, the New Mexico Real Estate Commission requires the disclosure of the following brokerage relationships (as quoted from 16.61.19.9 NMAC, 1-1-2004):

16.61.19.9 BROKERAGE RELATIONSHIPS: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to an exclusive agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

B. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

C. Transaction Broker: The non-fiduciary relationship created by Broker: 61.29.2A14 NMSA 1978, wherein a brokerage provides real estate services without entering into an agency relationship.



**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010
PART I – BROKER DUTIES**

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. **Disclosure:** The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Associate Broker or Qualifying Broker shall disclose in writing to their prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- (A) Honesty and reasonable care as set forth in the provisions of this section;
 - (B) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission Rules and other applicable local, state, and federal laws and regulations;
 - (C) Performance of any and all oral or written agreements made with the Customer or Client;
 - (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction;
- If the Broker in a transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;
- (E) Acknowledgment by the Broker that there may be matters related to the Transaction that are outside the Associate Broker's or Qualifying Broker's knowledge or expertise and that the Associate Broker or Qualifying Broker will suggest that the Customer or Client seek expert advice on these matters;
 - (F) Prompt accounting for all monies or property received by the Broker;
 - (G) Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; and or (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; (3) other Brokerage Relationship options available in New Mexico;
 - (H) Disclosure of any adverse material facts actually known by the Associate Broker or Qualifying Broker about the Property or the Transaction, or about the financial ability of the parties to the Transaction to complete the Transaction. Adverse material facts do not include data from a sex offender registry or the existence of group homes;
 - (I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;
 - (J) Unless otherwise authorized in writing, an Associate Broker or Qualifying Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Associate Broker's or Qualifying Broker's Customer or Client to remain confidential, unless disclosure is required by law.

REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010
PART II

BROKERAGE RELATIONSHIPS DISCLOSURE: Transaction Broker, Exclusive Agency, and Dual Agency are brokerage relationships available in New Mexico. Brokers may, but are not required to, disclose unwritten agreements with Buyers and Sellers. However, Brokers must disclose written agreements.

1. John Lance Swarengin ("Buyer's Broker") is working with the Buyer in this transaction as a:
 Transaction Broker without a written agreement.
 Transaction Broker with a written agreement (RANM Form 1206, Buyer Broker Agreement).
 Agent with a written agreement (RANM Form 1206, Buyer Broker Agreement with Agency Addendum).

2. IN-HOUSE TRANSACTION:
 A. Buyer's Broker is licensed under the same Qualifying Broker in the same Brokerage as Seller's Broker. Seller's Broker has a written listing agreement with the Seller as Transaction Broker Agent.
 B. Buyer's Broker is also Seller's Broker for the property in this Transaction. Seller's Broker has a written listing agreement with Seller as Transaction Broker Agent.

3. DUAL REPRESENTATION DISCLOSURE AND CONSENT: Brokerage is representing both Buyer and Seller by means of written agreements with each of them, without creating Dual Agency. If there are two written agreements, Buyer and Seller hereby consent to this dual representation.

4. DUAL AGENCY DISCLOSURE: Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them, and Designated Brokerage has not been chosen by the Qualifying Broker, thus creating Dual Agency. Prior to writing or presenting this offer, Broker must obtain written consent from the Buyer Client and Seller Client (RANM Form 1301, Agency Agreement - Dual).

5. Buyer's Broker does does not have a material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party: contracted as a Buyers Broker for the City of Las Cruces

If the Brokerage or Qualifying Broker has a material interest or relationship of a business, personal, or family nature in the transaction, that interest or relationship must also be disclosed separately.

6. Buyer Seller is a licensed New Mexico real estate Broker.

The BROKERAGE RELATIONSHIPS DISCLOSURE is acknowledged by the parties below:

BUYER

Buyer _____ Date _____ Time _____
City of Las Cruces
Buyer _____ Date _____ Time _____
By Terrance Moore-City Manager

SELLER

J. Lindy _____ Date _____ Time _____
1-25-10
Seller _____ Date _____ Time _____

BUYER'S BROKER

International Realty Plus NM
Buyer's Brokerage Firm
Broker Signature John Lance Swarengin
SELLER'S BROKER

Broker is is not a REALTOR®

1-8-10
Date _____ Time _____

Seller's Brokerage Firm _____

Broker is is not a REALTOR®

Broker Signature _____

Date _____ Time _____



REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT - RESIDENTIAL RESALE - 2010



OFFER DATE: _____

1. PARTIES. City of Las Cruces, By Terrence Moore-City Manager
("Buyer") agrees to buy from Seller and _____
("Seller") agrees to sell and convey to Buyer the Property described in paragraph 4 with a
Settlement/Signing Date of See Addendum #2 (described in paragraph 5 below).

2. PURCHASE PRICE. \$ 133,000.00
A. APPROXIMATE CASH DOWN PAYMENT \$ 1,000.00
(Including Earnest Money referred to in paragraph 3)
B. AMOUNT OF THE LOAN(S) described in paragraph 7 below. \$ _____

3. EARNEST MONEY. Buyer will deliver \$ 1,000.00
Earnest Money in the form of check cash note dated _____, to be escrowed upon
mutual acceptance of this Agreement by Buyer and Seller with Southwestern Abstract and Title Co.,
in accordance with New Mexico law. Earnest Money will be applied to Purchase Price and/or closing costs upon Funding
Date.

4. PROPERTY.
A. 2913 Onate Street Las Cruces NM 88007
Address City State/Zip Code

Lot 156, Legends West Subdivision Phase 4
Legal Description
or see metes and bounds or other legal description attached as Exhibit _____, Dona Ana
County, New Mexico. If the legal description of the Property is not complete or is inaccurate, this Agreement will not be
invalid and the legal description will be completed or corrected to meet the requirements of the title company which will
issue the title policy.

B. TYPE: site built manufactured housing modular off site built other: _____
(See RANM Form 2305 for further information.)

C. Description or explanation of any known mineral or water rights appurtenant to the Property and whether they will
be included in the sale: _____ If water or
mineral rights are identified as being included in the sale of the Property, Buyer is advised to seek expert and legal advice
and assistance to ensure that those rights are properly transferred at closing.

D. The Property will include the following, if existing on the Property, unless excluded below, free of liens: smoke,
fire, security and water conditioning systems (if owned by Seller); heating, ventilating and air conditioning systems,
landscaping; sprinklers/irrigation equipment; storm windows and doors, screens, window coverings and rods; TV
antennas, satellite dishes and receiver with access card (if owned by Seller and if transferable); light fixtures; ceiling
fans; range; oven; dishwasher; garbage disposal; attached mirrors; attached floor coverings; awnings; mailboxes; fireplace
grate and screen; garage door openers and controls; pool and spa equipment; and outdoor plants and trees (other than in
movable containers). The following additional existing personal property, if checked, shall remain with the property:

- Refrigerator
- Microwave
- Washer
- Dryer
- Other Stove and Dishwasher
- Decorative mirrors above bath vanities
- Built-in/attached speakers and sub woofers
- TV
- Audio components _____
- Other _____

The above additional existing personal property included shall not be considered part of the premises and shall be
transferred with no monetary value, and free and clear of all liens and encumbrances.

REALTORS® Association of New Mexico (RANM) makes no warranty of the legal effectiveness or validity of this form and disclaims any liability for damages
resulting from its use. By use of this form the parties agree to the limitations set forth in this paragraph. The parties hereby release RANM, the real estate brokers,
their Agents and employees from any liability arising out of the use of this form. You should consult your attorney with regards to the effectiveness, validity, or
consequences of any use of this form. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership
mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to the Association's
Code of Ethics.

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

E. The following items are excluded from the sale: _____

5. CLOSING. "Closing" is defined as a series of events by which Buyer and Seller satisfy all of their obligations in the Agreement. Closing is not completed until all parties have completed all requirements as stated below, as well as completing all other obligations under this Agreement. If either party elects to extend either of the following dates, they must do so in a writing signed by both parties. No extension is binding unless agreed to in writing by both parties. The parties further acknowledge that Seller will not receive the proceeds of sale until all the events stated under "Funding Date" have been completed.

A. Settlement/Signing date: See Addendum #2 (as described in paragraph 1)

1. Buyer and Seller agree to sign and deliver to the responsible closing officer all documents required to complete the transaction and to perform all other closing obligations of this Agreement on or before the above date.

2. Buyer and Seller agree to provide for the delivery of all required funds, exclusive of Lender funds, if any, using wired, certified or other "ready" funds acceptable to the closing officer, on or before the above date.

B. Funding Date (Completion of Closing): on or before See addendum #2 Para #3. The Funding Date is the date that the closing officer has funds available to disburse to all parties after recording all documents required to complete the transaction.

1. It is Buyer's responsibility to ensure that Buyer's lender, if any, makes available to the closing officer, wired certified or other "ready" funds with written instructions to disburse funds, on or before the Funding Date as set forth above.

2. Buyer and Seller acknowledge that possession of the Property will be in accordance with the terms of paragraph 6 below.

Unless otherwise agreed to in writing, failure to perform any of the above items by either party shall constitute a default under this Agreement.

6. POSSESSION.

A. Buyer and Seller agree that Seller will give possession of the Property to Buyer upon:

1. "Funding Date" as set forth above at 5:00 p.m.; or,

2. Other: _____

B. If possession date is other than "Funding Date" as set forth above, then Buyer and Seller shall execute a separate written Occupancy Agreement. (See RANM Forms 2201 and 2202)

7. FINANCED OR CASH PURCHASE.

A. LOANS. This Agreement is contingent upon Buyer's ability to obtain a loan in the amount stated above in paragraph 2B of the following type: Conventional FHA VA Deed of Trust Other: _____

1. Buyer has made written application for a loan, or agrees to make written application for a loan no later than _____ days after the Date of Acceptance ("Loan Application Period"). Buyer agrees to provide Seller with a letter of Preliminary Loan Approval from a lender no later than _____ days after the Date of Acceptance ("Financing Approval Period").

2. Preliminary Loan Approval must stipulate that: (1) a loan application has been made; (2) a credit report has been obtained and reviewed by a lender; (3) a preliminary loan commitment has been secured from the same lender; (4) financing equal to the loan amount provided in paragraph 2B is available to complete the transaction with no contingencies except those provided for in this Agreement.

3. If there are changes to the loan, loan program, financing terms, or a change in lender at any time after the Financing Approval Period which adversely affect Buyer's ability to obtain a loan, increase Seller's costs or delay Closing, Buyer shall have the obligation to notify Seller in writing within 2 days of such occurrence. In that event, within days of receipt of Buyer's notification, Seller may notify Buyer in writing of: (1) Seller's approval of such changes, or (2) Seller's decision to terminate the Agreement. If Seller does not notify Buyer within the 5 day period provided, Seller will be deemed to have waived Seller's right to terminate and shall proceed to Closing.

4. If Buyer cannot obtain Preliminary Loan Approval within the Financing Approval Period, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer unless the parties agree in writing to an extension.

5. Buyer further agrees to provide Seller with written notification of Final Loan Approval from Buyer's lender with all loan contingencies removed _____ days before the Settlement/Signing Date ("Final Loan Approval"). In the event of a written rejection by the lender prior to Final Loan Approval, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

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B. SELLER FINANCING: The approximate balance of \$ _____ shall be financed by Seller and shall be secured by: Real Estate Contract Mortgage Deed of Trust. Terms and conditions of the above instrument shall be attached as Addendum _____. If RANM Real Estate Contract (RANM Form 2401) is selected, a completed Addendum to Purchase Agreement - Real Estate Contract (RANM Form 2402) shall be attached.

Buyer shall provide Seller with: a current and complete financial statement and/or a current credit report no later than _____ days after the Date of this Agreement. Seller shall have the right to object to either of these documents within _____ days after receipt from Buyer (Financial Review Period). If Seller does not approve Buyer's qualifications during the Financial Review Period, Seller has the option to terminate this Agreement and Earnest Money shall be refunded to Buyer. If Seller does not object in writing to Buyer's qualifications within the Financial Review Period, Seller will be deemed to have waived Seller's right to object to Buyer's qualifications. Seller may not unreasonably withhold approval.

C. CASH PURCHASE: Buyer agrees to purchase the subject property for cash. No later than _____ days after the Date of Acceptance, Buyer agrees to provide Seller with verification of funds and proof satisfactory to Seller that Buyer has in Buyer's possession or control, the funds necessary to complete the transaction. This Agreement shall terminate in the event of failure of Buyer to provide timely proof of funds and Earnest Money shall shall not be refunded to Buyer.

D. CONTINGENT SALE: This Agreement is contingent on the future Closing of Buyer's property. Buyer's Sale Contingency -- RANM Form 2503 is is not attached.

8. APPRAISAL

A. CONVENTIONAL OR OTHER NON-FHA/VA LOAN: (describe): _____
It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty for forfeiture of Earnest Money if the Purchase Price exceeds the current estimated market value ("Appraisal") as established by a real estate appraiser approved by the lender.

B. FHA: It is expressly agreed that, notwithstanding any other provisions of this contract, Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the Buyer has been given, in accordance with HUD/FHA or VA requirement, a written statement by the Federal Housing Commissioner or a Direct Endorsement Lender setting forth the appraised value of the property, or a VA Certificate of Reasonable Value (excluding closing costs) of not less than \$ 133,000.00 (Purchase Price). The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the property. Buyer should satisfy himself that the price and condition of the property are acceptable.

C. VA: It is expressly agreed that, notwithstanding any other provisions of this contract, Buyer shall not incur any penalty by forfeiture of Earnest Money or otherwise be obligated to complete the purchase of the real estate described herein, if the contract Purchase Price or cost exceeds the reasonable value of the real estate established by the Veterans Administration.

D. CASH OR SELLER FINANCED: It is expressly agreed that, notwithstanding any other provisions of this Agreement, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty by forfeiture of Earnest Money if the Purchase Price exceeds the current estimated market value ("Appraisal") as established by a real estate appraiser engaged by and paid by Buyer Seller.

E. In the event the conventional appraisal, the FHA appraisal, the VA certificate of reasonable value, or an appraisal for a cash or seller financed transaction is less than the agreed upon Purchase Price, Buyer may still proceed with the consummation of this Agreement without regard to the amount of appraisal or certificate of reasonable value, provided Buyer delivers written notice to Seller of such election within 3 days of the receipt of said notice of value. If Buyer does not deliver written notice of such election within 3 days, Buyer shall be deemed to have elected not to proceed. If Buyer elects not to proceed, Seller and Buyer may agree to a Purchase Price acceptable to both parties within 5 days after receipt of said notice to both parties. If the parties cannot agree, this Agreement shall terminate and Earnest Money shall be refunded to Buyer.

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9. **COSTS TO BE PAID.** Buyer or Seller will pay the following marked items:

Loan Related Costs and Fees	Buyer	Seller	Not Required	Title Company Closing Costs	Buyer	Seller	Not Required
				Closing Fee	1/2	1/2	
Appraisal Fee	X			Legal Document Preparation			X
Appraisal Reinspection Fee	X			Special Assessment Search			X
Credit Report			X	Buyer Recording Fees	X		
Loan Assumption/Transfer			X	Seller Recording Fees		X	
Loan Documentation Preparation			X	Policy Premiums			
Origination Fee			X	Title Commitment		X	
Points - Buydown			X	Standard Owner's Policy		X	
Points - Discount			X	Mortgagee's Policy			X
Tax Service Fee			X	Mortgagee's Policy Endorsements			X
Underwriting Review Fee			X	Other:			
Flood Zone Certification		X		Miscellaneous			
Other:				Survey (§ 16C)		X	
Other:				Impact Fees			
Prepays Required by Lender				Home Warranty contract (§ 17)			
Flood Insurance			X	Transfer Fees (e.g. HOA, etc.)			
Hazard Insurance			X	HOA Fees (e.g. processing)			
Interest			X	Other:			
PMI or MIP			X	Escrow Fees			
Taxes			X	Set up			
Other:				Periodic			
Other:				Close Out			
				Other:			

Buyer agrees to pay all other allowed direct loan costs.

10. **IRS 1031 TAX-DEFERRED EXCHANGE.** Buyer Seller intends to use this property to accomplish a 1031 tax-deferred exchange. The parties agree to cooperate with one another in signing and completing any documents required. The exchanging party agrees that the other party will bear no additional expense.

11. **PRORATIONS.** Seller will be responsible for disclosing all applicable property-specific fees, or lease agreements, private memberships and/or association fees or dues, taxes and contract service agreements, all of which are to be prorated through Settlement/Signing Date. Any equipment rental or contract service agreement (e.g. alarm system, satellite system, propane and tank, private refuse collection, road maintenance, etc.) will be handled directly between the Buyer and Seller, and title company will not be responsible for proration thereof.

12. **ASSESSMENTS.** Buyer will assume all bonds, impact fees and assessments that are part of or paid with the property tax bill. If other bonds, impact fees or assessments are a lien upon the Property, the current installment will be prorated through Settlement/Signing Date. Buyer will assume future installments. This Agreement is conditioned upon both parties verifying and approving in writing the amount of all bonds, impact fees, or assessments to be assumed or paid within 10 days after receipt of the title commitment ("Approval Date"). In the event of disapproval, the disapproving party may terminate this Agreement by giving written notice to the other on or before the Approval Date. Future assessments for improvements such as, but not limited to, sidewalks, driveway cuts or roads will be paid by Buyer.

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13. EXAMINATION OF TITLE; LIENS; DEED.

A. Buyer Seller shall order a title commitment from Southwestern Abstract and Title Co. (Title Company) within 5 BUS days after the Date of Acceptance. Buyer will have 5 BUS days ("Review Period") to review and object to title exceptions after receipt of the title commitment and all documents referred to therein. Exceptions to the title, including the standard exceptions, shall be deemed approved unless written objection is delivered to the Seller within this Review Period. If Seller is unwilling or unable to remove such exception before Settlement/Signing Date, Seller shall provide written notice to Buyer within 5 BUS days after receipt of Buyer's objections. Buyer may choose to close subject to exceptions, remove them at Buyer's expense or terminate this Agreement. If Buyer terminates this Agreement, the Earnest Money will be refunded to Buyer.

B. Seller will satisfy any judgments and liens, including but not limited to, all mechanics' and materialmen's liens of record on or before Settlement/Signing Date and will indemnify and hold Buyer harmless from any liens filed of record after Settlement/Signing Date and which arise out of any claim related to the providing of materials or services to improve the Property as authorized by Seller or Seller's agents, unless otherwise agreed to by the parties in writing.

C. Seller will convey the Property by General Warranty Deed other deed _____ subject only to any matters identified in the title commitment and not objected to by Buyer as provided in paragraph 13A. The legal description contained in the deed shall be the same legal description contained in the title commitment and any survey required under paragraph 16C.

14. FOREIGN SELLERS. The disposition of a U.S. Real Property interest by a Foreign Person is subject to Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA applies if Seller is a Foreign Person, Foreign Corporation or Partnership, or non-resident Alien, unless BOTH the purchase price is \$300,000 or less AND Buyer intends to use the property as Buyer's primary residence. Federal Law requires that if Seller is a Foreign Person, then Buyer must withhold ten percent (10%) of the amount realized from the sale of the Property and remit it to the Internal Revenue Service (IRS) within 20 days of Closing unless the Seller provides written confirmation from the IRS that Seller is not subject to withholding. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate. If Seller is Non-Foreign, the Seller must provide proof of Non-Foreign status by fully executing an Affidavit of Non-Foreign Seller (RANM Form 2303) and deliver it to either the Buyer or to a Qualified Substitute. Under FIRPTA, if Seller is a Foreign Person and Buyer fails to withhold taxes, the Buyer may be held liable for the tax, in addition to other fines and penalties and the Buyer's Broker may be fined up to the amount of their commission.

