

75  
**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 7      Ordinance/Resolution# 09-298      Council District: 1

For Meeting of June 15, 2009

(Adoption Date)

**TITLE:** A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS AGREEMENT (HOME) BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE DEVELOPMENT AND CONSTRUCTION OF AFFORDABLE HOUSING FOR PROPERTY AT THE SOUTHEAST CORNER OF PICACHO AND VIRGINIA STREETS. THIS RESOLUTION ALSO APPROVES AN AFFORDABLE HOUSING GRANT AGREEMENT AND REAL ESTATE PURCHASE AGREEMENT FOR THE SALE OF CITY OWNED PROPERTY TO HABITAT FOR HUMANITY.

**PURPOSE(S) OF ACTION:** Approve a HOME Investment Partnerships Agreement, an Affordable Housing Grant Agreement and a Real Estate Purchase Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity.

<b>Name of Drafter:</b> Jan Lauterbach <i>JL.</i>		<b>Department:</b> Community Development <i>CD</i>		<b>Phone:</b> 528-3134	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Community Development	<i>[Signature]</i>	528-3066	Budget	<i>[Signature]</i>	541-2300
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2073

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program, in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs. The City Council approved Resolution 07-340 adopting the 2007 Action Plan, which as amended, allocated funding in the amount of \$89,746.86 to Mesilla Valley Habitat for Humanity, a Community Housing Development Organization (CHDO), for the production of affordable housing. Remaining funds from the 2007 Action Plan in the amount of \$44,746.86 that are available for allocation will be used for eligible HOME construction expenses in the development of affordable housing.

The City of Las Cruces acquired a parcel of land in the amount of \$14,650.00 in 2004 through the Street Maintenance Fund for the purpose of a road realignment. The property, located at the southeast corner of Picacho and Virginia Streets, has been vacant since the City's purchase. Mesilla Valley Habitat for Humanity, as a Qualifying Grantee under the City's Affordable Housing General Oversight Ordinance, identified the property and desires to

(Continued on page 2)

purchase the property for the development and new construction of affordable housing. The property currently appraises for \$30,000.00, plus annual maintenance costs estimated at \$807.36 by the City since its purchase. The City would like to sell the property to Habitat for Humanity for the original purchase price (\$14,650.00) plus the amount of annual maintenance (5 x \$807.36 = \$4,036.80) the City has spent on the property during its period of ownership for a total sales price of \$18,686.80. As the property will be developed as affordable housing for low income households, it is the desire of the City to grant the equity in the property of \$11,313.20 to Habitat for Humanity for the benefit of the household. The equity is to be granted through the Affordable Housing Grant Agreement, as the difference between the appraised value and the sales price, plus City maintenance expenses, to maintain the property's affordability during a 20- year affordability period.

In order to comply with HOME regulations, a HOME Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity as shown in Exhibit "A" is required to be executed. In order to complete the sale of the property and grant the equity in the property to Mesilla Valley Habitat for Humanity, the attached Affordable Housing Grant Agreement, as shown in Exhibit "B," and the Real Estate Purchase Agreement, as shown in Exhibit "C," must also be executed.

#### **SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
CHDO Set Aside – MV Habitat 2000-20184170-722190-11205	\$44,746.86	\$44,746.86

1. Resolution
2. Exhibit "A" – HOME Agreement
3. Exhibit "B" - Affordable Housing Grant Agreement
4. Exhibit "C" – Real Estate Purchase Agreement
5. Attachment "D" – Resolution 07-340

#### **OPTIONS / ALTERNATIVES:**

1. Vote YES and approve the Resolution authorizing the HOME Agreement, Affordable Housing Grant Agreement and the Real Estate Purchase Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity. This action will allow the sale of the property and grant of equity to Habitat and the grant of HOME funds for the construction of affordable housing at the proposed location.
2. Vote NO and deny the Resolution authorizing the Agreements between the City of Las Cruces and Mesilla Valley Habitat for Humanity. This action will not allow for the sale of the property and the development of affordable housing at the proposed location.
3. Modify the Resolution and vote YES to approve the modified Resolution.
4. Table/Postpone the Resolution and direct staff accordingly.