Buyer's offer is is not contingent upon the Seller completing the FIRPTA response box in the Acknowledgement by Seller Section of this Purchase Agreement, and providing the documents indicated there in no later than 10 days after Date of Acceptance. If Seller is providing an Affidavit of Non-Foreign Seller, Buyer agrees that Seller may, at Seller's option, provide this Affidavit either to Buyer or to a Qualified Substitute as provided by FIRPTA. If a Qualified Substitute is used, Buyer will not receive a copy of Seller's Affidavit.

For further information on FIRPTA, see the FIRPTA Information Sheet (RANM Form 2304), and consult with an attorney and/or tax professional.

15. INSURANCE CONTINGENCY/APPLICATION.

A. Buyer agrees to make application for insurance within _____ days after Date of Acceptance of this Agreement. If Buyer fails to make application within the agreed time, this insurance contingency shall be deemed waived. This Agreement is conditioned upon Buyer's ability to obtain a homeowner's or property insurance binder on the Property at normal and customary premium rates. Buyer understands that an insurance company may cancel or change the terms of a homeowner's insurance policy/binder for any reason prior to close of escrow or within sixty days after issuance of the homeowner's policy/binder (which generally occurs at close of escrow).

B. This insurance contingency shall be deemed satisfied, unless within _____ days after Date of Acceptance of this Agreement, Buyer gives notice of inability to obtain a binder for insurance or if Buyer gives notice that Buyer is unable to obtain a homeowner's or property insurance binder on the Property at normal and customary premium rates. If Buyer is unable to obtain such a binder for insurance after making a good faith effort and gives timely notice of such inability, then the Purchase Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

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16. SELLER DISCLOSURE AND OTHER DOCUMENTS AND INSPECTIONS. Any "Deadline" can be expressed either as a calendar date or as a number of days after Date of Acceptance. Delivery Deadlines, Objection Deadlines and Resolution Deadlines may be extended only by a written agreement of both parties.

A. DOCUMENTS. Seller shall deliver the following documents by the Delivery Deadline specified below. "Delivery Deadline" is the date by which Buyer shall receive any documents, reports or surveys as set forth below.

DOCUMENTS	Delivery Deadline	Objection Deadline	Resolution Deadline
Seller's Property Disclosure Statement			
Road Documents			
Water Rights Documents			
Well Documents			
Other:			
Other:			

Is any part of this Property a residence built before 1978? Yes No *If the answer is yes, federal law says:*
 Seller cannot legally accept this offer unless Buyer has received, before making this offer, ALL of the following:

1. Lead-Based Paint Addendum to Purchase Agreement (RANM Form 5112) that was first fully completed and signed by Seller and then is signed by Buyer; and
2. A list of and copies of all reports or information relating to lead-based paint inspections, risk assessments, and hazards; and
3. A copy of the pamphlet, "Protect Your Family From Lead-Based Paint in Your Home."

If Buyer received the above items 1, 2, and 3 prior to writing this offer, Buyer's right to a 10 day opportunity to conduct inspections or risk assessments for the presence of lead-based paint and/or lead-based paint hazards will begin on the Date of Acceptance (as defined in the Purchase Agreement).
 If Buyer has not received ALL the above items 1, 2 and 3 and had an opportunity to review them before writing this offer, AND has not signed the Lead-Based Paint Addendum to the Purchase Agreement, Seller cannot legally accept this offer. Seller should consult an attorney for specific legal advice.

PROPERTY TAX DISCLOSURE.

Buyer(s) hereby acknowledge receipt of the Estimated Property Tax Levy on the Property, attached as Exhibit 1 and understands that said Estimated Property Tax Levy is based on the LISTING price of the Property.
 Buyer(s) hereby acknowledge that the Estimated Property Tax Levy on the Property is not readily available and does hereby waive the right to receive the Estimated Property Tax Levy prior to submitting this Purchase Agreement. See Estimated Property Tax Levy Disclosure Information Sheet (RANM Form 3275).

SEPTIC SYSTEM. Does the Property include an on-site liquid waste system? Yes No *If the answer is "Yes", the transfer of the Property is subject to Regulations of the New Mexico Environment Department governing on-site liquid waste systems, which require inspection and possible repair, and RANM Form 5120a, Septic System Contingency Addendum, is attached hereto and incorporated by reference.*

B. INSPECTIONS. Seller and Broker strongly recommend that Buyer satisfy any concerns that Buyer may have about the physical condition of the Property. To accomplish this, the parties are encouraged to employ competent (and, where appropriate, licensed) professionals to perform inspections of all conditions of the Property. Buyer has the right to have performed the inspections checked below. Seller Buyer will be responsible for paying any charges required by the utility company to have utilities turned on for inspection purposes, but in no event will Buyer be responsible for charges to repair the property, to bring it up to code, to pay unpaid bills, or for anything other than a turn-on fee.

[Handwritten signatures and initials]

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Unless otherwise agreed in writing, the Buyer will select the inspector. Whether or not the transaction closes, the following inspections will be paid for by:

INSPECTIONS	Buyer Pays	Seller Pays	Delivery Deadline	Objection Deadline	Resolution Deadline
Home	X		Due Diligence	Due Diligence	Due Diligence
Electrical	X		Due Diligence	Due Diligence	Due Diligence
Heating/Air Conditioning	X		Due Diligence	Due Diligence	Due Diligence
Plumbing	X		Due Diligence	Due Diligence	Due Diligence
Roof	X		Due Diligence	Due Diligence	Due Diligence
Structural	X		Due Diligence	Due Diligence	Due Diligence
Lead-Based Paint Evaluation					
Risk Assessment					
Paint Inspection					
Combination Risk Assessment/Inspection					
Other:					
Well Equipment (pump, pressure tank, lines)					
Well Water Potability Tests					
Well Water Yield Tests					
Well Water Nitrate Tests					
Pool/Spa/Hot Tub Equipment					
Wood-Destroying Insects	X		Due Diligence	Due Diligence	Due Diligence
Dry Rot	X		Due Diligence	Due Diligence	Due Diligence
Radon					
Mold					
Square-Foot Measurement:					
Sewer Line Inspections	X		Due Diligence	Due Diligence	Due Diligence
Ducts (type):					
Phase One Environmental Inspection					
Soil Test					
Other:					
Other:					

C. SURVEYS OR IMPROVEMENT LOCATION REPORT. Buyer has the right to have performed the item selected below or the right to accept an existing one. Unless otherwise agreed in writing the party paying for the item will select the surveyor and order the survey or report.

SURVEY/IMPROVEMENT LOCATION REPORT	Delivery Deadline	Objection Deadline	Resolution Deadline
Improvement Location	30 Days After AcceptanceA	32 Days After AcceptanceA	40 Days After AcceptanceA
Metes and Bounds Description			
Staked Boundary	30 Days After AcceptanceA	32 Days After AcceptanceA	40 Days After AcceptanceA
American Land Title Association Survey (ALTA)			
Flood Plain Designation	30 Days After AcceptanceA	32 Days After AcceptanceA	40 Days After AcceptanceA
Other:			

Each party is responsible for payment as shown above for any inspection or surveys ordered and performed whether or not the transaction closes.

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D. BUYER'S OBJECTIONS.

1. The Buyer may make any reasonable objections to any report or unsatisfactory condition disclosed by any document (16A), inspections (16B), survey or Improvement Location Report (16C) by submitting them in writing to Seller no later than applicable Objection Deadline. Any objections to any inspection, survey or report must be accompanied by a copy of the report. If Seller is responsible for ordering a report or document, and if Buyer does not receive that report or document by the Delivery Deadline, Buyer and Seller may agree to extend the Objection Deadline and Resolution Deadline or Buyer may terminate the Agreement. If Buyer is responsible for ordering a report or document, and fails to do so in a timely manner, Buyer may not use the failure to receive the report or document as cause to terminate the Agreement.

2. Upon objection, Buyer can request that Seller cure the objections or Buyer can terminate this Agreement. If no written objection or termination is delivered to Seller in writing by Objection Deadline, the contingency shall be deemed removed.

E. RESOLUTION. If Buyer makes specific objections and requests Seller to cure, Buyer and Seller may negotiate a resolution. If the objections are not resolved by the Resolution Deadline, this Agreement shall be terminated.

F. COST OF REPAIRS. Seller agrees to complete or pay for any repairs required by a FHA, VA, conventional lender, or with respect to any objections made by Buyer as a result of the above reports, at an aggregate cost not to exceed \$ _____. If the cost to cure the objections exceeds this amount, such excess costs may be negotiated and if no agreement is reached, the Agreement shall terminate.

G. OBJECTIONS COMPLETION. Seller agrees to cure objections not later than _____ days prior to Settlement/ Signing Date.

H. REFUND OF EARNEST MONEY. If this Agreement is terminated pursuant to this paragraph, the Earnest Money will be refunded to Buyer.

I. REASONABLE ACCESS; DAMAGES. Seller agrees to provide reasonable access to Buyer and any inspectors. The party selecting the inspector is responsible for and shall pay for any damages which occur to the Property as a result of such Inspection.

17. HOME WARRANTY CONTRACT. If provided for in paragraph 9, a home warranty service contract will be purchased from _____. The parties acknowledge that the home warranty service contract provides for limited coverage and for only limited components of the Property. In addition, the home warranty service contract contains specific exclusions and/or certain deductibles. Neither the Seller nor the Broker is responsible for home warranty coverage or lack thereof. The parties acknowledge that a home warranty service contract provider may or may not conduct an inspection of the Property. Any inspection report made available by the provider is not meant as a representation as to the condition of the Property, and is only a report used by the provider to determine the conditions under which the Property may be warranted.

18. DISCLAIMER. The Property is sold in its current condition including, but not limited to, the nature, location, amount, sufficiency or suitability of its: current or future value; future income to be derived therefrom or as to its current or future production; condition; size; location of utility lines; location of sewer, water and other utility lines or availability of utility services or the possibility of extending improvements (paving, sewer, water, utilities, access) to the Property; easements with which it is burdened or benefited; lot boundaries; adjacent property zoning; physical and legal access; soil conditions; permits, zoning, or code compliance; lot size or acreage; and improvements or their square footage; and water rights. Broker has not investigated and is not responsible for the foregoing aspects of the Property, among which lot size, acreage, and square footage may have been approximated, but are not warranted as accurate. Buyer will have had full and fair opportunity to inspect and judge all aspects of the Property with professional assistance of Buyer's choosing prior to settlement and is purchasing Property based solely upon Buyer's inspection and judgment and not by reason of any representation made to Buyer by Seller or Broker unless expressly set forth in this Agreement or Disclosure Statements. Buyer and Seller acknowledge that Brokers' only role in this transaction is to provide real estate advice to Broker's client and/or customer and real estate information to the parties. For all other advice or information that may affect this transaction, including but not limited to financial and legal, the parties must rely on other professionals.

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- 19. RELEASE.** The parties hereby release the REALTORS® Association of New Mexico, all local REALTOR® Boards, Broker and the agents and employees of the foregoing from any liability arising out of use of this Purchase Agreement form. Buyer and Seller acknowledge that they are hereby advised to consult their own respective attorneys, accountants, or other advisors as to the legal and tax effect of this Agreement prior to signing.
- 20. MAINTENANCE.** Seller agrees that until Seller gives possession of the Property to Buyer, the heating, air conditioning, electrical, solar, septic systems, well and well equipment, gutters and downspouts, sprinklers, plumbing systems including the water heater, pool and spa systems, as well as appliances and other mechanical apparatus, will be in the same condition as the Date of Acceptance, normal wear and tear excepted. Until the Property is delivered, Seller will maintain all structures, landscaping, grounds and pool. Seller agrees to deliver the Property with all debris and personal belongings removed. The following items are specifically excepted from the above: _____
- 21. PRE-CLOSING WALK-THROUGH.** Within 2 days prior to Settlement/Signing Date, Buyer shall have the right to verify the Property is in the same condition as on the Date of Acceptance, reasonable wear and tear excepted, and all agreed upon improvements have been completed.
- 22. FLOOD HAZARD ZONE.** If the Property is located in an area which is designated as a special flood hazard area, Buyer may be required to purchase flood insurance in order to obtain a loan secured by the Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government.
- 23. DEFINITIONS. BROKER** includes Buyer's and Seller's brokers. **DAYS** means calendar days excluding weekends and bank holidays, unless otherwise specified. **DATE OF ACCEPTANCE** is the date this Agreement is fully executed and delivered. **DELIVERED** means personally delivered, delivered by facsimile, mailed postage prepaid, or by any method where there is evidence of receipt. The facsimile or e-mail transmission of a copy of this or any related document will constitute delivery of that document. The facsimile, e-mail or electronically transmitted signature shall have the same force and effect as an original signature. Delivery to the real estate Broker who is working with or who represents the Buyer or Seller will constitute delivery to the Buyer or Seller respectively, except if the same Broker works for or represents both Buyer and Seller, in which case, delivery to the principal is required. The **MASCULINE** includes the feminine. The **SINGULAR** includes the plural.
- 24. RISK OF LOSS.** Prior to Funding Date, risk of fire or other casualty will be on Seller, and in the event of loss, Buyer will have the option (to be exercised by written notice to Seller within 5 days after receipt of notice of loss) of canceling this Agreement and receiving back the Earnest Money or closing and receiving assignment of Seller's portion of the insurance proceeds, if any, at Funding Date. If Buyer fails to timely notify Seller of Buyer's election, Buyer will be deemed to have elected to close.
- 25. MEDIATION.** If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint a mediator and will share equally the costs of the mediation. If a mediator cannot be agreed on or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law.
- 26. EARNEST MONEY DISPUTE.** Notwithstanding any termination of this Agreement, in the event that a controversy arises between Buyer and Seller, and the controversy cannot be resolved, the Holder of the Earnest Money may take no action or may choose to file an Interpleader action. Interpleader is a legal proceeding whereby the Holder of the Earnest Money names Buyer and Seller as defendants and deposits the funds in question with an appropriate court. Once the funds have been disbursed by final determination of the court, the prevailing party and the Holder of the Earnest Money shall be entitled to request recovery of all court costs and reasonable attorneys' fees related to the dispute from the non-prevailing party. Parties to all Earnest Money disputes are urged to review RANM Form 2310, "Earnest Money Dispute Information Sheet," and to consult a licensed attorney to fully understand all their rights and remedies.
- 27. DEFAULT.** Time is of the essence. If any payment or any other condition hereof is not made, tendered or performed by either Seller or Buyer as required, then this Agreement may be terminated at the option of the party who is not in default. If the non-defaulting party elects to treat this Agreement as terminated, the non-defaulting party may elect to retain the Earnest Money and pursue any additional remedies allowable by law. In the event, however, the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party will have all rights and remedies available under this Agreement. Buyer and Seller acknowledge and agree that Broker will not in any circumstances be responsible for any breach by either party to this Agreement. Should any aspect of this Agreement result in dispute, litigation, or settlement, the prevailing party of such action including Broker shall be entitled to an award of reasonable attorneys' fees and court costs.

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28. FAIR HOUSING. Seller and Buyer understand that the Fair Housing Act and the New Mexico Human Rights Act prohibit discrimination in the sale or financing of housing on the basis of race, age, color, religion, sex, sexual orientation, gender identity, familial status, spousal affiliation, physical or mental handicap, serious medical condition, national origin or ancestry.

29. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original, and all of which will together constitute one and the same instrument.

30. GOVERNING LAW. This Agreement will be interpreted in accordance with the laws of the State of New Mexico.

31. SEVERABILITY. If any portion of this agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement will remain in full force and effect.

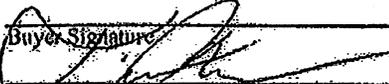
32. ENTIRE AGREEMENT. The parties understand that this offer, if accepted in writing by Seller and delivered to Buyer, constitutes a legally binding contract. This Agreement together with the following addenda and any exhibits referred to in this Agreement contains the entire agreement of the parties and supersedes all prior agreements or representations with respect to the Property which are not expressly set forth herein. This Agreement may be modified or canceled only by a writing signed and dated by both parties.

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. _____ (5101) | <input type="checkbox"/> Occupancy Agreement – Buyer/Seller (2201/2202) |
| <input type="checkbox"/> Buyer's Sale Contingency
(Right of First Refusal) Addendum (2503) | <input type="checkbox"/> Real Estate Contract Addendum (2402) |
| <input type="checkbox"/> Lead-Based Paint Addendum (5112) | <input type="checkbox"/> Residential Resale Condominium Addendum (2302) |
| <input checked="" type="checkbox"/> Other: <u>Addendum #1-NSP Letter</u> | <input checked="" type="checkbox"/> Other: <u>Exhibit #1-Tax Levy Form</u> |
| <input checked="" type="checkbox"/> Other: <u>Addendum #2</u> | <input checked="" type="checkbox"/> Other: <u>Exhibit #2-MLS Doc.</u> |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |

33. EXPIRATION OF OFFER. This offer will expire unless acceptance is delivered in writing to Buyer or Buyer's Broker on or before January 15, 2010, at 5:00 am pm Mountain Time. If not accepted, this offer can be withdrawn at any time before the expiration date.

OFFER BY BUYER:

Buyer acknowledges that Buyer has read the entire Purchase Agreement and understands the provisions thereof.

Buyer Signature	Offer Date	Time
	<u>1/12/10</u>	
Buyer Signature	Offer Date	Time
City of Las Cruces, By Terrence Moore-City Manager		
Buyer Names (Print)	Email Address	
Buyer Address	Las Cruces	NM 88001
	City	State Zip Code
Buyer Home Phone	Buyer Cell Phone	Buyer Business Phone
		Buyer Fax

**REALTORS® ASSOCIATION OF NEW MEXICO
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2010**

ACKNOWLEDGEMENT BY SELLER:

With regard to Paragraph 14, FOREIGN SELLERS, Seller agrees to;

Execute an Affidavit of Non-Foreign Seller (RANM Form 2303), or

Provide written documentation from the IRS that withholding is not required.

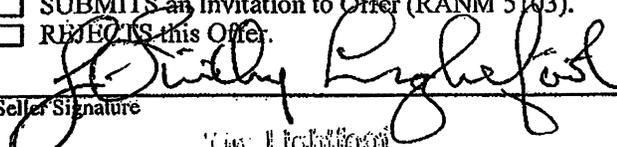
If Seller does not provide the Affidavit of Non-Foreign Seller (if applicable) within the time-frame provided, Buyer, in his sole discretion, may choose to terminate this Agreement or to proceed to Settlement/Signing. If Buyer chooses to terminate, Earnest Money will be returned to Buyer. If Seller fails to provide either of the above documents prior to the Settlement/Signing date, Buyer may still proceed with the consummation of this Agreement and may in his sole discretion, instruct the Title Company closing this transaction to withhold ten percent (10%) of the amount realized from the sale of the Property to be remitted to the IRS on Buyer's behalf. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate.

By signature hereto, Seller hereby acknowledges Buyer's obligations under FIRPTA and in the event Seller fails to provide the necessary documentation as provided for in this Agreement authorizes the Title Company closing this transaction to withhold ten percent (10%) of the amount realized from the sale of the Property to be remitted to the IRS on Buyer's behalf.

Seller acknowledges that Seller has read the entire Purchase Agreement and understands the provisions thereof.

Seller (select one):

- ACCEPTS this Offer and agrees to sell the Property for the price and on the terms and conditions specified in this Agreement.
- REJECTS this Offer and submits a Counteroffer (RANM 5102).
- SUBMITS an Invitation to Offer (RANM 5103).
- REJECTS this Offer.