RESOLUTION NO. 09-298

A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS AGREEMENT (HOME) BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE DEVELOPMENT AND CONSTRUCTION OF AFFORDABLE HOUSING FOR PROPERTY LOCATED AT THE SOUTHEAST CORNER OF PICACHO AND VIRGINIA STREETS. THIS RESOLUTION ALSO APPROVES AN AFFORDABLE HOUSING GRANT AGREEMENT AND REAL ESTATE PURCHASE AGREEMENT FOR THE SALE OF CITY OWNED PROPERTY TO HABITAT FOR HUMANITY.

The City Council is informed that:

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

**WHEREAS**, the City Council approved Resolution 07-340 adopting the 2007 Action Plan, which as amended, allocated funding in the amount of \$89,746.86 to Mesilla Valley Habitat for Humanity (MVHFH), a Community Housing Development Organization (CHDO) for the production of affordable housing; and

**WHEREAS**, the City Council approved Resolution 09-118 allocating \$45,000.00 to a now completed single family residence project by MVHFH, thus leaving \$44,746.86 available for allocation; and

**WHEREAS**, the \$44,746.86 available for allocation will be used for eligible HOME construction expenses in the development of affordable housing; and

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

**WHEREAS**, the City of Las Cruces acquired a parcel of land in the amount of \$14,650.00 in 2004 through the Street Maintenance Fund for the purpose of road realignment; and

**WHEREAS**, the property located at the southeast corner of Picacho and Virginia Streets has been vacant since the City's purchase and currently appraises at \$30,000.00 with annual maintenance costs estimated at \$807.36; and

**WHEREAS**, MVHFH identified the property and desires to purchase the property for the development and new construction of affordable housing by executing a real estate purchase agreement; and

**WHEREAS**, the City of Las Cruces would like to sell the property to MVHVH for the original purchase price, plus the amount of annual maintenance the City has spent during its period of ownership, for a total sale price of \$18,686.80; and

**WHEREAS**, it is the desire of the City of Las Cruces to grant the equity in the property to Habitat for Humanity for the benefit of the household by executing an Affordable Housing Grant Agreement.

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

(I)

**THAT** the HOME Investment Partnerships Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," the Affordable

Housing Grant Agreement, as shown in Exhibit "B," and the Real Estate Purchase Agreement for the sale of the property, identified at Exhibit "C", attached hereto and made part of this resolution, are all hereby approved.

(II)

THAT the City Manager, as the official representative of the City, is hereby authorized to sign the HOME and Affordable Housing Grant Agreements on the City's behalf and the Mayor is authorized to sign the Purchase Agreement.

(III)

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

DONE and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

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

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

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

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Archuleta: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Jones: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:

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

**HOME PROGRAM  
AGREEMENT BETWEEN  
THE CITY OF LAS CRUCES  
AND  
MESILLA VALLEY HABITAT FOR HUMANITY**

This **HOME AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City") and **MESILLA VALLEY HABITAT FOR HUMANITY**, a non-profit organization, whose address is 720 N. Santa Fe Street, Las Cruces, New Mexico 88001 (hereinafter referred to as "Sub-recipient").

**WITNESSETH:**

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

**WHEREAS**, the recipient has submitted a proposal to utilize Forty Four Thousand Seven Hundred Forty-Six Dollars and Eighty-Six Cents (\$44,746.86) in HOME funds for the development and construction of property, located on the property more specifically described on the attached **Attachment "A"** (hereinafter referred to as "Property");

**WHEREAS**, the new construction of single-family or multi-family, owner-occupied affordable housing is an eligible activity under the HOME Program; and

**WHEREAS**, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Sub-recipient regarding the use of funds to benefit low-income persons, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), a copy of which document for the current year is attached hereto as **Attachment "B"** and is incorporated herein by this reference;

**WHEREAS**, the parties acknowledge that this agreement is subject to completion of an satisfactory environmental assessment on the subject property.