Seller Signature  Date 1-25-10 Time _____

Seller Signature _____ Date _____ Time _____

Seller Names (Print) _____ Email Address _____

Seller Address _____ City _____ State _____ Zip Code _____

Seller Home Phone _____ Seller Cell Phone _____ Seller Business Phone _____ Seller Fax _____

BUYER'S BROKER

International Realty Plus NM
Buyer's Brokerage Firm _____ Address _____ Office Phone _____ Fax _____

John Lance Swarengin
By (Print) _____ Email Address _____ Broker is is not a REALTOR®

SELLER'S BROKER

Seller's Brokerage Firm _____ Address _____ Office Phone _____ Fax _____

By (Print) _____ Email Address _____ Broker is is not a REALTOR®





REALTORS® ASSOCIATION OF NEW MEXICO
GENERAL ADDENDUM No. 2 2010

This Addendum is part of the Residential Resale Form-2104 Agreement (the "Agreement")
dated _____, between City of Las Cruces
and Seller relating to the following Property:

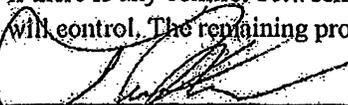
2913 Oate Street Las Cruces 88007
Address City Zip Code

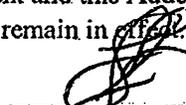
Lot 156, Legends West Subdivision Phase 4
Legal Description
or see metes and bounds description attached as Exhibit _____, Dona Ana County, New Mexico.

The following is added to the Agreement:

1. Settlement/Signing Date shall be on or before 59 days after acceptance of the agreement
2. The Buyer has 21 working days Due Diligence to receive bids and reach a conclusion on feasibility of the purchase of the property.
3. The funding shall be on or before 60 days after acceptance of the offer.

If there is any conflict between the provisions of the Agreement and this Addendum, the provisions of this Addendum will control. The remaining provisions of the Agreement will remain in effect.


Signature _____ Date 1/25/10 Time _____
City of Las Cruces By Terrence Moore-City Manager


Signature _____ Date 1-25-10 Time _____

Signature _____ Date _____ Time _____

Signature _____ Date _____ Time _____

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City of Las Cruces

ADDENDUM 3

January 11, 2010
L-10-012

Federal National Mortgage Association
14221 Dallas Parkway Ste 1000
Dallas, TX 75254-2916

Gentlemen:

The City of Las Cruces is interested in acquiring property you own at 2913 Onate, Las Cruces, NM 88007, for a proposed project which will receive funding assistance from the U.S. Department of Housing and Urban Development (HUD) through the State of New Mexico, Local Government Division (LGD) under the Neighborhood Stabilization Program (NSP).

Please be advised that the City of Las Cruces possesses eminent domain authority to acquire property. However, in the event we cannot reach an amicable agreement for the voluntary purchase of your property, we will not pursue its acquisition under eminent domain. Your property is not a necessary part of the proposed project and is not intended, planned, or in a designated project area where substantially all of the property within the area is to be acquired.

We are offering you \$133,000 to purchase your property (see attached formal offer). We believe this amount represents the Fair Market Value (FMV) of your property. FMV will be confirmed through a formal appraisal after an offer is negotiated or accepted. The FMV price must then be discounted by one percent (1%) to meet the requirements of the NSP at Article IX.C, as amended, of the grant agreement from the State of New Mexico, Local Government Division, to the City of Las Cruces.

If you have any questions about this notice or the proposed project, please contact me at 575-528-3208 or email at jnachison@las-cruces.org.

Sincerely,

Jerry Nachison, AICP
Housing Development Coordinator

cc: David Dollahon, Neighborhood Services Administrator
David Weir, Community Development Director
Ray Sartin, Home Rehabilitation Coordinator
Grantee File

Seller's Initials

Exhibit # 1



Steinborn GMAC Real Estate
141 N. Roadrunner Pkwy. Ste. 141
Las Cruces, NM 88011
FAX: 575-522-4987



REALTORS® ASSOCIATION OF NEW MEXICO
COUNTY ASSESSOR'S PROPERTY TAX LEVY
REQUEST AND CERTIFICATE - 2009

Grady Oxford / Jodi Juliana, Listing Broker, on behalf of Seller
Diana Fina County Tax Assessor furnish the following information for the list price of
\$ 142,000 in accordance with the New Mexico Estimated Property Tax Levy Disclosure with respect to the
following property:

Property Address: 2913 Oracle
Parcel ID: 02-3387
Legal Description: Lot 150, Legend West

New Mexico law requires that upon request, a County Assessor must furnish in writing an Estimated Property Tax Levy with respect to a residential Property in the County, calculated at a Property value specified by the requestor. The County Assessor must comply with the request by the close of business of the business day following the day the request is received. A County may satisfy this obligation through an internet site or other automated format that allows a user to print the requested Estimated Property Tax Levy.

REQUESTED BY SELLER:

Seller: Jodi Juliana Date: 12-28-09 Time:
Broker: STEINBORN GMAC REAL ESTATE Date: Time:

PLEASE RETURN VIA FAX TO THE ABOVE BROKER AT: (575) - 522-4987
Or via email to:

PROPERTY TAX LEVY CERTIFICATE
(To be completed by the County Assessor's Office)

The following items are required to be provided by the County Assessor:

Actual amount of Property tax levied for the current calendar year: 1,430.08 (or if not available) the amount of
Property tax levied for the prior calendar year: \$ 1,413.96

The ESTIMATED Property Tax Levy for the year following the current tax year based upon the above list price:
\$ 1,301.44

The Estimated Property Tax Levy is calculated using the stated price and estimates of the applicable tax rates. The County Assessor is required by law to value the Property at its "correct and correct" value, which may differ from the listed price. Further, the estimated tax rate may be higher or lower than those that will actually be imposed. Accordingly, the actual tax levy may be higher or lower than the estimated amount. New Mexico law requires your real estate Broker or agent to provide you an Estimated Property Tax Levy on the Property you have submitted or intended to submit an Offer to Purchase. All real estate Brokers and agents who have complied with these disclosure requirements shall be immune from suit and liability from suit relating to the Estimated Property Tax Levy.

ASAR Date: 12/29/09
County Tax Assessor Representative Date: Time:

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[Handwritten signature]



REALTORS® ASSOCIATION OF NEW MEXICO
CERTIFICATION OF DELIVERY AND ACKNOWLEDGMENT
OF RECEIPT OF ESTIMATED PROPERTY TAX LEVY - 2010

TAX YEAR 2008

Buyer(s) City of Las Cruces, By Terrence Moore-City Manager

Seller(s) _____

Property Address 2913 Onate Street, Las Cruces, NM 88007

Parcel ID _____

COUNTY ASSESSOR'S ESTIMATED PROPERTY TAX LEVY IS ATTACHED.

I, Seller's Broker, provided a copy of the Assessor's response to my request for the Estimated Property Tax Levy on the above-identified Property to Buyer Buyer's Broker on this _____ day of _____.

Seller's Broker _____

Date _____

I, Buyer's Broker, do hereby acknowledge that I received an Estimated Property Tax Levy on the above referenced Property from Seller Seller's Broker on the 8th day of January, 2010 and that I provided the same to Buyer on the _____ day of _____.

Buyer's Broker John Lance Swarengin

Date 1-7-10

I, Buyer, hereby acknowledge receipt of the Estimated Property Tax Levy provided to me by Buyer's Broker Seller's Broker on this _____ day of _____.

Buyer(s) City of Las Cruces, By Terrence Moore-City Manager

Date 1/12/10

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ALL FIELDS DETAIL

197 #
Exhibit Z



MLS #	810650	# Bedrooms	3
Status	Active	# Baths	2
Type	House	# Fireplaces	1
Address	2913 ONATE STREET	Year Built	2006
Address 2		Garage Capacity	2
City	LAS CRUCES	Carport Capacity	0
State	NM		
Zip	88007		
Area	San Andres		
Class	RESIDENTIAL		
Asking Price	\$143,000		
Sale/Rent	For Sale		
IDX Include	Yes		

GENERAL

County	Dona Ana	New Vs. Resale	Resale
Agent	GRADY OXFORD - Offic; (575) 522-3698	Listing Office 1	Steinborn GMAC Real Estate - main: (575) 522-3698
Listing Agent 2	JODI A JULIANA - CELL: (575) 496-0394	Listing Office 2	Steinborn GMAC Real Estate - main: (575) 522-3698
Entry Only Listing	No	Limited Service Listing	No
Code	3	Listing Date	12/28/2009
Expiration Date	3/28/2010	Owner	FNMA
Phone Number		Phone Type	
Subdivision	Legends West PH 4	Type of Structure	Site Built Home
Style	Southwestern	How to Show	Foreign LB
Alarm Activated	No	SQFT Source	Public Records
Appx House Sq Footage	1459	Bedroom Size	
Kitchen Size		Living Room Size	
Dining Room Size		Family Room Size	
Age	3 to 5 years	Garage Type	Attached
Carport Type	None	Lot Size	.0 to .24 AC
Actual Lot Size	.155 acre	Actual Lot Size Source	Public Records
Impact Fees	Yes	Parcel ID	02-33389
Add Parcel ID		Associated Document Count	1
Legal	Lot 156	Landscaping	Low Maintenance
Association/Condo Fee	No	Earnest Money Payable To	Fidelity National Title
3rd Party Approval	No	Short Sale	No
Automated Valuation	Yes	Blogging	Yes
Court Approval	No	Builder	Unknown
Cumulative DOM	11	Cumulative DOMLS	11
Search By Map		Tax ID	
Update Date	12/29/2009	Status Date	12/28/2009
HotSheet Date	12/28/2009	Price Date	12/28/2009
Input Date	12/28/2009 5:16:00 PM	Off Market Date	
Original Price	\$143,000	Contingency Remarks	

FEATURES

FENCE Rock Wall	MASTER BATHROOM Double Sinks Jet Tub Tile Floor Walk-In Closet	INTERIOR FEATURES Garage Door Opener	WINDOWS Double Pane
POSSESSION Closing	MASTER BEDROOM Carpet	HEATING Forced Air Gas	FLOORING/FOUNDATION Concrete Slab
LIVING ROOM Fireplace Carpet	BEDROOMS/OTHER Carpet	COOLING Refrigerated Central	PORCH/PATIO/DECK Covered Patio
DINING ROOM Kitchen Combo Tile Floor	BATHROOMS/OTHER Tiled Floor With Full Bath	WATER HEATER Gas	CONSTRUCTION Frame Stucco
KITCHEN Breakfast Bar Galley Tile Floor Formica Counters Wood Cabinets	LAUNDRY ROOM Utility Room	UTILITIES City Gas City Sewer City Water Impact Fees Apply Telephone El Paso Electric	ROOF Pitched Shingle
			OTHER AMENITIES Corner Lot

SOLD STATUS

198

How Sold
Buyer From Location
Closing Date
Selling Agent 1
Selling Agent 2
Sale Concessions

Buyer Profile
Contract Date
Sold Price
Selling Office 1
Selling Office 2

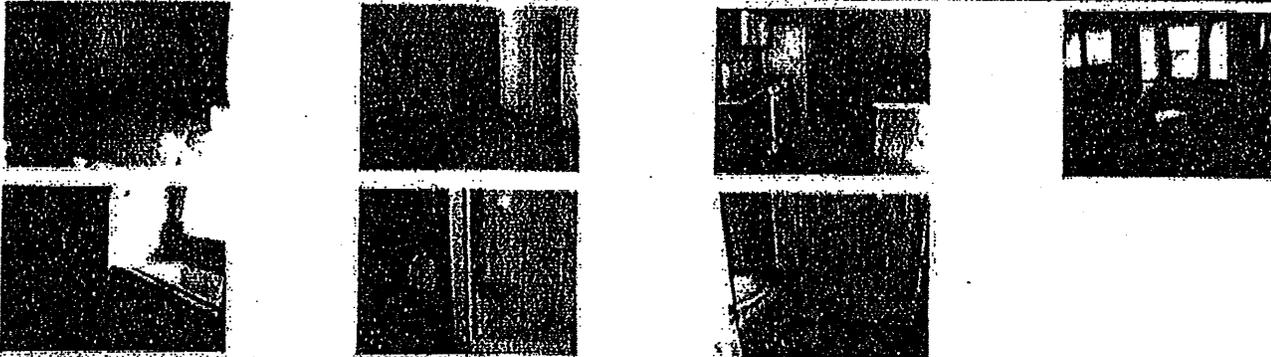
DIRECTIONS

North on Motel, left on Tashiro, left on Fountain, right on Onate.

REALTOR INFO

Sold as is. No warranties or disclosures. On combo lockbox - code 3893. Seller may not pay GRT, brokers responsible for their own. This property is eligible for Home Path Financing. Call for details.

ADDITIONAL PICTURES



DISCLAIMER

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REALTORS® ASSOCIATION OF NEW MEXICO
AFFIDAVIT -- NON-FOREIGN SELLER - 2010

NOTICE TO SELLER: If you need any assistance to understand the Foreign Investment in Real Property Act and its application to you, please consult with your own tax advisor. Real estate Brokers are not permitted to give advice with respect to such matters.

Section 1445 of the Internal Revenue Code provides that a Buyer of United States real property must withhold tax if Seller is a foreign person. To inform Buyer that withholding of tax is not required upon the disposition of the Property described below, the undersigned Seller executes this Affidavit. Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement may be punished by fine, imprisonment or both.

This Affidavit is executed in connection with the sale of the following Property:

2913 Onate Street Las Cruces 88007
Address City Zip Code
Lot 156, Legends West Subdivision Phase 4
Legal Description
or see metes and bounds description attached as Exhibit _____, Dona Ana County, New Mexico.

INDIVIDUAL SELLER

- 1. I am not a Foreign Person for purposes of United States income taxation.
- 2. My United States taxpayer identification number (Social Security Number) is: _____
- 3. My home address is: _____

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.

Name of Individual Seller Laniece Mone
Signature J. Emily Lightfoot
Date 1-25-10 Time _____

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J. Emily Lightfoot
2913 Onate

REALTORS® ASSOCIATION OF NEW MEXICO
AFFIDAVIT -- NON-FOREIGN SELLER - 2010

ENTITY SELLER

1. Fannie Mae ("Seller")
is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

2. Seller's United States employer identification number is _____

3. Seller's office address is _____

4. If a corporation, Seller's place of incorporation is _____
Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements in this Affidavit are true, correct, and complete, and that I have authority to sign this document on behalf of Seller.

Name of Entity _____

By _____

Its J. Smith Lightfoot

Date 1-25-10 Time _____

Buyer or Qualified Substitute, as applicable, must retain this Affidavit and make it available to the Internal Revenue Service upon request.

NOTICE TO SELLER OR BUYER: An affidavit should be signed by each individual or entity seller to whom or to which it applies. Any questions relating to the legal sufficiency of this form, or to whether it applies to a particular transaction, or to the definition of any of the terms used, should be referred to a certified public accountant, attorney, or other professional tax advisor, or to the Internal Revenue Service.

Received by Buyer Qualified Substitute

Signature [Signature] City of Las Cruces, By Terrence Moore - City Manager

Date 1/28/10 Time _____

RESOLUTION NO. 10-009**A RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER TO APPROVE REAL ESTATE PURCHASE AGREEMENTS ON BEHALF OF THE CITY OF LAS CRUCES IN ORDER TO EXPEDITE AND COMPLETE TRANSACTIONS UNDER THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP).**

The City Council is informed that:

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is implementing the Housing and Economic Recovery Act of 2008 (HERA); and

WHEREAS, The City of Las Cruces is operating it's approved Neighborhood Stabilization Program (NSP) under HERA, through the New Mexico Department of Finance and Administration, Local Government Division; and

WHEREAS, due to the urgency expressed under HERA, the City of Las Cruces is committed to completing its obligation of all NSP funds for property acquisition, rehabilitation and resale/transfer within 18 months of the initial award of April 17, 2009; and

WHEREAS, the City of Las Cruces must simplify its internal processes in order to avail itself of short timelines for completing all property purchase transactions.

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

(I)

THAT staff working on the City of Las Cruces' NSP are granted appropriate authority to complete said necessary property transactions with the City Manager's approval in accordance with the following restrictions: (1) such authority is limited to actions related to purchase of foreclosed property in the City NSP's priority areas or that are bank or real-estate owned; and (2) such authority is limited to total transactions that can be completed within the City's affordability cap of \$140,000/unit, composed of an estimated purchase price of \$70,000-100,000 for the property, related fees and a rehabilitation cost cap of \$50,000 per unit.

(II)

THAT the City Manager is authorized to execute all necessary documents, including payment to a qualified seller by check and is the City's designated signatory for all such NSP transactions.

(III)

THAT City staff shall inform the City Council of all such completed transactions by Monthly Report and that when the City disposes/resells the property in accordance with the City's NSP, the Council will do so with appropriate review and consideration of a resolution.

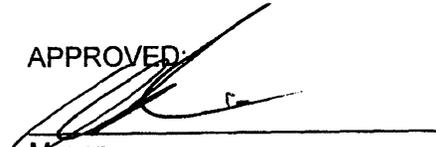
(IV)

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

DONE and APPROVED this 6th day of July, 2009.

(SEAL)

APPROVED:


Mayor

ATTEST:


City Clerk

VOTE:

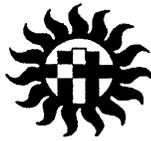
Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Archuleta

Seconded by: Silva

Approved as to Form:


City Attorney



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 Ordinance/Resolution# 10-009 Council District: N/A

For Meeting of July 6, 2009
(Adoption Date)

TITLE: A RESOLUTION DELEGATING AUTHORITY TO THE CITY MANAGER TO APPROVE REAL ESTATE PURCHASE AGREEMENTS ON BEHALF OF THE CITY OF LAS CRUCES IN ORDER TO EXPEDITE AND COMPLETE TRANSACTIONS UNDER THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP).

PURPOSE(S) OF ACTION: To enable staff to complete NSP real estate transactions in a timely manner within program and other constraints.

Name of Drafter: <i>Jerry Nachison</i>		Department: <i>Community Development</i>		Phone: 528-3208	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>[Signature]</i>	528-3067	Budget	<i>[Signature]</i>	541-2281
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: In July 2008, President Bush signed the Housing and Economic Recovery Act of 2008 (HERA). HERA was created to provide neighborhood stabilization to communities throughout the United States due to rising foreclosures and abandoned residential properties due to tough economic times. HERA appropriated \$3.92 billion in funding as part of a special allocation of Community Development Block Grant (CDBG) funds for distribution to States and Local governments. The State of New Mexico received a total allocation of \$19.6 million. Las Cruces, received \$1.5 million from the State of New Mexico Department of Finance and Administration, Local Government Division.

In summary, the City's NSP Plan primarily focuses through partner agencies in two areas. To (1) acquire, rehab, and resale abandoned or foreclosed properties or build new housing on acquired, vacant parcels for homeownership to serve persons between 50% and 120% of Area Median Income (AMI); and (2) acquire, rehab, and donate to qualified non-profit agencies as rental housing for persons below 50% of AMI, primarily for those with special needs. Single family detached houses are preferred, though duplexes, single family attached properties and other small multi-family properties (generally less than 8 units) may be considered. All properties must be foreclosed and available or abandoned, blighted and unused, with owners willing to sell. Vacant lots for infill purposes may also be considered for new residential construction. The City's priority areas for purchase of properties are in areas so designated.

The NSP program is time sensitive for the City. In general, all funds must be obligated within 18-months of our grant with the State (ends October 31, 2010). This overall time limit is one with which staff has to consider all processing and approvals. However, staff was recently

(Continued on Page 2)

informed by knowledgeable real estate brokers that banks consider "time is of the essence" in the processing of foreclosed properties. The banks generally expect a two week (14 calendar days) turnaround from accepted offer to closing (and payment) in order to accept a reasonable offer. This can create serious problems for the City's NSP.