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

## SECTION 1. DEFINITIONS

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

1. Adjusted for Family Size – 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).
2. Affordable or Affordability – is 20 years as defined in Section 3, Paragraph 2 of this Agreement.
3. Affordability Period – if the subsidy per lot is \$1 to \$14,999, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy per lot is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of the Mortgage; if the subsidy per lot is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage; or if the subsidy is for new construction or acquisition, then the Affordability Period is twenty (20) years from the date of the Mortgage. The Affordability Period will begin on the date of the Mortgage.
4. Annual Gross Income – 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.
5. Displaced Person – a person (family or individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds, and as further defined in 24 CFR Part 92.
6. Eligible Person or Eligible Household – one or more natural persons or a family who are determined by the City to be of Extremely Low, Very Low, or Low Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household.
7. Extremely Low Income Person or Extremely Low Income Household – one or more natural persons who has a total Annual Gross Income for the household that does not exceed thirty percent (30%) 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.
8. HUD – the United States Department of Housing and Urban Development, its successors or assigns.
  9. Grant Documents – 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.
  10. Low Income Housing – housing that is Affordable to Low Income Persons.
  11. Low Income Person or Low Income Household – 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.
  12. Owner-Occupied – if, at any time during the term of the Affordability Period, the Property ceases to be 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 HUD, and will use the Property as its principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Grant was committed to the Property.
  13. Project – the acquisition of and new construction of one or more owner occupied, single-family units within the Property, in which all units shall be exclusively occupied by Extremely Low Income Person, Very Low Income Person or Low Income Persons.
  14. Project Completion – that the new construction work on all of the units contemplated under this Agreement has been completed, all of these units have met all HOME Program regulations, received the Certificate of Occupancy by the City, and all of the units are occupied by qualified homeowners, the final drawdown has been disbursed for the Project, and Project Completion information has been entered in the Integrated Disbursement and Information System (IDIS) established by HUD.
  15. Property - All that certain real property located in the county of Dona Ana, State of New Mexico, described as Lots 11, 12, and 13, , Block 6 of Cox's First Subdivision. See attached **Attachment "A"** for full legal description.

16. Very Low Income Person or Very Low Income Household – one or more natural persons or a family whose has 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 within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the HOME regulations, or 24 CFR Part 92, or as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

## SECTION 2. GRANT AMOUNT AND USE OF FUNDS

1. Recitals: The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.
2. The Grant: Under the terms and conditions of this Agreement, the City agrees to grant the Sub-recipient Forty Four Thousand Seven Hundred forty Six Dollars and Eighty-Six Cents (\$44,746.86) for the development and construction of the Property. The grant to the Sub-recipient shall be in the form of a grant on the terms set forth in this Agreement and Mortgage and Restrictive Covenants, as required by the City. The Sub-recipient shall secure a Mortgage and Restrictive Covenants on the Property (the "Mortgage") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.
3. Disbursement: All grant funds must be disbursed within one (1) year of execution of this Agreement. This provision herein shall not be extended; unless a one-time extension is requested and approved by the City and the Sub-recipient.

The City shall disburse the grant proceeds for eligible expenses only after approval by the City of invoices submitted and verified in accordance with this Agreement and applicable HOME regulations. Notwithstanding anything to the contrary in this Agreement, the City 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 City accordingly.

4. Use of Grant Money: The Sub-recipient shall use the grant proceeds for eligible construction expenses permitted under applicable HOME regulations and as set forth in 24 CFR §92.206, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "D"** and incorporated herein by this reference. The Sub-recipient shall not use any HOME funds for prohibited purposes as set forth in 24 CFR §92.214 or

other HOME regulations, as the same may from time to time be amended. The Sub-recipient acknowledges and agrees that any funds not used in accordance with permitted HOME regulations must be repaid to the City. The Sub-recipient acknowledges and agrees if this Project is terminated before completion, either voluntary or otherwise, the Sub-recipient must repay any HOME funds invested in the Project to the City. The Sub-recipient shall keep all financial records for the Project, including source documentation to support how HOME 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 City to support the expenditures for this Project.

5. Layering Review: It is the City's responsibility under HOME regulations, and more specifically 24 CFR §92.250, to evaluate the use of other local, state, or federal assistance in HOME-assisted projects to ensure that it does not invest any more HOME funds than are necessary to provide Low Income Housing. The Sub-recipient must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was submitted.
6. Program Income: Any program income generated from the proceeds of the HOME grant may be retained by the Sub-recipient for additional HOME projects in accordance with 24 CFR §92.503 (a) and 24 CFR §92.504 (c)(2)(ii). The sub-recipient must demonstrate that its financial management system will track all proceeds of the HOME grant to additional HOME eligible projects. The Sub-recipient may only invest its HOME program income in eligible projects within the participating jurisdiction boundaries.
7. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through the end of the twenty (20) year Affordability Period. 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 HOME regulations shall survive termination of this Agreement.
8. Payment: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$44,746.86. Payment requests are due by the fifteenth (15<sup>th</sup>) day of each month. If no payment request is needed for a particular month, the Sub-recipient must submit in writing that no payment request is required for that particular

month. The Sub-recipient agrees to use the Payment Request form as referenced in **Attachment "E."** Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 24 CFR Part 84, Subpart C, "Financial and Program Management."