Therefore, to facilitate working within such a timeline, staff is requesting Council to give the City Manager the authority to approve and execute real estate purchase agreements for the NSP, without prior City Council approval, on qualified foreclosed properties that are either bank or real-estate owned. This will allow the City to work with banks and other sellers with foreclosed properties in a most expeditious manner. Again, this approval authorization is only for purchase of foreclosed properties owned by banks or real estate brokerages for the NSP.

The NSP foreclosure approval process is as follows:

- (1) Property and proposed City offer are considered reasonable for NSP, as determined through City internal review.
- (2) Offer is approved by City Manager and transmitted to the appropriate property owner.
- (3) If owning entity accepts offer and proposed timing, staff may proceed with actions necessary to complete the property purchase, including payment instrument with signature by the City Manager.
- (4) Closing takes place under the timeline identified in transaction paperwork.
- (5) Staff provides City Council a monthly report summarizing such transactions during each most recent reporting period.

Also, the City will be selling/disposing of the acquired properties in accordance with the City's NSP. The City Council will so do with appropriate review and consideration of a resolution.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Attachment "A" - Map of priority Census tracts for Property Acquisition (background)

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution granting authority to the City Manager to complete NSP transactions on foreclosed properties in a timely manner. Doing so ensures the NSP can move forward quickly in concert with the sellers of foreclosed property, City processes and State program constraints.
2. Vote NO and disapprove the Resolution, thus not approving purchase of foreclosed properties under the City's NSP without prior City Council approval. So doing may eliminate the possibility of most foreclosure sales to the City and drastically limit properties available for purchase from sellers under the NSP. This puts the City's ability to complete transactions and conform to established deadlines for the NSP in jeopardy.

(Continued on Page 3)

3. Modify the Resolution and vote YES to approve the modified Resolution. This action would be based on the Council's discretion.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff. Tabling or postponing could jeopardize the City's ability to utilize the NSP funds from the State due to established deadlines.

RESOLUTION NO. 10-097

A RESOLUTION APPROVING TWO GRANTS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP), ONE FOR TIERRA DEL SOL AND ONE FOR LA CASA, INC . THE GRANTS PROVIDE OPERATING AUTHORITY TO EACH NON-PROFIT AGENCY TO BECOME NSP PROPERTY OWNERS, REHABILITATE, AND SELL THE PROPERTIES TO ELIGIBLE HOMEBUYERS, OR MAKE THEM AVAILABLE TO ELIGIBLE RENTERS.

The City Council is hereby informed that:

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is charged with implementing the Housing and Economic Recovery Act of 2008 (HERA); and

WHEREAS, HERA funds are a special allocation of Community Development Block Grant (CDBG) funds, of which the City of Las Cruces is an entitlement community, and HERA created a national program henceforth called the Neighborhood Stabilization Program; and

WHEREAS, due to the urgency expressed under HERA, the entire allocation of HERA funding were awarded to the State of New Mexico Department of Finance and Administration, Local Government Division, and the City of Las Cruces received a grant from the New Mexico Department of Finance and Administration for \$1,500,000 to operate its NSP; and

WHEREAS, the City staff have prepared the grant agreements to Tierra del Sol (\$695,000) and to La Casa, Inc. (\$700,000) to carry out their responsibilities in these grants to implement the NSP; and

WHEREAS, the responsibilities of the non-profits include owning NSP properties transferred from the City and rehabilitating them to code and after rehabilitation, Tierra del Sol will resell the properties to eligible homebuyers and La Casa will hold the properties in perpetuity for low income renters.

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

(I)

THAT the City of Las Cruces Neighborhood Stabilization Program Agreements with Tierra del Sol and La Casa, Inc. to implement the NSP, as shown in Exhibit "A" and "B," attached hereto and made part of this Resolution, are 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 21st day of September, 2009.

(SEAL)

APPROVED:



Mayor

ATTEST:



City Clerk

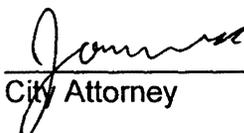
VOTE:

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: Thomas

APPROVED AS TO FORM:



City Attorney

MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL (Tds) FOR THE ACQUISITION, REHABILITATION AND RESALE OF SINGLE FAMILY DWELLINGS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

THIS AGREEMENT is entered into between the City of Las Cruces (herein called the "Grantee") and Tierra del Sol (herein called the "Developer") under a State-issued NSP Grant; the Developer is a non-profit organization.

WHEREAS, the Grantee has applied for and received funds from the State of New Mexico through the United States Government under Title III of division B of the Housing and Recovery Act of 2008, Public Law 110-289, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.256.

WHEREAS, the Grantee wishes to engage the Developer to assist the Grantee in utilizing project funds;

Now, Therefore, in consideration of the mutual covenants and agreements of mutual comprehensibility contained herein, and for other good and valuable consideration under Grant No. _____, the sufficiency and receipt whereof being hereby acknowledged, the Grantee and the Developer agree and follow hereto that;

I. SCOPE OF SERVICE

A. NATIONAL OBJECTIVE:

The Grantee and Developer certify that the activities carried out with the funds provided under this Agreement meet the CDBG Program's National Objective 570.208(a)(3) – Housing Activities as amended by the Housing and Economic Recovery Act of 2008 (HERA). This is acquisition and rehabilitation for the purpose of providing home ownership opportunities for low to middle income families.

B. DEFINITIONS:

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

1. **Annual Gross Income (AGI)** - means the annual anticipated income for a household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §5.609. AGI is used to determine potential applicant/tenant's initial and ongoing program and income eligibility.
2. **Annual Gross Income Adjusted for Family Size** – means adjusted in manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base

income eligibility based upon a formula established by the U.S. Department of Housing and Urban Development (HUD) for the Las Cruces Metropolitan Statistical Area (MSA).

3. Affordability Period – means as defined in Section I, Paragraph C.9 of this Agreement and is up to 15 years.
4. Dwelling/Unit - A dwelling unit has a minimum of one (1) bedroom, one (1) full bath. Living Room, Dining Area and Kitchen with at least 650 square feet of living space. The property should have a minimum of 150 square feet of outside space.
5. Eligible Person or Eligible Household – means one or more natural persons or a family who are determined by the Grantee to be of Low Income or Moderate Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household.
6. Energy Efficiency: Each property rehabilitated with NSP funds must have energy star labels on all replaced appliances, heating and cooling equipment, doors and windows. All accessible piping and ductwork should be insulated.
7. Grant Documents – means this Agreement, the Mortgage and Restrictive Covenants 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.
8. Lease to Own – means a structured rental agreement (i.e., lease) of up to 24 months executed between the Developer and a members of a qualified family that allows them to rent said property, build a down payment and commit to purchasing the dwelling at the end of the lease period. A lease up to 36 months may be considered in exceptional circumstances approvable by the Grantee.
9. Low Income Person or Low Income Household – means one or more natural persons who have a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the median annual income Adjusted for Family Size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
10. Moderate Income Person or Moderate Income Household – means one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income Adjusted for Family Size for households within the Las Cruces SMSA, which includes the City of Las Cruces, as determined by HUD.
11. Middle Income Person or Middle Income Household - means one or more natural persons or a family who has a total Annual Gross Income for the household that is between eighty percent (80%) to one hundred and twenty percent (120%) of the Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

12. Project – means the acquisition of one or more dwellings and rehabilitation thereof within the city limits of Las Cruces, that will be re-developed and sold for owner-occupied, single family residences. These shall be exclusively owned and occupied by Low to Middle Income persons, subject to the affordability requirements as stated in Section I, Paragraphs C.9-10.
13. Project Completion – means that the rehabilitation work on each dwelling contemplated under this Agreement has been completed, the unit has met all CDBG and NSP Program regulations, received the Certificate of Occupancy Completion by the Grantee, and the unit is sold and occupied by qualified homeowners, the final drawdown has been disbursed for the Project, and Project Completion information has been provided to the State for entry into the project completion system established by HUD.
14. Property Amendments – means all qualified properties transferred to the Developer by from the Grantee and made available for sale to qualified buyers under this Agreement as part of Attachments “A” and “B” (described below).
15. Property Purchaser – The Developer shall do an initial review of income eligibility for each prospective homebuyer. In determining eligibility, the Developer acknowledges that the City may examine the source documents evidencing the prospective tenant’s AGI, per 24 CFR Part 5.609. All documentation including, but not necessarily limited to, a homebuyer’s application, verifications, proposed sale and/or lease terms may be reviewed by the City’s Neighborhood Services Section, its Successors or Assigns, for final approval before a purchase/lease contract is signed and per City monitoring requirements.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the CDBG regulations, or 24 CFR Part 570 (or as cross-referenced therein), or their ordinary dictionary meaning as the context so requires. Please be aware that “dwelling” and “unit” are used interchangeably in this Agreement.

C. HOMEOWNERSHIP ACTIVITIES:

The Grantee will purchase single family detached or attached houses. All properties will either be foreclosed and available or abandoned, blighted and unused, with owners willing to sell. Vacant lots for infill purposes may also be considered for new residential construction. Such properties will be deeded over to the non-profit Developer for rehabilitation/reconstruction and resale to qualified homebuyers.

There are two phases to this award. Phase I goes from the date of award through October 31, 2010. It is expected that at least 5-8 single-unit or other qualifying properties will be bought by the City, transferred to the Developer, rehabilitated and then re-sold by the Developer. All funds for the rehab and re-sale of these properties must be obligated on or before October 31, 2010. Any properties rehabbed, sold and closed prior to October 31, 2010 will be treated the same way as those in Phase II, following.

Phase II goes from November 1, 2010 through April 30, 2013. In this phase any funds from the re-sale of rehabilitated homes will be returned to the Grantee, aggregated as appropriate and recycled into the purchase, transfer and re-sale of additional properties. Such recycling will continue at least through October 31, 2013.

1. Each property transferred to the Grantee from a seller will be amended to this agreement under Attachment "A1"; all property transfer documents from Grantee to Developer are at Attachment "A2" and property transfers from Tierra del Sol to the eligible home-buyers are at Attachment "A3." Attachment "B2" Restrictive Real Estate Covenants, is required with all real estate transfers and resales.
2. The Developer may sub-contract appropriate activities, consistent with 24 CFR Part 85. The Developer will carry out the rehabilitation/redevelopment, subject to appropriate design standards and City code and a per unit maximum of \$50,000 in hard rehabilitation costs. Costs associated with initial purchase, redesign, permits, fees, appraisals, transfers, etc., are not counted with the \$50,000 rehabilitation cap. These will be paid by the developer from funds in the grant or directly from the Grantee's NSP Administrative funds on behalf of the Developer, as appropriate. The developer must follow the Energy Efficiency guidelines in Section I.B(6), prior in all rehabilitation plans..
3. The Developer has the option of establishing a sweat equity requirement of no more than 500 hours per property. These hours will be applied to the cost of the rehabilitation, to help ensure affordability of the property.
4. Rehabilitated/redeveloped properties may be sold outright or on a lease-to-own basis, with a lease term of no more than twenty-four (24) months. In exceptional circumstances, the lease-to-own may be written for up to thirty-six (36) months with the approval of the Grantee. If lease-to-own is utilized, the Developer must provide a letter to the tenants and include similar language in the lease informing them of non-URA eligibility (see draft letter to adapt at Attachment "C").

At the time of sale to an eligible household (after completion of rehabilitation to code) the property will be re-appraised by the Grantee. The appraised value must be in the "affordable housing" range, which currently (2009) is not-to-exceed \$140,000 (**NOT FINAL**) per unit in Las Cruces. Exceptions and special circumstances will be considered. The post-rehab appraisal will establish the affordability level. This amount may or may not be the same as the final sale price. A soft second to ensure affordability is required based on the differences between the appraisal and actual sell value. **NOTE:** At the time of sale to an eligible homebuyer, the appraisal must be no more than 60 days old, so coordination with the Grantee is critical.

5. Ownership of the rehabilitated property is limited to families at or below 120% of Adjusted Median Income (AMI). The Grantee encourages the Developer to give priority consideration to those persons/households above 50% and below 120% of AMI.
6. The Developer will identify eligible individuals/households and provide at least 10 hours of homebuyer counseling with appropriate documentation, either directly or

through a qualified partner, for each qualifying individual or family slated to purchase a unit. Other services may also be needed and provided.

7. The monthly cost of a property to an eligible applicant (see #4 above) should be no more than 30% of that applicant's monthly gross income. Developer will work with NSP homebuyer applicants and local lending institutions to gain favorable mortgage terms (0-7% interest, maximum).
8. Once the properties are sold, any program income generated by the Developer as a result of the sale must be returned to the Grantee for re-investment in similar properties during the initial 4-year program period, and beyond, as applicable. The Developer will take possession of these additional properties and rehabilitate/sell them, and assist additional clients with re-invested NSP funds. Third party funds may be added to these additional re-sales to aid affordability.
9. There is an Affordability Period associated with each property sold to an eligible purchaser, based on a subsidy amount (soft second) and equity gain. If the Homeowner assisted amount is between 0-\$15,000, the affordability period is for five (5) years. If the homeowner assisted amount is between \$15,001 and 40,000, the affordability period is for ten (10) years. If the homeowner assisted amount is \$40,001 or more, it is for fifteen (15) years. The affordability period begins on the date of the original mortgage to the homebuyer. The affordability and equity sharing chart must be included in the mortgage documents.

If at any time the property is sold or transferred during the affordability period, it must be to another qualified homeowner and must follow the equity share requirement listed below. If the property is sold by one owner to another (see No. 10, following), the start point for an equity share for the second buyer will begin at the year/date the unit is purchased. For example, if the dwelling has a soft second of \$17,000, the affordability period is 10 years. If the unit is sold at year 5, month 10, the affordability period will be the remainder of that established at by the original mortgage. The new owner's affordability period will begin at year 5 month 10 and go through the end of year 10. During this period, if there is any equity gain and the property is again sold, such equity will be shared between the Owner and the City. The equity sharing principle is illustrated in the following chart.

AFFORDABILITY AND EQUITY SHARING			
Equity Gain	5-Year	10-Year	15-Year
Percent Share	City/Owner	City/Owner	City/Owner
Year 1	80/20	90/10	85/15
Year 2	60/40	80/20	75/25
Year 3	40/60	70/30	65/35
Year 4	20/80	60/40	55/45
Year 5	0/100	50/50	50/50
Year 6	---	40/60	45/55
Year 7	---	30/70	40/60
Year 8	---	20/80	35/65

Year 9		---	10//90	30/70
Year 10		---	0/100	25/75
Year 11		---	---	20/80
year 12		---	---	15/85
Year 13		---	---	10/90
Year 14		---	---	5/95
Year 15		---	---	0/100

10. The property must remain Owner-occupied during the Affordability Period. If it ceases to be Owner-occupied during this period, whether through sale or otherwise, the Owner agrees to sell the property to another individual or family that qualifies as eligible under the terms of this program. The Developer and the Grantee shall have the right of first refusal. The new Owner must use the property as a principle residence and be bound by the stipulations of the Affordability Period.

II. PRIORITY LOCATIONS

First priority on properties to be acquired by the Grantee for transfer to the developer are within those areas of greatest identified need and are the following Census Tracts, in order of priority:

<u>First Priority Level</u>		<u>Second Priority Level</u>	
1)	3.00	1)	4.01
2)	5.00	2)	6.00
3)	1.02	3)	7.00
4)	4.02	4)	8.00
5)	2.00	5)	9.00

The need is for all block groups within these Census Tracts. These are within the heart of the city and near jobs, shopping, transit, and government access. Other Census Tracts, outside the First and Second Priority Levels, but within the city limits may be considered, but are not a priority for property identification and selection. See map at Attachment "D".

III. GRANT AMOUNT AND USE OF FUNDS

A. RECITALS:

The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.

B. THE GRANT:

Under the terms and conditions of this Agreement, the Grantee agrees to grant the Developer full authority, subject to Grantee oversight, for the redevelopment of the transferred properties, housing counseling, other services as appropriate and all direct costs associated with the additional property transactions to eligible buyers. The grant to the Developer shall be on the terms set forth in this Agreement and Mortgage and Restrictive covenants, as required by the Grantee and all other documents in the progressive chain of transfers illustrated by Section I.C.. Conforming to the same documents shall be a mortgage secured by the homeowner upon purchase from the Developer and also incorporated herein by reference.

C. BUDGET:

Payments will be made only for the line items listed below:

NSP HOMEOWNER ESTIMATED COSTING				
Planned Line Items	Unit Cost	Multiple Units (#)	TOTAL BUDGET	NSP \$\$\$ ONLY
Developer's Fee				
Real Estate Consultant (opt)				
Purchase Price w/o broker/appraiser cost				
Design Fee for Rehab				
Hard Rehab Costs				
Front End Closing Costs (City to developer)				
a.				
b.				
c.				
d.				
Management Overhead costs				
Qualifying Homeowner costs				
Housing Counseling costs				
Supportive services (List)				
a.				
b.				
c.				
Lease-to-Own Costs (management/utility				
Lease-to-Own Escrows (rents, etc.)				
Closing Costs (Homebuyer)				
a.				
b.				
c.				
d.				
In-Kind Costs (List)				
a.				

b.				
c.				
Sweat Equity (#Hours/Rate)				
Other (List)				
a.				
b.				
TOTAL COSTS/COMPLETE PROGRAM				\$695,000

ADD SHEETS/EXPLANATIONS AS NEEDED

Indirect costs cannot be charged to this agreement.

D. PAYMENTS:

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement to the Developer shall not exceed \$695,000 and is expected to be used for eligible expenses as stated in the budget specified in Section II, Paragraph C above, herein in accordance with the Scope of Service and any approved modifications thereto. Payments are contingent upon compliance with all administrative requirements of Section VII and Attachment "D." It is also understood that all requests for payment or advances shall be in writing and must be submitted by the developer to the Grantee.

E. DISBURSEMENTS:

The Grantee shall disburse the grant proceeds only after receipt of invoices and certification from the Developer that the portion of work then being billed has been satisfactorily completed. Disbursement of grant proceeds will be to the developer only after approval by the Grantee of invoices submitted and verification of work completed in accordance with this Agreement and applicable CDBG and NSP guidance and regulations. Notwithstanding anything to the contrary in this Agreement, the Grantee also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the Grantee accordingly. All NSP funds for the project must be disbursed within four years of the start of the Grantees NSP, April 30, 2013. Any funds, recycled or otherwise neither obligated nor expended 60 days after the end of the grant period (April 30, 2013) will be held by the Grantee and not be available to the developer.

F. USE OF GRANT FUNDS:

The Developer shall use the grant proceeds for eligible expenses permitted under applicable CDBG regulations and NSP guidance, and as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule and Budget. The Developer shall not use any NSP funds for prohibited purposes as set forth in 24 CFR §570.207 or other CDBG regulations, as the same may from time to time be amended. The Developer does acknowledge and agree that any funds not used in accordance with permitted CDBG regulations must be repaid to the Grantee. The Developer does acknowledge and agree if this Project as a whole, or as individual single-family houses (units) within the whole, is terminated before completion, either voluntarily or otherwise, the Developer must repay any NSP funds invested in the Project to the Grantee.

G. PROGRAM INCOME:

Program income generated from the proceeds of the NSP grant through the sale of properties to eligible homebuyers must be returned to the Grantee for recycling into additional NSP properties, in accordance with 24 CFR §570.500(a) and 24 CFR §570.504. The Developer must demonstrate that its financial management system will track all proceeds of the NSP grant into additional properties, their rehabilitation and resale. The Grantee reserves the right to disallow the retention of program income by the developer with an administrative amendment to this agreement upon review of required operational procedures to track the income by the developer.

IV. TIME OF PERFORMANCE**A. TERM OF AGREEMENT:**

The term of this Agreement shall commence on the effective date thereof which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through two phases. The first period of performance will continue through October 31, 2010. Phase II runs through April 30, 2013. The term extends to the end of the fifteen (15) year Affordability Period for all properties sold under the NSP between the effective date of the grant and April 30, 2013. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the property requirements set forth in this Agreement or any record-keeping or use requirements mandated by CDBG regulations shall survive termination of this Agreement.

B. ELIGIBLE PAYMENT PERIOD:

All eligible expenses and purchases approved by this Agreement and incurred during the grant period through Phase II by the Developer may be reimbursed.

V. AMENDMENTS

The Grantee may amend and the Developer can propose to amend the scope of work of this Agreement at any time, when appropriate. Such proposed change requires a written request, to be submitted on the available "Budget Line Item Revision." Any budget changes must be limited to comply with the administrative scope of the project as defined in Scope of Services in Part I. Any adjustment or amendment of any change to the scope must be in writing, approved and signed by a duly authorized representative of both organizations and by the Grantee's governing body. Any such amendment shall not invalidate nor relieve the Grantee or Developer from its obligations under this Agreement. Extensions of time are not permitted.

The Grantee may, at its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments by the Grantee result in a change in the funding or the scope of services undertaken as part of this Agreement, such modifications will be incorporated by a written amendment that is signed by the Grantee and the developer.

Any amendments to this agreement are subject to 24 CFR Part 84.25 and the Covenants at Attachment "B."

VI. COMMUNICATIONS

Communication and details concerning this Agreement shall be directed in writing, hand delivered, and/or sent by regular mail to the following Agreement representatives:

Grantee

Jerry Nachison, Housing
Development Coordinator
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004
Phone: (575) 528-3208
E-mail: jnachison@las-cruces.org

Developer

Ms. Rose Garcia
Executive Director
Tierra del Sol, Inc.
P.O. Box 2626
Anthony, NM 88021
(575) 882-3554
rgarcia@tierradelsol.org
adavalos@tierradelsol.org

VII. ADMINISTRATIVE REQUIREMENTS

A. APPLICABLE LAWS:

The Developer shall comply with all applicable Federal, state and local statutes, rules and regulations dealing with property acquisition, rehabilitation, resale and quality standards whether they are presently or subsequently promulgated. The Developer agrees to comply with any and all the CDBG regulation and NSP guidance, as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance forthwith. The Developer shall also comply with all other applicable Federal, state or local statutes, ordinances, rules and regulations including but not limited to all applicable provisions of the Las Cruces' Municipal, Building and Zoning Codes.

B. FINANCIAL MANAGEMENT:

The Developer agrees to comply with the stipulations of this Agreement and with 24 CFR 570.610, 24 CFR Part 84, Subpart C, Financial and Program Management and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," 24 CFR Part 85 and OMB Circular A-133, "Audits of States, Local Governments and Non-Profits."

C. DOCUMENTATION AND RECORDKEEPING:

The Developer shall keep all financial records for the Project, including source documentation to support how NSP funds were expended, which includes, but is not limited to, cancelled checks, paid bills, payrolls, time and attendance records, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the Grantee to support the expenditures for this Project.

1. Records to be Maintained:

The Developer shall comply with 24 CFR 570.506 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, State, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all Mortgages and Project financial records, including source documentation to support how NSP funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the Grantee to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.

2. Reports:

The Developer shall submit reports every other month beginning 75 days after the execution of the grant award with such reports due by the 15th of each target month. These reports shall show the status of participants in the Developer's program, status of construction progress and status of identifying homeowner applicants and qualifying them for occupancy and purchase..

3. Client Data:

The Developer shall maintain client data demonstrating eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level consistent with program income limits as published annually by HUD. The Developer will use 24 CFR Part 5 for determining eligibility. Such information shall be maintained in a client file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.

4. Uniform Administrative Requirements:

The Developer and the Grantee shall comply with 24 CFR §570.610 regarding uniform administrative requirements. The Developer shall provide the Grantee with such documentation and records to satisfy its requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

D. PROPERTY STANDARDS:

The Developer shall comply with the property standards requirements set forth in City and State Law. The Developer shall keep records to document compliance with these property standards. At Project Completion, each 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.

E. PERFORMANCE MONITORING:

The Grantee will monitor the programmatic and financial performance of the Developer during the pre-occupancy portion of the project and annually to insure that design and construction documents, services provided to the homeowner applicants and mortgage documents are consistent with CDBG rules and regulations and this grant document. There will also be required short annual reports and a certification from the developer to the Grantee annually during the affordability period delineating appropriate statistics on number of initial clients for each sold property consistent with Section VIII.C, prior.

The Grantee will also conduct on-site inspections of the subject property during the construction process in order to verify compliance with property standards.

VIII. GOVERNANCE AND SEVERABILITY

- A. This agreement shall be governed by the laws of the State of New Mexico.
- B. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- C. All Attachments are part and parcel of this Agreement and have the same weight and importance as the initial Paragraphs I through VIII.
- D. All certifications at Attachments A to J shall be signed by the developer as part of this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

TIERRA Del SOL



Signature

Printed Name

Title

Date

CITY OF LAS CRUCES

A handwritten signature in black ink, appearing to read "Terrence Moore", written over a horizontal line.

Terrence Moore, City Manager
City of Las Cruces

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be initials, written over a horizontal line.

City Attorney

9-21-09

Date

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

Attachment A: Property Documents

- A1 – Property Sale and transfer from Seller to City.
- A2 – Property transfer from City to Developer.
- A3 – Property resale from Developer to eligible homebuyer.

Attachment B: Restrictive Real Estate Covenants for Properties

Attachment C – Sample URA Letter for Adaptation.

Attachment D - Map of Priority Areas.

Attachment E - General Grant Requirements.

Attachment F - Drug-Free Workplace for all Properties.

Attachment G - EEO/AA Clause.

Attachment H - Anti-Lobbying Clause;

Attachment I - Section 3 Clause + Stipulations

Attachment J - Required City and Federal Clauses and Certifications.

Attachment A:

**OPEN FOR
PURCHASE/TRANSFER DOCUMENTS**

ATTACHMENT "B"

CITY OF LAS CRUCES

RESTRICTIVE COVENANTS AGREEMENT

RESTRICTIVE REAL ESTATE COVENANT - _____, Las Cruces, New Mexico.

Made in Las Cruces, New Mexico

Date _____

Option A - City to Developer; Option B - Developer to homeowner. This agreement is made by _____ in favor of _____. The premises discussed in this covenant are at _____. This covenant is a part of NSP Grant _____, Dated _____ (herein called the "Agreement"). At completion of acquisition, the premises are owned by the developer, with certain limitations.

1. Recitals:

- A. The following premises described as follows:
 - (i) Description of building and premises including legal description. (to be added).
 - (ii) Square footage of the property is approximately _____ and square footage of the buildings on the property are _____.
- B. The Owner of that certain real estate (Real Property) in Dona Ana County, New Mexico holds the property in fee simple.
- C. The City has advanced certain sums of money under the Housing and Economic Recovery Act of 2008 (HERA) to the Developer. Such funding benefits the real property of the _____.
- D. In consideration for the assistance given by the City for the benefit of the _____, it has agreed to restrictions on the use of the real property in order to implement the policies and obligations of HERA and the CDBG program..

2. Restrictive Covenants:

During the term of this Agreement as set forth in Paragraph 4, below:

A. Use of Property:

(a) for Developer - In exchange for \$_____ to acquire, rehabilitate and resell the premises, as described by the Developer's application of May 8, 2009 the premises of the

Developer owns this property which shall maintain it under this Covenant, with the first priority usage as slated for sale to qualified low to middle income persons.

(b) for Homeowner - In exchange for \$_____ to acquire the premises at _____ and shall maintain it under this Covenant for an affordability period of fifteen (15) years.

The real property shall be used as lived-in habitation of record for the new owners.

B. This Agreement shall be and constitute covenants running with the real property during the term of this agreement and shall be enforceable by the City using legal and equitable action including injunctive relief.

B. This Agreement and Restrictive Covenant shall automatically terminate at the time of sale to homeowner, or for the homeowner, at the earlier of 5 PM New Mexico Time on the 15th anniversary of such recordation that is running with the real property and subject to Item 2.A above.

C. Property Standards.

This project will meet all Housing Quality Standards or other physical property standards regulated by the U.S. Department of Housing and Urban Development at 24 CFR Part 982.401 and local building code requirements when sold to an eligible applicant.

3. **Reporting Requirements**

The Developer shall report in writing, at least annually to the City through the affordability period consistent with Section I.C, prior, of this document. With this report the developer shall also submit a certification that the owners of the premises are of low to middle income.

4. **Covenants Running with the Real Property**

This Agreement shall be and constitute covenants running with the real property during the term of this agreement and shall be enforceable by the City by legal and equitable action, including an auction, for injunctive relief.

5. **Binding Effect**

Upon execution of this agreement by the Developer, and later the homeowner, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of all parties and of their representatives.

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Tierra del Sol, in the amount of \$_____ ("Loan") for acquisition. The Loan is made to the Homebuyer through the Lender's NSP Program pursuant to Title 24 of the Code of Federal Regulations Part 570, 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 Loan 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. Homebuyer 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 \$15,000, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy is from \$15,001 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of the Mortgage; if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage. The Affordability Period will begin on the date of the Mortgage.
- 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 Loan was committed to the Property, through the Agent, Tierra del Sol.
- C. Transfer of the Property. Developer or 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. The City and Tierra del Sol have the first right of refusal. Owner agrees that the entire Loan will be due and payable upon any such unapproved sale or transfer except as provided for in Paragraph (D).
- D. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Loan 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 Loan, 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 Loan and to otherwise comply with all the terms and conditions of this Agreement.
- E. Default. Developer or Owner agree that any default under the terms of the Loan, 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

Attachment C

SAMPLE URA Ineligibility Move-In Notice – Adapt and Revise as Necessary

(Use Grantee Letterhead)

Date: _____

Dear _____:

Tierra del Sol was funded to implement a program with dollars from the State of New Mexico and the Department of Housing and Urban Development (HUD). The project involves, acquisition and rehabilitation of the property located at _____

_____. Because federal funds are involved in this project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), may apply to persons in occupancy at the time of dwelling purchase. However, if you choose to occupy this property as a new tenant after rehabilitation you will not be eligible for relocation payments or assistance under the URA. This notice is to inform you of the following information before you enter into a lease agreement and/or occupy the property located at the above address.

- You may be displaced or required to temporarily relocate;
- You may be subject to a rent increase; and
- You will not be entitled to any relocation payments or assistance provided under the URA. If you have to move or your rent is increased as a result of the project you will not be reimbursed for any such rent increase or for any costs or expenses you incur in connection with a move as a result of the project.

Please read this notification carefully prior to signing a rental agreement and moving into the dwelling. If you should have any questions about this notice, please contact _____ at _____, phone # _____. Once you have read this and understood this notice,

please sign the statement below and return it to the project office if you still desire to rent the unit.

Sincerely

_____ **(name and title)**

I have read the above information and understand the conditions under which I am moving into this project.

Print Names of All Tenants

Signatures of all Tenants

Address, and unit # if applicable.

Date

Attachment E

I. GENERAL GRANT REQUIREMENTS:**A. Audits and Inspections**

The Developer shall comply with the audit provisions contained in 24 CFR §85.26 and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507) and OMB Circular A-133. Audits shall be conducted annually. The Developer agrees to allow the City's Community Development Department, Financial Services Department, and Internal Auditor, or their successors or Assigns, to conduct any audits the City feels necessary at any time during the term of this Agreement or pursuant to any HUD request. The Developer shall submit its annual audit to the Grantee within one hundred twenty (120) days of the end of the Developer's fiscal year.

All Developer records with respect to any matter covered by this Agreement shall be made available to the Grantee, their designees or the Federal government at any time during normal business hours, as often as the grantee deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. One copy of the Developer's reporting package shall be submitted to the Grantee 30 days after receipt of an auditors report or 120 days after the end of the audit period, whichever occurs first. The reporting package shall include:

- a. Financial statements,
- b. Schedule of prior year Audit findings,
- c. Auditors report, and
- d. Corrective action plan that addresses audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Developer or within 30 days after receipt. Failure of the Developer to comply with the above audit requirements will constitute a violation of this Agreement and be subject to sanctions. The Sub-recipient and Owner hereby agree to have an annual agency audit conducted in accordance with current Grantee policy concerning developer audits at 24 CFR Part 570.502(b) and OMB Circular A-133 (Audits of States, Local Governments and non-Profit Organizations), as applicable. It also agrees to allow the City's Community Development Department, Financial Services Department, the Internal Auditor or HUD, upon request, to conduct any audits the City or HUD feels necessary at any time during the term of this Agreement or during the period of the covenants.

B. Suspension or Termination

Any of the parties may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the approved Scope of Service may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all documents prepared by the developer under this Agreement shall become the property of the Grantee and the Developer shall be entitled to receive just

and equitable compensation for any satisfactory work completed on such construction and documents prior to the termination.

The Grantee may also suspend or terminate this Agreement in whole or in part if the developer materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the developer ineligible for further participation in the Grantee's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Developer is not in compliance with any applicable rules or regulations, the Grantee may withhold the one-time payment or such amount that the Grantee determines appropriate. Such suspension will last until such time as the Developer is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

C. Insurance and Bonding

1. General:

The Developer shall carry sufficient insurance coverage to protect Agreement Assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering the Board of Directors and all employees working on this project in an amount equal to cash advances from the Grantee.

2. Insurance Requirements:

The Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the Grantee thirty (30) days prior to commencement of construction and for each year during the period of the lease. The Grantee shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The Grantee, its officers and employees, shall be named as an additional named insured on all policies of liability insurance. The developer shall comply with the bonding and insurance requirements of 24 CFR Part 84, Subpart C, Financial and Program Management, Bonding and Insurance.

- (a) Such policy shall provide that the coverage shall be primary for losses arising out of the developers performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Developer with in 30 days of execution of this Agreement or it shall be automatically terminated.
- (b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer shall provide the Grantee with evidence of the renewal of said insurance policies in a form satisfactory to the Grantee.

(c) The Policies of Insurance which must be secured are:

- (i) Commercial General Liability Insurance: The developer must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit of liability shall not be less than One Million Dollars (\$1,000,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than Two Hundred Thousand Dollars (\$200,000) per occurrence for property damage.
- (ii) Worker's Compensation Coverage: All employees of the Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
- (iii) Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations, if necessary.

D. Close-Outs

The Developer's obligations to the Grantee shall not end until all closeout requirements are completed.

- (1) Activities covered in all Annual reports.
- (2) disposition of program assets, if any.
- (3). determining custody of records.

E. Lead-Based Paint

The Developer shall not use lead-based paint in the project or anywhere on the property and shall comply with 24 CFR Part 570.608 and the Lead Based Paint Poisoning Prevention Act (42 U.S.C. Section 5421-4846).

F. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the three parties. The Developer shall at all times remain "independent contractors" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Developer is an "independent contractor."

G. Hold Harmless

The Developer agrees to defend, indemnify and save harmless the Grantee and its officers, agents and employees from any and all suits, actions and claims of any character brought

because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from negligence of the developer under this Agreement. However, this hold harmless clause shall not extend to liability claims, damages, losses or expenses, including attorney fees arising out of:

- 1) The preparation or approval of drawings, opinions, reports, change orders, designs and specifications by the Grantee, or its agents or employees, or
- 2) The giving of or failure to give directions or instructions by the Grantee, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily harm to persons or damages to the property.

In the event the Grantee, or its officers, agents or employees, actively participates in such negligence (a) the developer is relieved of its obligation to defend the grantee, and (b) the developer's obligation to indemnify and save harmless is limited to the actual amount representing the developers comparative share of negligence with the Grantee.

H. Grantee Recognition

The Developer shall insure recognition of the role of the Grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as to funding source. In addition, the Developer will include a reference to the support, provided herein, in any publications made possible with funds made available under this Agreement,

I. Use of Real Property

The standards described in this section apply to real property within the Developer's control which was acquired in whole or in part using CDBG funds in excess of \$25,000. The applicable standards are detailed in the Restrictive Covenants, Attachment "B".

J. Reversion of Assets

Upon its expiration, the Developer shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Developer's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 may remain in the possession of the developer subject to the Restrictive Covenants in Attachment "B".

In the event the property is not used in accordance with the national objective, I.A, page 1, above, the Developer shall pay to the Grantee \$_____ or such other amount determined by the Grantee. Any such payment is program income to the Grantee.

K. Travel

Travel by the Developer outside the metropolitan area of Las Cruces or south Dona County is not permitted with funds provided under this Agreement.

L. **Religious Organizations**

The Developer agrees that all funds and/or programs under this agreement which includes faith-based organizations are subject to the requirements specified in 24 CFR Part 570.200(j), as amended, September 30, 2003.

II. **Procurement**

Procurement under this agreement is limited to the design and rehabilitation of the aforesaid properties, subject to HUD rules and regulations and prior Grantee approval.

III. **PERSONNEL & PARTICIPANT CONDITIONS**

A. **Civil Rights - Compliance**

The Developer agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063; and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

B. **Section 504/Americans with Disabilities Act (ADA)**

Section 504 and ADA

The Developer agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) and with the Americans with Disabilities Act of 1990 which expands Section 504 nation and prohibits discrimination against the handicapped in employment, any Federally assisted program and states general architectural accessibility standards.

The Developer agrees to comply with any Federal regulations issued pursuant to compliance by adding discrimination against the handicapped in any public areas, employment, state and local governmental areas and public and private transportation.

The Developer shall also post, one or more signs containing - facility hours, rules, warning signs and emergency telephone numbers, Anti-drug policy, EEO, New Mexico Workforce and Fair Housing Posters, as appropriate. The developer shall make such postings available in alternate formats upon request. The developer shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

C. **Affirmative Action (AAP):**

1. **Approved Plans**

The Developer shall prepare and provide to the Grantee an approved AAP and appropriate Tenant Selection plans to the Grantee.

2. **Women/Minority Business Enterprise**

The Developer will use their best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the subsequent activities of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native American. The Developer may rely on written representations by businesses regarding their status as minority and female business enterprises - in lieu of an independent investigation.

D. **Employment Restrictions**

1. **Prohibited Activity**

The Developer are prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities except as provided for in accordance with Attachment F for lobbying; political patronage; and nepotism activities.

2. **Assignability**

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the developer from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

3. **Debarment and Suspension**

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

4. Hatch Act

The Developer agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code.

5. Copeland "Anti-Kickback" Act

As applicable, the Developer shall comply with the Copeland "Anti Kickback Act (18 U.S.C. Section 874), as supplemented by the Department of Labor Regulations contained at 29 CFR Part 3.

6. Conflict of Interest (COI)

The Developer agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Developer further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient or Owner hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the developer, or of any designated public agencies, developer that receives funds under the NSP. The Developer is required to keep records supporting requests of waivers of COI and submit COI statements to the Grantee, as so specified.

a. Applicability

In the procurement of supplies, equipment, construction, and services by Developer and by contractors, if any, of the Sub-recipient and Owner the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply. In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this paragraph shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the Developer or its contractors to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703(i)).

b. Conflicts Prohibited

The general rule is that no persons described in Paragraph III.D(7)(c) in its entirety who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part; or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity; either for themselves

or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c. Persons Covered

The conflict of interest provisions of Paragraph III.D(7)(b) herein, apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Developer, or of any designated public agencies, or developer that is receiving funds under this part.