9. HOME Match Requirement: The Recipient and Sub-recipient are exempt from HUD's matching requirements in 24 CFR §92.220 per CPD notice 07-05 issued July 11, 2007 and expiring July 11, 2008; however the exemption from the match requirement is applicable in the subsequent year from the date of the notice.

### SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Sub-recipient shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Sub-recipient agrees to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, and 24 CFR Part 92, 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 therewith. The Sub-recipient also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Municipal, Building, and Zoning Codes.
2. Period of Affordability/Restrictive Covenant: All HOME-assisted units shall be maintained as Affordable housing for the Affordability Period. To be classified as Affordable housing, it is required that the owner shall maintain the Property as Owner Occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the HOME assistance/subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the date of the Mortgage; if the HOME assistance/subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of Mortgage; if the HOME assistance/subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage; or if the subsidy is for new construction or acquisition, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the date of the Mortgage. In order to ensure compliance with the Affordability Period, the Sub-recipient, as developer, of the Property, shall execute a Mortgage and Restrictive Covenants, a copy of which is attached hereto as **Attachment "C"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Sub-

recipient acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Mortgage which requires resale of the HOME unit to another eligible person or household, if the Project does not meet the Affordability requirements for the Affordability Period.

3. Property Standards: The Sub-recipient shall comply with the property standards requirements set forth in 24 CFR §92.251. The Sub-recipient shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, and zoning ordinances. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, as applicable.
4. Monitoring: The City will monitor both the financial and programmatic performance of the Sub-recipient on an annual basis during the Affordability Period. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within 30-days of time after being notified by the City, Agreement suspension or termination procedures will be initiated.
5. Records: The Sub-recipient shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Sub-recipient 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 Sub-recipient shall make all records available to the City, HUD, and to their respective representatives during normal business hours. The Sub-recipient shall maintain all mortgages and Project financial records, including source documentation to support how HOME 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 City 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 Sub-recipient 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.
6. Reports: The Sub-recipient shall submit monthly reports with such reports due by the 15<sup>th</sup> of each month. These reports shall include information on status of participants in the Sub-recipient's Program, status of construction

progress, and status of identifying land for future affordable housing development.

7. Beneficiary Data: The Sub-recipient shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Sub-recipient will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary file by the Sub-recipient and shall be made available to the City's monitors and/or their designees for review upon request.
8. Uniform Administrative Requirements: The Sub-recipient and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Sub-recipient shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Sub-recipient 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.
9. Audits: The Sub-recipient 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 Sub-recipient agrees to allow the City's Community Development Department, Financial Services Department, and Internal Auditor to conduct any audits the City feels necessary at any time during the term of this Agreement or pursuant to any HUD request. The Sub-recipient shall submit its annual audit to the City and within one hundred twenty (120) days of the end of the Sub-recipient's fiscal year.
10. Compliance with Davis-Bacon Act: The Sub-recipient, as applicable, shall comply with 24 CFR §92.354 and all applicable provisions of the Davis-Bacon Act (40 U.S.C. §276a, et seq.) and implementing labor regulations contained in 29 CFR Part 5. The Sub-recipient shall also comply with the Contract Work and Hours and Safety Standards Act (40 U.S.C. §§327-332), and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1, as applicable. The Sub-recipient shall maintain records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.
11. Copeland "Anti-Kickback" Act: As applicable, the Sub-recipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

12. Debarment and Suspension: The Sub-recipient shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Sub-recipient shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Sub-recipient has entered into a contract or subcontractor with a debarred or suspended party, no HOME funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Sub-recipient shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.
13. Drug-Free Workplace: The Sub-recipient shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Sub-recipient agrees to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "F"** and incorporated herein by reference. The Sub-recipient will complete this certification, and a copy will be kept in the files of each party.
14. Utilization of Minority/Women's Business Enterprises: The Sub-recipient shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Sub-recipient shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Sub-recipient shall keep such records necessary to comply with 24 CFR §92.508(a)(7).
15. Section 3 Economic Opportunity: The Sub-recipient shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 CFR Part 135 regarding economic development opportunities for Low and Very Low Income Persons. The Sub-recipient shall comply with the "Section 3" requirements attached hereto as **Attachment "G"** and incorporated herein by this reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Very Low and Low Income Persons residing in the Project Area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the area. The Sub-recipient shall keep records documenting compliance with these requirements as required by 24 CFR §92.508 (a)(7).