The Developer shall provide to the Grantee a current list of Board of Director members with names, addresses, telephone numbers and positions and of staff who will work on this Agreement. The Developer shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this Agreement for Board members and appropriate staff so identified.

ATTEST:

By: _____

_____ Date

By: _____

_____ Date

ATTACHMENT "F-1" Part 1

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding the Grant as stated in Exhibit A. If it is later determined that the Developer knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The developer will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. **The developer certifies that it will provide a drug-free workplace by:**
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's workplaces and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Developer's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A".
 - D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
 - E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity

the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

- F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Developer shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Developer further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

ATTACHMENT "F-1," Part 2

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of developer:

Program Name:

Date:

The developer shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

Check if there are work places on file that are not identified here.

ATTEST:

By:

Date

By:

Date

ATTACHMENT "F", Part 3

**PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Name of Developer:

Program Name:

Date: _____

The Developer shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

Check if there are work places on file that are not identified here.

ATTEST:

By: _____ Date _____

By: _____ Date _____

ATTACHMENT "G"

**EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE FOR
CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the developer and its contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual preference, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The developer shall state in all solicitations or advertisements for employees placed by or on behalf of the developer that it is an Equal Opportunity or Affirmative Action employer.

ATTEST:

By:

Date

By:

Date

ATTACHMENT "H"**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, subject to Section II.D, Attachment A, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Sub-recipient and Owner shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such ailure.

ATTEST:

By:

Date

By:

Date

SECTION 3 CLAUSE – SUBRECIPIENTS AND CONTRACTORS

- A. The work to be performed herein is on a project receiving direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be directed to low and very low income persons residing in the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the City and in the area of the Project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.
- D. Part 135, and all applicable rules and orders of HUD issued therein prior to the execution of this contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the contractor and subcontractor(s) for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the contractor and subcontractor(s) and assigns to those sanctions identified by the City’s Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- E. The Contractor will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the City of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient or contractor is in violation of the HUD regulations at 24 CFR Part 135. The Subcontractor will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of at 24 CFR Part 135, and will not let any subcontract unless the agency has first

provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- F. The contractor will certify that any vacant employment positions, including those for training, that are filled: (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations at 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under said regulations.
- G. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project and shall be binding upon the contractor or subcontractor(s), its successors or assigns. Failure to fulfill these requirements shall subject the contractor, its successors, and assigns to those sanctions specified by the City Agreement or contract through which Federal assistance is provided, and as are specified by 24 CFR Part 135. These include, but are not limited to, termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- H. The subcontracting parties to the prime contractor of this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The subcontracting parties will sign a separate Section 3 clause certification (this form) prior to contract execution with the prime contractor and the execution of the contract between the prime contractor and the City. The subcontracting parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.

ATTEST:

By: _____

Date: _____

By: _____

Date: _____

ATTACHMENT "J"

**EMPLOYMENT NEEDS FOR
SECTION 3 ELIGIBLE CONTRACTS
WITH THE
CITY OF LAS CRUCES**

Name of Business: _____

Type of Business: ↑ Corporation ↑ Partnership
 ↑ Sole Proprietorship ↑ Joint Venture

Procurement/Bid/Project
Number: _____

Procurement/Bid/Project
Name: _____

How many current employees are expected to work on this contract?
_____ Full-time (F/T) _____ Part-time (P/T)

How many additional full-time employees does the contractor plan on hiring for this contract? _____

No. of anticipated full-time positions:

Position Type	Number of Anticipated Positions to be Hired		
	Regular Full-time	Temp Full-time	Seasonal Full-time
Laborers			
Apprentices			
Journeyman			
Licensed Trade			
Professionals			
Administrative/ Clerical			

ATTEST:

By: _____

Date: _____

Name of Organization: _____

Attachment "K"**REQUIRED CITY AND FEDERAL CLAUSES AND CERTIFICATIONS****VENDOR COMPLIANCE WITH THE WORKERS' COMPENSATION ACT**

Any potential contractor shall agree to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If contractor fails to comply with the Workers' Compensation Act and Applicable rules when required to do so, the contract may be canceled effective immediately.

VENDOR COMPLIANCE WITH ADA REQUIREMENTS

Any potential contractor shall insure all proposed products, services or activities contained as a part of the proposal comply with the requirements of the Americans with Disabilities Act and ADAAG requirements; ANSI Accessibility Guidelines and NMBC Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

BREACHES AND DISPUTE RESOLUTION**Applicability to Contracts**

Any contract in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes

Disputes arising in the performance of any contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by the City, contractor shall continue performance as stated herein

while matters in dispute are being resolved.

Claims for Damages

Should any party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies

The duties and obligations imposed by these documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Tierra del Sol, Inc.

Signature _____ Date _____

Company Name _____

Title _____

Signature _____ Date _____

Company Name _____

Title _____

CONFLICTS OF INTEREST

Based in part on federal regulations (24CFR 85.36(b)) and Contract agreement between the developer and the Grantee, or agent of the developer shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The developers officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Developer may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the developer's, employees, or agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. The developer shall not enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the developer, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the developer was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the developer, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the developer and such disclosure is entered upon the minutes of the developer, either, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the developer shall not participate in any action relating to such contract, subcontract, or arrangement.

Date _____

Signature _____

Company Name _____

Title _____

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.

- (1) The developer shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Date _____

Signature _____

Title _____

Date _____

Signature _____

Title _____

CERTIFICATION OF ENERGY CONSERVATION,

AIR QUALITY, AND CLEAN WATER COMPLIANCE

Company/Organization Name:

The third party Contractor named above hereby certifies compliance with the requirements listed below and regulations issued by the Environmental Protection Agency (EPA), Federal Highway Administration, Federal Transit Administration (FTA) and other agencies of the Federal Government as well as future regulations, guidelines, standards, orders, directives or other requirements that may affect this procurement contract.

The above named Contractor will:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C., 7401 et seq.
2. Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C., 1251 et seq.
3. Comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
4. Report any violation of these requirements by a sub recipient or itself, resulting from completing the required manufacturing and delivery of vehicles included with this contract to HUD and the appropriate United States EPA Regional Office.
5. Agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with assistance provided by HUD.

Date _____ Signature _____

Title _____

CERTIFICATION OF RESTRICTIONS ON LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

I, _____, hereby certify on behalf of _____, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub-grants, loans, and cooperative agreement) which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.

As required by 49 CFR part 20, "New Restrictions on Lobbying," I will disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on my behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Executed this _____ day of _____, of 20____.

(Signature of Authorized Official)

(Title of Authorized Official)

RETENTION AND INSPECTION OF RECORDS

A. The City, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the developer's directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The developer agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above, ""Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

The periods of access and examination in paragraphs (a) and (b) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the HA (the City), HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ACCESS TO RECORDS

The Contractor agrees to provide the developer, the HUD Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

COPYRIGHTS AND RIGHTS IN DATA

The City shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, designs and documents discovered or produced by developer or contractors, as appropriate, pursuant to the terms of the contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City of Las Cruces and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Las Cruces, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

False or Fraudulent Statements or Claims.

The Contractor acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection

with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the developer makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate

Name and Title of Authorized Representative

Signature Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS, FOLLOWING PAGE, WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The developer submits that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the developer is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Agreement, the developer is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Housing and Urban Development (HUD) may pursue available remedies, including suspension and/or debarment.
- 5.3. The developer agrees, should the covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HUD.
- 6.4. The developer further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion " in all solicitations for lower tier covered transactions.
- 7.5. A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
- 8.6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 3 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the DOT may pursue available remedies, including suspension and/or debarment.

PRIVACY ACT

The Proposer agrees to comply with all applicable terms in the Privacy Act of 1974; will notify the government when the Proposer anticipates operating a system of records on behalf of the government in order to implement the bid if such system contains information about individuals retrievable by the individual's name or other identifier; and will include in any subcontract the Privacy Act notifications above.

TERMINATION**Flow Down**

The termination requirements of contracts partially or wholly funded by Federal funds flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning. The Proposer, by signing this form, acknowledges that these contract termination provisions will apply to this procurement.

a. Termination for Convenience (General Provision) The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

b. Opportunity to Cure (General Provision) The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

c. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Name and Title of Authorized Representative

Signature

Date

STATE AND LOCAL LAW DISCLAIMER

Flow Down

The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

Name and Title of Authorized Representative

Signature

Date

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the developer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the developer agrees to comply with applicable Federal implementing regulations and other implementing requirements of HUD.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the developer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The developer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the developer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(c) **Disabilities** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the developer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(3) The developer also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

Name and Title of Authorized Representative

AGE DISCRIMINATION ACT

The developer shall comply with all the requirements of the Age Discrimination Act of 1975 42 U.S.C. 6101 et seq. Or with respect to otherwise qualified handicapped persons as provided in section 504 of The Rehabilitation Act of 1973 29 U.S. C. 794.

Name and Title of Authorized Representative

Signature

Date

**MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND LA CASA, INC.
FOR PROGRAM OVERSIGHT, REHABILITATION, PROPERTY OWNERSHIP,
QUALIFYING AND SUPPORTING RENTERS AND ONGOING PROPERTY
MANAGEMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP)**

THIS AGREEMENT is entered into between the City of Las Cruces (herein called the "Grantee") and La Casa, Inc. (herein called the "Developer") under a State-issued NSP Grant; the Developer is a non-profit organization.

WHEREAS, the Grantee has applied for and received funds from the State of New Mexico through the United States Government under Title III of Division B of the Housing and Recovery Act of 2008, Public Law 110-289, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.256.

WHEREAS, the Grantee wishes to engage the Developer to assist the Grantee in utilizing project funds;

NOW THEREFORE in consideration of the mutual covenants and agreements of mutual comprehensibility contained herein, and for other good and valuable consideration under Grant No. _____, the sufficiency and receipt whereof being hereby acknowledged, the Grantee and the Developer agree and follow hereto that;

I. SCOPE OF SERVICE

A. National Objective

The Grantee and Developer certify that the activities carried out with the funds provided under this Agreement meet the CDBG Program's National Objective 570.208(a)(3) – Housing Activities as amended by the Housing and Economic Recovery Act of 2008. That is, acquisition and rehabilitation for the purpose of providing rental opportunities in perpetuity primarily for low-income families.

B. Definitions

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

1. Annual Gross Income (AGI) - means the annual anticipated income for a household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §5.609. AGI is used to determine potential applicant/tenant's initial and ongoing program and income eligibility.
2. Adjusted Annual Gross Income for Family Size – means annual anticipated income for a household adjusted in manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces Metropolitan Statistical Area (MSA). Income contains gross amount of wages, income from assets, regular cash and non-cash

contributions and other resources and benefits determined to be income by HUD as defined in 24 CFR Part 5.609 with adjustments as defined in 24 CFR Part 5.611.

3. Eligible Person or Eligible Household – means one or more natural persons or a family who are determined by the Grantee to be of Low Income or Moderate Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household.
4. Energy Efficiency: Each property rehabilitated with NSP funds must have energy star labels on all replaced appliances, heating and cooling equipment, doors and windows. All accessible piping and ductwork should be insulated.
5. Grant Documents – means this Agreement, the Mortgage and Restrictive 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.
6. Location of Rental Units – All housing units funded through this NSP Grant must be within the limits of the City of Las Cruces.
7. Low-Income Person or Low-Income Household – means one or more natural persons who have a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the Annual Median Income (AMI adjusted for Family Size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD. These households are the priority for rentals under this Grant, consistent with 24 CFR Part 5.653.
8. Moderate Income Person or Moderate Income Household – means one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
9. Program Costs – Program costs under this grant are composed of three major items: (a) Costs of each dwelling – acquisition, appraisal, site assessment, inspections and other fees and rehabilitation (up to \$50,000 per unit). The total cost limit per dwelling is \$140,000 (**NOT FINAL \$**); (b) all costs of qualifying and supporting with appropriate classes tenants living in a unit; and (c) ongoing costs of management and maintenance of each unit.
10. Project – means the acquisition by the Grantee of one or more dwellings within the city limits of the City of Las Cruces, that will be transferred to the Developer and rehabilitated/re-developed by the developer and held as rental units for qualifying individuals and families in perpetuity, subject to the requirements at 24 CFR Part 982.
11. Project Completion – means that the rehabilitation work on each unit contemplated under this Agreement has been completed, the unit has met all CDBG and NSP Program regulations, meets the rental standards for the Americans with Disabilities

Act, received the Certificate of Occupancy by the Grantee, and is made available and rented to qualifying families. Additionally, the final drawdown has been disbursed for the Project, and Project Completion information has been provided to the State for entry into the project completion system established by HUD.

12. Property Amendments – means all qualified properties transferred to the developer from the Grantee under this Agreement as part of Attachments “A” and “B” of the required certifications attached to the Grant Agreement.
13. Rental Requirements – Every dwelling unit is subject HUD’s Fair Market Rent (FMR) limits to ensure that they are affordable to low income persons or households. These rental limits are re-determined by HUD on a regular basis.
14. Rental Unit – A dwelling unit has a minimum of one (1) bedrooms, one (1) full bath. Living Room, Dining Area, Kitchen and storage with at least 650 square feet of living space. If dwelling unit is single family, the property should have a minimum of 150 square feet of outside space front or rear. Each unit must meet the Housing Quality Standards at 24 CFR Part 982.401 at initial occupancy and regular Grantee inspections
15. Tenant Selection and Re-Certification – The Developer shall do an initial review of income eligibility for each prospective tenant. In determining eligibility, the developer acknowledges that the City may examine the source documents evidencing the prospective tenant’s AGI, per 24 CFR Part 5.609. The Developer shall adopt written tenant selection policies consistent with 24 CFR Parts 5.655 and 92.253. All documentation including, but not necessarily limited to, a tenant’s application, verifications, proposed rent and lease terms may be reviewed by the City’s Neighborhood Services Section, its Successors or Assigns, for final approval before a lease is signed and per City monitoring requirements during tenancy (at least every other year).

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the CDBG regulations, or 24 CFR Part 570 (or as cross-referenced therein), or their ordinary dictionary meaning as the context so requires. Please note that the terms “dwelling” and “unit” are used interchangeably throughout.

II. RENTAL PROGRAM DESCRIPTION

The Grantee will purchase, under a separate process, residential properties that have been abandoned or foreclosed upon, or are blighted or unused (with owners willing to sell) in order to deed them to the Developer in perpetuity for use in this rental program for clientele primarily at or below 50% of AMI.

The major features of this award are:

- A. The Developer must organize a team evidencing at least the following: (i) overall management and leadership; (ii) construction with appropriate trades; (iii) consulting real estate brokerage (optional); (iv) case management and renter support with appropriate supportive services; (v) rental subsidy provider(s), as appropriate; and (vi) property management, as appropriate.

- B. The Grantee will purchase an estimated 5-8 properties (units), in consultation with the Developer. The properties will be single family detached houses, preferably, but duplexes, single family attached properties, and other small multifamily properties (generally less than eight (8) units) will be considered.
- C. The Grantee will transfer the Titles for the properties to the Developer prior to rehabilitation, who will own the properties outright and in perpetuity and operate them as rental units. The Developer may partner with subsidized rental program(s) that may be available for these units. It has the option of establishing a special purpose entity to own and operate these properties.
- D. The Developer shall sub-contract appropriate activities, consistent with 24 CFR Part 85 and carry out the rehabilitation/redevelopment, subject to appropriate design standards and City code and a per unit maximum of \$50,000 in hard rehabilitation costs. Costs associated with design, permits, fees, appraisals, etc., are not counted towards the \$50,000 rehabilitation cap. These will be paid directly by the Grant or by Grantee NSP Administrative funds. In rehabilitation, the Developer must follow the energy efficient guidance in Section I.B(4), prior. The Grantee will pay the Design/Build contractor(s) on behalf of the developer as needed.
- E. At the time of rehabilitation completion of each unit (after completion of rehabilitation to code) the property will be appraised by the Grantee. The appraised value must be in the "affordable housing" range, which currently (2008) is not-to-exceed \$140,000 (NOT final \$\$) per unit in Las Cruces. Rental charges before rent subsidy are capped at fair market rents established by HUD. Exceptions and special circumstances will be considered. **NOTE:** At the time of completion of each unit, before rental, each property must be re-appraised. The appraisal must be completed no more than 60 days after the completion of the rehabilitation, so a rental level can be established in relation to value, so coordination with the Grantee is necessary.
- F. The Developer must provide the Grantee with a management plan for approval, to oversee the operation and cash flow of the properties within 120 day's of the signing of this Grant Agreement or no later than 45 days prior to the first occupancy of the first completed rental dwelling, which ever is later. The developer also has the option of hiring a professional management firm to operate these properties. Such contract must be approved in advance of its signing, by the Grantee, and incorporating Sections II.G-J, following.
- G. The Developer must establish separate accounts for rents collected on each property for: (i) a utilities escrow (paid into monthly @ 1/12 annual estimate); (ii) an insurance escrow (same); (iii) on-going maintenance, management and related costs at an amount to be determined by the Grantee; (iv) a case management and direct supportive services fund at an amount to be determined); (v) a tax escrow (1/12 annual estimate) , and (vi) a major maintenance and repair escrow (7% monthly rent per unit). These funds will be maintained through a local lending institution for the life of the property ownership. All expenses paid from rental income are limited to direct operations of these properties.

- H. The priority for the Grantee's Rental NSP is to identify and target those persons making less than 50% of Area Median income (AMI) at the time of occupancy. The Developer may charge a tenant rent of no more than 30% monthly adjusted gross income (AGI). An individual unit may rent for no more than the maximum fair market rent established for that size unit in Las Cruces by HUD.
- I. If the established rent for a unit is greater than 30% of tenant's adjusted monthly gross income, the Developer may partner with/or accept Section 8 Housing Choice Vouchers, Transitional Housing, Supportive Housing, Emergency Shelter and/or Tenant-Based Rental Assistance (TBRA) under HOME, or other sources as appropriate, to make up the difference between tenant-paid and unit rent. In such cases, Monthly Gross income will be adjusted and utilized for the tenant rent calculation, as appropriate to the subsidy program.

NOTE: A prospective renter may not qualify for rent subsidy. In such cases, the rental charge between the tenant's 30 percent of adjusted monthly gross income and the rent level set for that unit must be absorbed by the developer or a designated third party agency.

- J. Tenants will have their income recertified at least annually, or consistent with the rules of the subsidy program(s) utilized. For rent-subsidized individuals and families, continued occupancy for individuals and families shall be consistent with subsidy program rules. For non-subsidized individuals and families, continued occupancy is allowed until such time as their income exceeds 120% of AMI at a subsequent annual recertification, at which time they must find other residences within 60 days of said recertification.
- K. If the units are sold or otherwise disposed of at any time after initial title is granted to the Developer, it, or its successor agencies, must refund to the Grantee all funds originally expended for purchase and rehabilitation for reuse under the NSP, its successors or Assigns, the Community Development Block Grant Program, or for return to the State, as appropriate.

III. PRIORITY LOCATIONS

First priority on properties to be acquired by the Grantee for transfer to the developer are within those areas of greatest identified need and are the following Census Tracts, in order of priority:

First Priority Level		Second Priority Level	
1)	3.00	1)	4.01
2)	5.00	2)	6.00
3)	1.02	3)	7.00
4)	4.02	4)	8.00
5)	2.00	5)	9.00

The need is for all block groups within these Census Tracts. These are within the heart of the city and near jobs, shopping, transit, and government access. Other Census Tracts, outside the First and Second Priority Levels, but within the city limits may be considered, but are not a priority for property identification and selection. See map at Attachment "C".

IV. GRANT AMOUNT AND USE OF FUNDS

A. Recitals

The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.

B. The Grant

Under the terms and conditions of this Agreement, the Grantee agrees to grant the Developer full authority, subject to Grantee oversight, for the redevelopment of the transferred properties., housing counseling, other services as appropriate and all direct costs associated with the additional property transactions to eligible buyers. The grant to the Developer shall be on the terms set forth in this Agreement and Mortgage and Restrictive Covenants, as required by the Grantee and all other documents in the progressive chain of transfers illustrated by Section II.C, prior.

B. Budget

Payments will be made only for the line items listed below:

Renter Planned Line Items	Unit Cost	Multiple Units (#)	TOTAL BUDGET	NSP \$\$\$ ONLY
Developer's Fee (New hire)	11,000	4	44,000	44,000
Real Estate Broker for Agency (not using)	0	0	0	0
Purchase Price w/o broker/appraiser cost	90,000	4	360,000	360,000
Design Fee for Rehab	5,000	4	20,000	20,000
Hard Rehab Costs	27,050	4	108,200	108,200
¹ Hard Rehab Costs (La Casa)	25,000	4	100,000	
Front End Closing Costs (City to developer)				
a. Title	300	4	1,200	1,200
b. Closing	850	4	3,400	3,400
c. Origination	0	4	0	0
d. Survey	300	4	1,200	1,200
e. City Broker/Appraisal Costs Charged Back	5,500	4	22,000	22,000
NSP CAP PURCHASE/REHAB	165,000		560,000	
TOTAL PURCHASE/REHAB	165,000		660,000	560,000
Front End Management costs			6 Months	
Management Overhead costs (pre-occupancy)	145	4	3,480	3,480
Qualifying Renter Costs	145	28	4,060	4,060
Front End Social Services/person (4/household)	225	112	25,200	25,200
Total Front-end costs	515		32,740	32,740
Management Fee OR			All Monthly costs X 36	
Ongoing Property Management	70	4	10,080	10,060

10% of monthly back-end costs

Rent Escrows					
² Rent Subsidy provided by Third parties	550	4	66,000		Subsidy from 30 Mo. of grant rents that allows for turnover
Rent Subsidy for non-eligibles committed by Grantee or third parties					
Insurance Escrow/Reimbursement	60	4	8,640	8,640	Paid by Clients
Tax Escrow/Reimbursement	60	4	8,640	8,640	
Utilities Costs	155	4	22,320		Per year costs
Maintenance Escrow	190	4	27,360	27,360	
Case Mgmt/Services/Reimbursement	2,100	4	25,200	25,200	
Repair/Replacement Escrow	190	4	27,360	27,360	
Total Back-end costs	2,825		129,600	107,260	
In-Kind Costs (List)					
TOTAL FRONT END/BACK END COSTS	3,890		228,340	140,000	
GRAND TOTAL	168,890		888,340	700,000	

Indirect costs cannot be charged to this agreement

D. Payments

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement to the Developer shall not exceed \$700,000 directly or indirectly on the Developers behalf and is expected to be eligible expenses as specified in the budget in Section II.C, above, herein in accordance with the Scope of Service and any approved modifications thereto. Payments are contingent upon compliance with all administrative requirements of Section VII and Attachment "C." It is also understood that all requests for payment or advances shall be in writing and must be submitted by the Developer to the Grantee.

E. Disbursements

The Grantee shall disburse the grant proceeds only after receipt of invoices and certification from the Developer that the portion of work then being billed has been satisfactorily completed. Disbursement of grant proceeds will be to the Developer or by the Grantee on their behalf only after approval by the Grantee of invoices submitted and verification of work completed in accordance with this Agreement and applicable CDBG and NSP guidance and regulations. Notwithstanding anything to the contrary in this Agreement, the Grantee also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the Grantee accordingly. All NSP funds for the project must be disbursed within

four years of the start of the Grantees NSP, April 30, 2013. Any funds, recycled or otherwise neither obligated nor expended 60 days after the end of the grant period (April 30, 2013) will be held by the Grantee and not be available to the Developer.

F. Use of Grant Funds

The Developer shall use the grant proceeds for eligible expenses permitted under applicable CDBG regulations and NSP guidance, and as the same may from time to time be amended, and in accordance with the Scope of Work, Project Schedule and Budget. The Developer shall not use any NSP funds for prohibited purposes as set forth in 24 CFR §570.207 or other CDBG regulations, as the same may from time to time be amended. The Developer does acknowledge and agree that any funds not used in accordance with permitted CDBG regulations must be repaid to the Grantee. The developer does acknowledge and agree if this Project is terminated before completion, either voluntary or otherwise; the Developer must repay any NSP funds invested in the Project to the Grantee.

G. Program Income

There is little expected prospect for Program Income (PI) in this Grant. In the event that any Program Income is generated from the rental proceeds of the NSP grant, it may be retained by the Developer for use within its own programs as approved by the Grantee in accordance with 24 CFR §570.500(a) and 24 CFR §570.504. The Developer must demonstrate that its financial management system will track all proceeds of the NSP grant into its programs, as noted above.

The Grantee reserves the right to disallow the retention of program income by the Developer with an administrative amendment to this Agreement upon review of required operational procedures to track income accrual.

V. TIME OF PERFORMANCE

A. Term of the Agreement

The term of this Agreement shall commence on its effective date, which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through two time periods. The first period of performance will continue through October 31, 2010 and includes all dollar obligations for the original dwellings identified. The second time period runs through April 2013. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the property requirements set forth in this Agreement or any record-keeping or use requirements mandated by CDBG regulations shall survive termination of this Agreement.

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period, the Developer may be reimbursed for expenditures, subject to the time limitations on obligations during the period prior to November 1, 2010.

VI. AMENDMENTS

The Grantee may amend, and the Developer can propose to amend the scope of work of this Agreement at any time, when appropriate. Any budget changes must be limited to comply with the administrative scope of the project as defined in Scope of Services in Part I. Any adjustment or amendment of any change to the scope must be in writing, approved and signed by a duly authorized representative of both organizations and by the Grantee's governing body. Any such amendment shall not invalidate nor relieve the Grantee or Developer from its obligations under this Agreement. Extensions of time are not permitted.

The Grantee may, at its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments by the Grantee result in a change in the funding or the scope of services undertaken as part of this Agreement, such modifications will be incorporated by a written amendment that is signed by the Grantee and the developer.

Any amendments to this agreement are subject to 24 CFR Part 84.25 and the Covenants at Attachment "B."

II. COMMUNICATIONS

Communication and details concerning this Agreement shall be directed in writing, hand delivered, and/or sent by regular mail to the following Agreement representatives:

Grantee

Jerold S. Nachison, Housing
Development Coordinator
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004
Phone: (575) 528-3028
E-mail: jnachison@las-cruces.org

Developer

Ms. Gina Ruiz
Executive Director
La Casa, Inc.
P.O. Box 2463
Las Cruces, NM 88001
(575) 526-2819
gruiz@lacasainc.org

VIII. ADMINISTRATIVE REQUIREMENTS

A. Applicable Laws

The Developer shall comply with all applicable Federal, state and local laws rules and regulations dealing with property acquisition rehabilitation and resale and quality standards whether they are presently or subsequently promulgated. The Developer agrees to comply with any and all the CDBG regulation and NSP guidance, as amended from time-to-time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance forthwith. The Developer shall also comply with all other applicable Federal, state or local statutes, ordinances, rules and regulations including but not limited to all applicable provisions of the Las Cruces' Municipal, Building and Zoning Codes.

B. Financial Management

The Developer agrees to comply with the stipulations of this Agreement and with 24 CFR 570.610, 24 CFR Part 84, Subpart C, Financial and Program Management and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," 24 CFR Part 85 and OMB Circular A-133, "Audits of States, Local Governments and Non-Profits."

C. Documentation and Record-Keeping

The Developer shall keep all financial records for the Project, including source documentation to support how NSP funds were expended, which includes, but is not limited to, cancelled checks, paid bills, payrolls, time and attendance records, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the Grantee to support the expenditures for this Project.

1. Records to be Maintained

The Developer shall comply with 24 CFR Part 570.506 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, State, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all Mortgages, Covenants, and Project financial records, including source documentation to support how NSP funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the Grantee to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.

2. Reports:

The Developer shall submit bi-monthly reports with such reports due by the 15th of each target month. These reports shall show the status of participants in the Developer's program, status of construction progress and status of identifying rental applicants and qualifying them for occupancy and appropriate supportive services.

3. Client Data:

The Developer shall maintain client data demonstrating eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level consistent with 24 CFR Part 5 which shall be used for determining eligibility. Such information shall be maintained in a client file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.

4. Uniform Administrative Requirements:

The Developer and the Grantee shall comply with 24 CFR §570.610 regarding uniform administrative requirements. The Developer shall provide the Grantee with such documentation and records to satisfy its requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

D. Property Standards

The Developer shall comply with the property standards requirements set forth in City and State Law. The Developer shall keep records to document compliance with these property standards. At Project Completion, the each 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.

E. Performance Monitoring

The Grantee will monitor the programmatic and financial performance of the Developer during the pre-occupancy portion of the project and annually to insure that design and construction documents and services provided to the rental applicants are consistent with CDBG rules and regulations and this grant document. There will also be required short annual reports and a certification from the Developer to the Grantee annually during the ownership period delineating appropriate statistics on number of clients for each rental property consistent with Section VII.C.

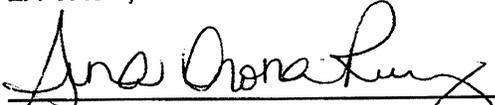
The Grantee will also conduct on-site inspections of the subject property during the construction process and thereafter, in order to verify compliance with property standards.

IX. GOVERNANCE AND SEVERABILITY

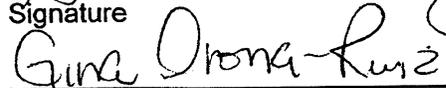
- A. This agreement shall be governed by the laws of the State of New Mexico.
- B. If any provision of this Agreement is held invalid, the reminder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- C. All Attachments are part and parcel of this Agreement and have the same weight and importance as the initial Sections I through VIII.
- D. All certifications in the Attachment Section of this Agreement shall be signed by the Developer as part of the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

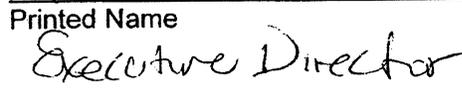
LA CASA, INC.



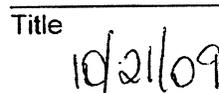
Signature



Printed Name

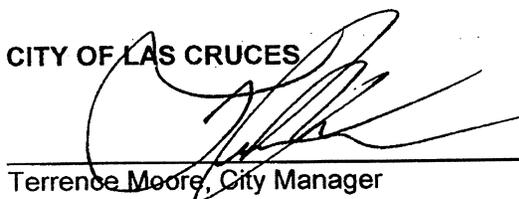


Title

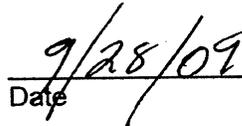


Date

CITY OF LAS CRUCES

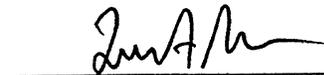


Terrence Moore, City Manager
City of Las Cruces



Date

APPROVED AS TO FORM:



City Attorney

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

Attachment A: Property Documents

AI – Property Sale and transfer from Seller to City.

A2 – Property transfer from City to Developer.

Attachment B: Restrictive Real Estate Covenants for Properties from Grantee to Developer.

Attachment C – Map of Priority Areas.

Attachment D - General Grant Requirements.

Attachment E - Drug-Free Workplace for all Properties.

Attachment F - EEO/AA Clause.

Attachment G - Anti-Lobbying Clause.

Attachment H - Section 3; and

Attachment I - Required City and Federal Clauses and Certifications.

Attachment A

**OPEN FOR
PURCHASE / TRANSFER DOCUMENTS**

Attachment B

**RESTRICTIVE REAL ESTATE COVENANT – _____, Las Cruces,
New Mexico.**

Made in Las Cruces, New Mexico

Date _____

This agreement is made by **La Casa, Inc.**, a New Mexico non-profit organization (herein after referred to as Developer), whose address is P.O. Box 2463, Las Cruces, New Mexico 88001, in favor of **the City of Las Cruces**, a municipal corporation (hereinafter designated as "the City." The premises discussed in this Covenant are at _____. This Covenant is a part of NSP Grant _____, Dated _____ (herein called the "Agreement"). At completion of acquisition, the premises are owned by the Developer, with certain limitations.

I. Recitals:

- A. The following premises described as follows:
- (i) Description of building and premises including legal description (to be added).
 - (ii) Square footage of the property is approximately _____ and square footage of the buildings on the property are _____.
- B. The Developer of that certain real estate (Real Property) in Dona Ana County, New Mexico holds the property in fee simple.
- C. The City has advanced certain sums of money under the Housing and Economic Recovery Act of 2008 (HERA) to the Developer. Such funding benefits the real property of the Owner.
- D. In consideration for the assistance given by the City for the benefit of the Developer it has agreed to restrictions on the use of the real property in order to implement the policies and obligations of HERA and the CDBG program..

II. Restrictive Covenants:

During the term of this Agreement as set forth in Paragraph 4, below:

A. Use of Property:

In exchange for \$_____ to acquire, rehabilitate and rent the premises, as described by the Developer's application of May 8, 2009 the premises of the Developer and as stated herein owned by same and shall be maintained under this Covenant for use of the Developer in perpetuity, with the first priority usage as rentals for low income persons and families as defined annually by HUD.

The real property shall be used as lived-in habitation of record for the new renters.

- B. This Agreement shall be and constitute Covenants running with the real property in perpetuity under the term of this agreement and shall be enforceable by the City using legal and equitable action including injunctive relief.
- C. This Agreement and Restrictive Covenant shall automatically terminate at such time the property may be sold by the Developer, its Successors or Assigns, with the Developer returning to the City its original total investment in the property.
- D. Property Standards.

This project will meet all Housing Quality Standards or other physical property standards regulated by the U.S. Department of Housing and Urban Development and local building code requirements after rehabilitation by the developer.

III. Reporting Requirements

The Developer shall report in writing, at least annually to the City in perpetuity consistent with Section II, prior, of this document. With this report the developer shall also submit a certification that the tenants of the premises are of low to moderate income with those of low and very low income the majority.

IV. Covenants Running with the Real Property

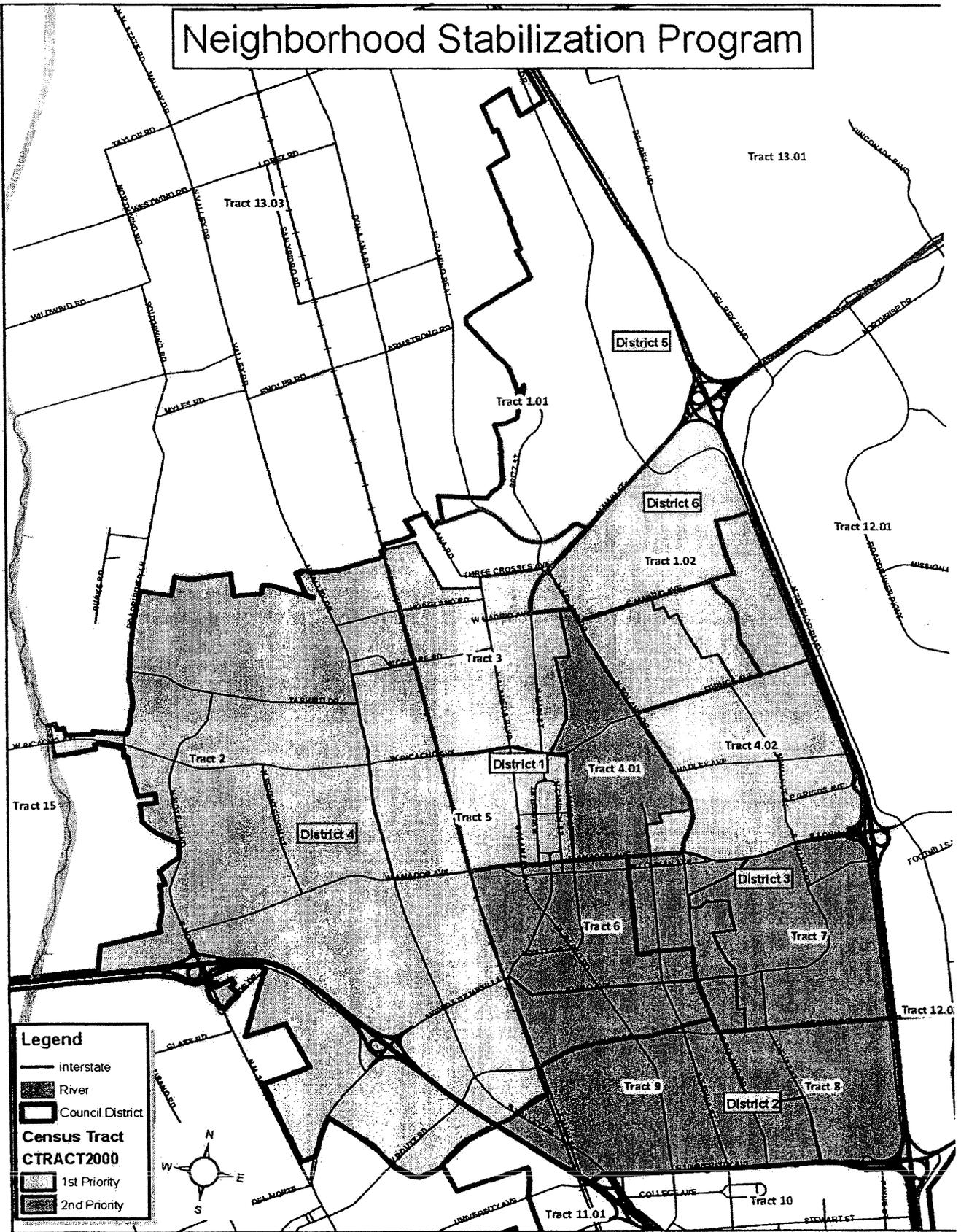
This Agreement shall be and constitute covenants running with the real property during the term of this agreement and shall be enforceable by the City by legal and equitable action, including an auction, for injunctive relief.

V. Binding Effect

Upon execution of this agreement by the developer, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of all parties and of their representatives.

Signatures on the Next Page

Neighborhood Stabilization Program



I. GENERAL GRANT REQUIREMENTS:**A. Audits and Inspections**

The Developer shall comply with the audit provisions contained in 24 CFR §85.26 and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507) and OMB Circular A-133. Audits shall be conducted annually. The Developer agrees to allow the City's Community Development Department, Financial Services Department, and Internal Auditor, or their successors or Assigns, to conduct any audits the City feels necessary at any time during the term of this Agreement or pursuant to any HUD request. The Developer shall submit its annual audit to the Grantee within one hundred twenty (120) days of the end of the Developer's fiscal year.

All Developer records with respect to any matter covered by this Agreement shall be made available to the Grantee, their designees or the Federal government at any time during normal business hours, as often as the grantee deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. One copy of the Developer's reporting package shall be submitted to the Grantee 30 days after receipt of an auditors report or 120 days after the end of the audit period, whichever occurs first. The reporting package shall include:

- a. Financial statements,
- b. Schedule of prior year Audit findings,
- c. Auditors report, and
- d. Corrective action plan that addresses audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Developer or within 30 days after receipt. Failure of the Developer to comply with the above audit requirements will constitute a violation of this Agreement and be subject to sanctions. The Sub-recipient and Owner hereby agree to have an annual agency audit conducted in accordance with current Grantee policy concerning developer audits at 24 CFR Part 570.502(b) and OMB Circular A-133 (Audits of States, Local Governments and non-Profit Organizations), as applicable. It also agrees to allow the City's Community Development Department, Financial Services Department, the Internal Auditor or HUD, upon request, to conduct any audits the City or HUD feels necessary at any time during the term of this Agreement or during the period of the covenants.