16. Equal Employment Opportunity: The Sub-recipient shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "H"**, and incorporated herein by this reference. Any contracts entered into by the Sub-recipient shall include a provision requiring compliance with these regulations. The Sub-recipient shall keep records and documentation demonstrating compliance with these regulations.
17. Conflict of Interest: The Sub-recipient shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Sub-recipient who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. The Sub-recipient shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.
18. Anti-Lobbying Provision: The Sub-recipient shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Sub-recipient shall complete and comply with the "Certification Regarding Lobbying", attached hereto as **Attachment "I"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's files. The Sub-recipient shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.
19. Displacement and Relocation: The Sub-recipient shall comply with the provisions of 24 CFR §92.353, "Displacement, relocation, and acquisition." It is anticipated that no displacement and relocation will occur as the result of new construction.
20. Lead-Based Paint Prohibited: The Sub-recipient shall not use lead-based paint in the Project or anywhere on the Property and shall comply with 24 CFR §92.355, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, J, K, M, and R. The Sub-

recipient shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

21. Non-Discrimination and Equal Opportunity: The Sub-recipient shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Sub-recipient shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, the nondiscrimination requirements at Section 282 of the HOME Investment Sub-recipients Act, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Sub-recipient shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Sub-recipient shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Sub-recipient shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered into by the Sub-recipient shall include a provision requiring compliance with these regulations. The Sub-recipient shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
22. Fair Housing Act: The Sub-recipient shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-65, et. seq., and shall keep all records demonstrating compliance.
23. Affirmative Marketing: The Sub-recipient and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Sub-recipient and the City shall keep records necessary to comply with 24 CFR §92.508(a)(7).
24. Miscellaneous Federal Requirements: The Sub-recipient shall comply with the federal requirements set forth in 24 CFR Part 5, Subpart A.

25. Religious Organizations: The Sub-recipient shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.
26. Financial Accountability: The Sub-recipient shall have financial accountability standards that conform to the requirements detailed in 24 CFR §84.21, "Standards for Financial Management Systems" and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
27. Environmental Review: The Project will be assessed and comply in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.
28. Reversion of Assets: Upon the Agreement's expiration, the Sub-recipient shall transfer to the City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.

#### **SECTION 4. DEFAULTS AND REMEDIES**

1. Events of Default: The following shall constitute an Event of Default under this Agreement:
- a) If the Sub-recipient fails to comply with any regulations governing HOME Program awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by the City to the Sub-recipient;
  - b) If the Sub-recipient is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;
  - c) If at any time any material representation made by the Sub-recipient in any written certification or communication submitted by the Sub-recipient to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
  - d) If the Sub-recipient does not disclose to the City, upon demand, the names of all persons with whom the Sub-recipient has contracted

or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and

- e) If any default shall occur under the Mortgage and Restrictive Covenants, or any Grant Documents executed in connection with this grant by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Grant Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Sub-recipient thereof.

Notwithstanding any of the foregoing provisions to the contrary, if the Sub-recipient has failed to cure any default within five (5) days prior to the expiration of any applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

- 2. No Waiver: Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.
- 3. Remedies: Upon the occurrence of any uncured Event of Default or any other breach of this Agreement, the City shall be free to terminate this Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of this Agreement, or other Grant Documents, statutory law, equity, or under common law. The City may also exercise any one or more of the actions contained in 24 CFR §85.43(a)(1-5). All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to it.

## **SECTION 5. INDEMNIFICATION**

- 1. Environmental Indemnification: The Sub-recipient shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such

adverse environmental condition. The existence of this indemnification agreement shall not be construed as an indicia of ownership, management or control of the Property by the City, and the Sub-recipient hereby recognizes and acknowledges that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Mortgage and Restrictive Covenants, or other Grant Documents to the contrary, this indemnification provision shall survive closing.

## SECTION 6. INSURANCE

1. Insurance: Without limiting the Sub-recipient's indemnification, the Sub-recipient 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 City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.
  - a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Sub-recipient's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.
  - b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Sub-recipient shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.
  - c) The Policies of Insurance which must be secured are:
    - i. Commercial General Liability Insurance: The Sub-recipient must secure commercial property liability insurance to included, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than Five Hundred Thousand Dollars (\$500,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than One Hundred

Thousand Dollars (\$100,000) per occurrence for property damage.

- ii. Worker's Compensation Coverage: All employees of the Sub-recipient must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
- iii. Flood Insurance: The Sub-recipient shall provide Flood Insurance as required under applicable HUD regulations and where applicable.

## SECTION 7. MISCELLANEOUS PROVISIONS

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City.
2. No Sub-recipient or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Sub-recipient with respect to the Program. The Sub-recipient is not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Sub-recipient for any purpose.
3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.
4. Entire Agreement/Modification: This Agreement, together with **Attachments "A" through "I"** attached hereto, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Sub-recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Sub-recipient from its obligations under this Agreement. The City may, in 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 result in a change in the funding, scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and the Sub-recipient.

5. Notices: Whenever by the terms of this Agreement,, notice shall be given to either party, such notice shall be in writing and shall be hand delivered, sent by regular mail, or sent electronically to:

A. Neighborhood Programs Specialist (HOME)  
Community Development Department  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, New Mexico 88004  
(505) 528-3134

B. Ed Johnson, Executive Director  
Mesilla Valley Habitat for Humanity  
720 N. Santa Fe  
Las Cruces, New Mexico 88001  
(505) 525-0475

6. Compliance With All Laws: Notwithstanding anything to the contrary, the Program shall be operated consistent with all applicable federal, state, and local laws and regulations.

7. Governing Law: This Agreement shall be construed in accordance with the laws of the State of New Mexico.

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

**MESILLA VALLEY HABITAT FOR HUMANITY**

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

\_\_\_\_\_  
Date

**CITY OF LAS CRUCES**

\_\_\_\_\_  
City Manager  
City of Las Cruces

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

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

**ATTACHMENT "A"****LEGAL DESCRIPTION**

Lots 11, 12, 13, Block 6 Cox's First Subdivision, in the City of Las Cruces, Dona Ana County, New Mexico as shown and designated on the plat thereof filed in the office of the County Clerk of said county on September 21, 1910 on Book 4, Page 20 of Plat Records.

## ATTACHMENT "B"

STANDARDS OF ELIGIBILITY - 2009 INCOME LIMITS

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

<p align="center"><b>HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size</b></p> <p align="center"><b>EFFECTIVE DATE, March 19, 2009</b></p> <p align="center"><b>MEDIAN FAMILY INCOME (MFI): \$43,000</b></p>					
<b>FAMILY SIZE * # OF PERSONS</b>	<b>EXTREMELY LOW INCOME (30% of Median)</b>	<b>VERY LOW INCOME (50% of Median)</b>	<b>LOW INCOME (80% of Median)</b>	<b>MODERATE INCOME (100% of Median)</b>	
1	\$9,300	\$15,450	\$24,700	\$30,100	
2	\$10,600	\$17,650	\$28,250	\$34,400	
3	\$11,950	\$19,850	\$31,750	\$38,700	
4	\$13,250	\$22,050	\$35,300	\$43,000	
5	\$14,300	\$235,800	\$38,100	\$46,440	
6	\$15,350	\$25,600	\$40,950	\$49,880	
7	\$16,450	\$27,350	\$43,750	\$53,320	
8	\$17,500	\$29,100	\$46,600	\$56,760	

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

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

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

## CITY OF LAS CRUCES

### MORTGAGE AND RESTRICTIVE COVENANTS AGREEMENT

#### Mortgage of Property

Date: \_\_\_\_\_

The City of Las Cruces has granted funds for construction to its agent, Mesilla Valley Habitat for Humanity (under a separate Agreement between the City and Habitat for Humanity), which has loaned the granted funds to the Owner.

\_\_\_\_\_, ("Owner") for consideration paid, grants to the Mesilla Valley Habitat for Humanity, a non-profit organization, having an office located at 720 N Santa Fe St., Las Cruces, NM, 88001 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of \_\_\_\_\_, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

#### Mortgage Covenants

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

- (a) The performance of all of Owner's obligations and agreements contained in this Agreement, and
- (b) The conditions and obligations imposed upon the use of the Property contained herein.