B. Suspension or Termination

Any of the parties may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the approved Scope of

Service may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all documents prepared by the developer under this Agreement shall become the property of the Grantee and the Developer shall be entitled to receive just and equitable compensation for any satisfactory work completed on such construction and documents prior to the termination.

The Grantee may also suspend or terminate this Agreement in whole or in part if the developer materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the developer ineligible for further participation in the Grantee's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Developer is not in compliance with any applicable rules or regulations, the Grantee may withhold the one-time payment or such amount that the Grantee determines appropriate. Such suspension will last until such time as the Developer is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

C. Insurance and Bonding

1. General:

The Developer shall carry sufficient insurance coverage to protect Agreement Assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering the Board of Directors and all employees working on this project in an amount equal to cash advances from the Grantee.

2. Insurance Requirements:

The Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the Grantee thirty (30) days prior to commencement of construction and for each year during the period of the lease. The Grantee shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The Grantee, its officers and employees, shall be named as an additional named insured on all policies of liability insurance. The developer shall comply with the bonding and insurance requirements of 24 CFR Part 84, Subpart C, Financial and Program Management, Bonding and Insurance.

- (a) Such policy shall provide that the coverage shall be primary for losses arising out of the developers performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to
- (b) any such loss. The required certificate shall be furnished by the Developer within 30 days of execution of this Agreement or it shall be automatically terminated.

(c) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer shall provide the Grantee with evidence of the renewal of said insurance policies in a form satisfactory to the Grantee.

(d) The Policies of Insurance which must be secured are:

- (i) Commercial General Liability Insurance: The developer must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit of liability shall not be less than One Million Dollars (\$1,000,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than Two Hundred Thousand Dollars (\$200,000) per occurrence for property damage.
- (ii) Worker's Compensation Coverage: All employees of the Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
- (iii) Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations, if necessary.

D. Close-Outs

The Developer's obligations to the Grantee shall not end until all closeout requirements are completed.

- (1) Activities covered in all Annual reports.
- (2) disposition of program assets, if any.
- (3) determining custody of records.

E. Lead-Based Paint:

The Developer shall not use lead-based paint in the project or anywhere on the property and shall comply with 24 CFR Part 570.608 and the Lead Based Paint Poisoning Prevention Act (42 U.S.C. Section 5421-4846).

F. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the three parties. The Developer shall at all times remain "independent contractors" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical

insurance and Worker's Compensation Insurance, as the Developer is an "independent contractor."

G. Hold Harmless

The Developer agrees to defend, indemnify and save harmless the Grantee and its officers, agents and employees from any and all suits, actions and claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from negligence of the developer under this Agreement. However, this hold harmless clause shall not extend to liability claims, damages, losses or expenses, including attorney fees arising out of:

- 1) The preparation or approval of drawings, opinions, reports, change orders, designs and specifications by the Grantee, or its agents or employees, or
- 2) The giving of or failure to give directions or instructions by the Grantee, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily harm to persons or damages to the property.

In the event the Grantee, or its officers, agents or employees, actively participates in such negligence (a) the developer is relieved of its obligation to defend the grantee, and (b) the developer's obligation to indemnify and save harmless is limited to the actual amount representing the developers comparative share of negligence with the Grantee.

H. Grantee Recognition

The Developer shall insure recognition of the role of the Grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as to funding source. In addition, the Developer will include a reference to the support, provided herein, in any publications made possible with funds made available under this Agreement,

I. Use of Real Property

The standards described in this section apply to real property within the Developer's control which was acquired in whole or in part using CDBG funds in excess of \$25,000. The applicable standards are detailed in the Restrictive Covenants, Attachment "B".

J. Reversion of Assets

Upon its expiration, the Developer shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Developer's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 may remain in the possession of the developer subject to the Restrictive Covenants in Attachment "B".

In the event the property is not used in accordance with the national objective, I.A, page 1, above, the Developer shall pay to the Grantee \$_____ or such other amount determined by the Grantee. Any such payment is program income to the Grantee.

K. Travel

Travel by the Developer outside the metropolitan area of Las Cruces or south Dona County is not permitted with funds provided under this Agreement.

L. Religious Organizations

The Developer agrees that all funds and/or programs under this agreement which includes faith-based organizations are subject to the requirements specified in 24 CFR Part 570.200(j), as amended, September 30, 2003.

II. Procurement

Procurement under this agreement is limited to the design and rehabilitation of the aforesaid properties, subject to HUD rules and regulations and prior Grantee approval.

III. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights - Compliance

The Developer agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063; and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

B. Section 504/Americans with Disabilities Act (ADA)

Section 504 and ADA

The Developer agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706) and with the Americans with Disabilities Act of 1990 which expands Section 504 nation and prohibits discrimination against the handicapped in employment, any Federally assisted program and states general architectural accessibility standards.

The Developer agrees to comply with any Federal regulations issued pursuant to compliance by adding discrimination against the handicapped in any public areas, employment, state and local governmental areas and public and private transportation.

The Developer shall also post, one or more signs containing - facility hours, rules, warning signs and emergency telephone numbers, Anti-drug policy, EEO, New Mexico Workforce and Fair Housing Posters, as appropriate. The developer shall make such postings available in alternate formats upon request. The developer shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

C. Affirmative Action (AAP):

1. Approved Plans

The Developer shall prepare and provide to the Grantee an approved AAP and appropriate Tenant Selection plans to the Grantee.

2. Women/Minority Business Enterprise

The Developer will use their best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the subsequent activities of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native American. The Developer may rely on written representations by businesses regarding their status as minority and female business enterprises - in lieu of an independent investigation.

D. Employment Restrictions

1. Prohibited Activity

The Developer are prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities except as provided for in accordance with Attachment F for lobbying; political patronage; and nepotism activities.

2. Assignability

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the developer from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

3. Debarment and Suspension

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

4. Hatch Act

The Developer agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code.

5. Copeland "Anti-Kickback" Act

As applicable, the Developer shall comply with the Copeland "Anti Kickback Act (18 U.S.C. Section 874), as supplemented by the Department of Labor Regulations contained at 29 CFR Part 3.

6. Conflict of Interest (COI)

The Developer agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Developer further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient or Owner hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the developer, or of any designated public agencies, developer that receives funds under the NSP. The Developer is required to keep records supporting requests of waivers of COI and submit COI statements to the Grantee, as so specified.

a. Applicability

In the procurement of supplies, equipment, construction, and services by Developer and by contractors, if any, of the Sub-recipient and Owner the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply. In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this paragraph shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the Developer or its contractors to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or

facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703(i).

b. Conflicts Prohibited

The general rule is that no persons described in Paragraph III.D(7)(c) in its entirety who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part; or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity; either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c. Persons Covered

The conflict of interest provisions of Paragraph III.D(7)(b) herein, apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Developer, or of any designated public agencies, or developer that is receiving funds under this part.

The Developer shall provide to the Grantee a current list of Board of Director members with names, addresses, telephone numbers and positions and of staff who will work on this Agreement. The Developer shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this Agreement for Board members and appropriate staff so identified.

ATTEST:

By: 

10/20/09
Date

By: _____

Date

ATTACHMENT "E" Part 1**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding the Grant.. If it is later determined that the Developer knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The developer will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The developer certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's workplaces and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Developer's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A".
 - D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

- E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - F. Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Developer shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Developer further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

ATTACHMENT "E," Part 2

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of developer: La Casa, Inc.

Program Name: La Casa, Inc.

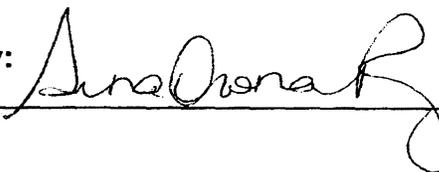
Date: _____

The developer shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

Check if there are work places on file that are not identified here.

ATTEST:

By: 

Date 10/26/07

By: _____

Date _____

ATTACHMENT "E," Part 3

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of Developer:

Program Name:

Date: _____

The Developer shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

Check if there are work places on file that are not identified here.

ATTEST:

By:

Date

By:

Date

ATTACHMENT "F"

**EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE FOR
CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the developer and its contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual preference, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The developer shall state in all solicitations or advertisements for employees placed by or on behalf of the developer that it is an Equal Opportunity or Affirmative Action employer.

ATTEST:

By:

Sara Donahy

Date

10/26/09

By:

Date

ATTACHMENT "G"

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Sub-recipient and Owner shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such ailure.

ATTEST:

By: *Ana Osuna Ruiz*

10/26/09
Date

By:

Date

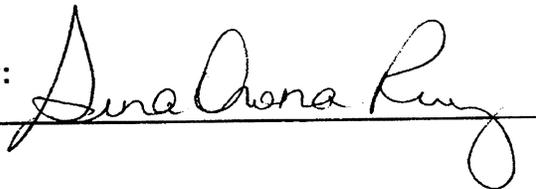
SECTION 3 CLAUSE – SUBRECIPIENTS AND CONTRACTORS

- A. The work to be performed herein is on a project receiving direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be directed to low and very low income persons residing in the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the City and in the area of the Project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.
- C. The contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.
- D. Part 135, and all applicable rules and orders of HUD issued therein prior to the execution of this contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the contractor and subcontractor(s) for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the contractor and subcontractor(s) and assigns to those sanctions identified by the City’s Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- E. The Contractor will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the City of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient or contractor is in violation of the HUD regulations at 24 CFR Part 135. The Subcontractor will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of

at 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- F. The contractor will certify that any vacant employment positions, including those for training, that are filled: (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations at 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under said regulations.
- G. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project and shall be binding upon the contractor or subcontractor(s), its successors or assigns. Failure to fulfill these requirements shall subject the contractor, its successors, and assigns to those sanctions specified by the City Agreement or contract through which Federal assistance is provided, and as are specified by 24 CFR Part 135. These include, but are not limited to, termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- H. The subcontracting parties to the prime contractor of this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The subcontracting parties will sign a separate Section 3 clause certification (this form) prior to contract execution with the prime contractor and the execution of the contract between the prime contractor and the City. The subcontracting parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.

ATTEST:

By: 

Date: 10/26/09

By: _____

Date: _____

ATTACHMENT "I"

EMPLOYMENT NEEDS FOR
SECTION 3 ELIGIBLE CONTRACTS
WITH THE
CITY OF LAS CRUCES

Name of Business: La Casa, Inc.

Type of Business: Corporation Partnership
 Sole Proprietorship Joint Venture

Procurement/Bid/Project
Number: _____

Procurement/Bid/Project
Name: _____

How many current employees are expected to work on this contract?
 _____ Full-time (F/T) _____ Part-time (P/T)

How many additional full-time employees does the contractor plan on hiring for this contract? _____

No. of anticipated full-time positions:

Position Type	Number of Anticipated Positions to be Hired		
	Regular Full-time	Temp Full-time	Seasonal Full-time
Laborers			
Apprentices			
Journeyman			
Licensed Trade		1	
Professionals			
Administrative/ Clerical			

ATTEST:

By: Dina Chana [Signature]

Date: 10/26/09

Name of Organization: La Casa, Inc.

Attachment "J"

REQUIRED CITY AND FEDERAL CLAUSES AND CERTIFICATIONS

VENDOR COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Any potential contractor shall agree to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If contractor fails to comply with the Workers' Compensation Act and Applicable rules when required to do so, the contract may be canceled effective immediately.

VENDOR COMPLIANCE WITH ADA REQUIREMENTS

Any potential contractor shall insure all proposed products, services or activities contained as a part of the proposal comply with the requirements of the Americans with Disabilities Act and ADAAG requirements; ANSI Accessibility Guidelines and NMBC Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts

Any contract in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes

Disputes arising in the performance of any contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by the City, contractor shall continue performance as stated herein while matters in dispute are being resolved.

Claims for Damages

Should any party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

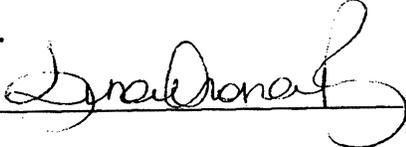
Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies

The duties and obligations imposed by these documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

La Casa, Inc.

Signature  Date 10/29/9

Company Name La Casa Inc.
Title Executive Director

Signature _____ Date _____

Company Name _____
Title _____

CONFLICTS OF INTEREST

Based in part on federal regulations (24CFR 85.36(b)) and Contract agreement between the developer and the Grantee, or agent of the developer shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The developers officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Developer may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the developer's, employees, or agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. The developer shall not enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the developer, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the developer was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the developer, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the developer and such disclosure is entered upon the minutes of the developer, either, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the developer shall not participate in any action relating to such contract, subcontract, or arrangement.

Date 10/26/09
 Signature Dina Orana Rung
 Company Name LaCase, Inc.
 Title Executive Director

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.

- (1) The developer shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Date 10/20/09
Signature Jana Oronaky
Title Executive Director

Date _____
Signature _____
Title _____

CERTIFICATION OF ENERGY CONSERVATION,

AIR QUALITY, AND CLEAN WATER COMPLIANCE

Company/Organization Name:

La Casa, Inc.

The third party Contractor named above hereby certifies compliance with the requirements listed below and regulations issued by the Environmental Protection Agency (EPA), Federal Highway Administration, Federal Transit Administration (FTA) and other agencies of the Federal Government as well as future regulations, guidelines, standards, orders, directives or other requirements that may affect this procurement contract.

The above named Contractor will:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C., 7401 et seq.
2. Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C., 1251 et seq.
3. Comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
4. Report any violation of these requirements by a sub recipient or itself, resulting from completing the required manufacturing and delivery of vehicles included with this contract to HUD and the appropriate United States EPA Regional Office.
5. Agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with assistance provided by HUD.

Date 10/26/99 Signature *Dina Oronaka*
 Title *Executive Director*

CERTIFICATION OF RESTRICTIONS ON LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

I, Gina Orona Ruiz, hereby certify on behalf of La Casa, Inc., that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub-grants, loans, and cooperative agreement) which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.

As required by 49 CFR part 20, "New Restrictions on Lobbying," I will disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on my behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 26 day of October, of 2009

Gina Orona Ruiz (Signature of Authorized Official) Executive Director (Title of Authorized Official)

RETENTION AND INSPECTION OF RECORDS

A. The City, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the developer's directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The developer agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above, "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

The periods of access and examination in paragraphs (a) and (b) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the HA (the City), HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ACCESS TO RECORDS

The Contractor agrees to provide the developer, the HUD Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

COPYRIGHTS AND RIGHTS IN DATA

The City shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, designs and documents discovered or produced by developer or contractors, as appropriate, pursuant to the terms of the contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City of Las Cruces and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Las Cruces, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

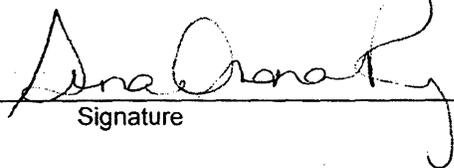
False or Fraudulent Statements or Claims.

The Contractor acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the developer makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate

 Gina Orona-Ruiz, Executive Director
Name and Title of Authorized Representative

 Signature
10/26/09 Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Agreement, the developer is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Housing and Urban Development (HUD) may pursue available remedies, including suspension and/or debarment.
- 5.3. The developer agrees, should the covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HUD.
- 6.4. The developer further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion " in all solicitations for lower tier covered transactions.
- 7.5. A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
- 8.6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 3 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the DOT may pursue available remedies, including suspension and/or debarment.

STATE AND LOCAL LAW DISCLAIMER

Flow Down

The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

Carla Drona-Ruz, Executive Direct

Name and Title of Authorized Representative

Carla Drona Ruz 10/20/09

Signature

Date

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the developer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the developer agrees to comply with applicable Federal implementing regulations and other implementing requirements of HUD.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the developer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The developer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the developer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(c) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the developer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the developer agrees to comply with any implementing requirements HUD may issue.

(3) The developer also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

Name and Title of Authorized Representative

Linda Orona Ruiz, Executive Director

AGE DISCRIMINATION ACT

The developer shall comply with all the requirements of the Age Discrimination Act of 1975 42 U.S.C. 6101 et seq. Or with respect to otherwise qualified handicapped persons as provided in section 504 of The Rehabilitation Act of 1973 29 U.S. C. 794.

Carla Donahue, Executive Director

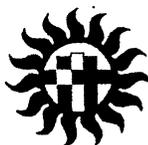
Name and Title of Authorized Representative

Carla Donahue

Signature

10/26/29

Date



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 17 Ordinance/Resolution# 10-097 Council District: 1

For Meeting of September 21, 2009

(Adoption Date)

TITLE: A RESOLUTION APPROVING TWO GRANTS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP), ONE FOR TIERRA DEL SOL AND ONE FOR LA CASA, INC. THE GRANTS PROVIDE OPERATING AUTHORITY TO EACH NON-PROFIT AGENCY TO BECOME NSP PROPERTY OWNERS, REHABILITATE AND SELL THE PROPERTIES TO ELIGIBLE HOMEBUYERS OR MAKE THEM AVAILABLE TO ELIGIBLE RENTERS.

PURPOSE(S) OF ACTION: To provide the documents authorizing the City's NSP grantees to move forward and implement the NSP.

Name of Drafter: Jerry Nachison		Department: Community Development		Phone: 528-3208	
Department	Signature	Phone	Department	Signature	Phone
Community Development		528-3060	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: In July 2008, the U.S. Congress developed and President Bush signed the Housing and Economic Recovery Act of 2008 or HERA. HERA was created to provide neighborhood stabilization to communities throughout the United States with foreclosed and abandoned residential properties due to tough economic times, thus creating the Neighborhood Stabilization Program (NSP). Under HERA, the State of New Mexico received a total allocation of \$19.6 million. The City applied for and received \$1.5 million from the State Department of Finance and Administration, Local Government Division in April 2009.

The City developed and issued competitive requests for qualifications to a list of eligible applicants. The two cited non-profits were selected in late spring 2009. The City is awarding a grant to each that provides the ability to receive property from the City and carry out all necessary rehabilitation work. Tierra del Sol will receive \$695,000 and La Casa, Inc. will receive \$700,000. After rehabilitation, Tierra del Sol will sell the properties to eligible homebuyers. The proceeds for the sale will come back to the City and be recycled into additional property purchases. After rehabilitation, La Casa, Inc. will hold the properties in perpetuity as affordable rental units for low income individuals or families.

(Continued on page 2)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
HUD Special Projects		
Tierra del Sol / 20184230-TBD	\$695,000.00	\$695,000.00
La Casa / 20184230-TBD	\$700,000.00	\$700,000.00

1. Exhibit "A" – Resolution
2. Exhibit "B" – Grant Agreement, Tierra del Sol
3. Exhibit "C" – Grant Agreement, La Casa, Inc.

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution formalizing the two cited NSP grant agreements.
2. Vote NO and disapprove the Resolution, thus not approving authorization for the two grantees. Such action puts the City's NSP on hold, requiring further discussions on the rationale for non-approval. The City's compliance with NSP required timetables could be endangered, possibly requiring some reversion of funds to the State at a later date.
3. Modify the Resolution and vote YES to approve a modified Resolution. This action will be based on the Council's discretion and may or may not impact implementation of the NSP.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff. Tabling or postponing could jeopardize the City's ability to utilize these funds from the State due to HUD's established deadlines.