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

#### Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity, in the amount of \_\_\_\_\_ ("Grant and/or Loan") for HOME eligible construction costs. The Grant and/or Loan will be made to the Owner through the Lender's HOME Investment Partnerships Program pursuant to Title 24 of the Code of Federal Regulations Part 92, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the grant and/or 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. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of the Mortgage; if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage; or if the subsidy is used for new construction or acquisition, then the Affordability Period is twenty (20) years. 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, Mesilla Valley Habitat for Humanity.
- C. Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Owner agrees that the entire Loan will be due and payable upon any such unapproved sale or transfer except as provided for in Paragraph (E).
- D. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the 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 Grant and to otherwise comply with all the terms and conditions of this Agreement.



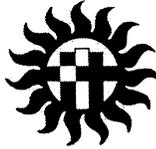
**ATTACHMENT "D"****(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)**

Mesilla Valley Habitat for Humanity identified a section of vacant infill City owned property for purchase and proposes to construct an owner-occupied affordable housing unit(s) on the property located at the southeast corner of Picacho and Virginia Streets. The vacant land was purchased by the City of Las Cruces in 2004 for a road realignment project from the Street Maintenance Fund.

The sale to Habitat for Humanity will reimburse the Street Maintenance Fund, the original sales price plus estimated annual maintenance costs for the time period the property was under City ownership. Habitat will purchase the property with private funds and the Federal HOME funds will only be used to help with eligible construction costs and not the property acquisition. The constructed dwelling(s) will be offered for sale through Habitat for Humanity as affordable to a low income household(s) earning less than 50% of the area medium income.



(PAYMENT REQUEST FORM)



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

**INVOICE**

Date \_\_\_\_\_

Agency Name Mesilla Valley Habitat for Humanity  
Project Name Lots 11, 12, 13, Block 6, Cox's First Subdivision

Original contract balance **\$ 44,746.86**

Balance as of end of previous month

**Invoice Expenses:**

\$

**GRAND TOTAL:** \$

**Remaining Balance:** \$ \_\_\_\_\_

**Certification:**

I, \_\_\_\_\_, as \_\_\_\_\_  
of \_\_\_\_\_,  
hereby certify that the information provided on this invoice is for reimbursement  
for eligible development and construction expenses incurred in the month of \_\_\_\_\_  
for Mesilla Valley Habitat for Humanity, a Community Housing  
Development Organization.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT "F"****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 Sub-recipient 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 Sub-recipient will comply with the other provisions of the Act and with other applicable laws.

**CERTIFICATION**

1. The Sub-recipient 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 Sub-recipient's workplace 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 Sub-recipient'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 Sub-recipient 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 Sub-recipient 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.

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

**Name of Subgrantee:** Mesilla Valley Habitat for Humanity

**Program Name:** Mesilla Valley Habitat for Humanity

**Date:** \_\_\_\_\_

The Sub-recipient 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):

Lots 11, 12, 13, Block 6 Cox's First Subdivision

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

**ATTEST:**

**MESILLA VALLEY HABITAT FOR  
HUMANITY**

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

\_\_\_\_\_ Date

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

\_\_\_\_\_ Date

**ATTACHMENT "G"****SECTION 3 CLAUSE**

- A. The work to be performed under this contract is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is 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 given to lower income residents of 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 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 the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.
- C. The Sub-recipient 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, shall 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. The Sub-recipient will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Sub-recipient will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 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.

- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its subrecipients, and its successors, and assigns to those sanctions specified by the HOME 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 for default and debarment and suspension from future HUD-assisted contracts.

**ATTEST:**

**MESILLA VALLEY HABITAT FOR HUMANITY**

By:

\_\_\_\_\_

\_\_\_\_\_ Date

By:

\_\_\_\_\_

\_\_\_\_\_ Date

**ATTACHMENT "H"**

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

In carrying out this Agreement, the Sub-recipient and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Sub-recipient 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 Sub-recipient 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 Sub-recipient shall state in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient that it is an Equal Opportunity or Affirmative Action employer.

**ATTEST:**

**MESILLA VALLEY HABITAT FOR  
HUMANITY**

By:

\_\_\_\_\_

\_\_\_\_\_ Date

By:

\_\_\_\_\_

\_\_\_\_\_ Date

**ATTACHMENT "I"**

**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 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 failure.

**ATTEST:  
MESILLA VALLEY HABITAT FOR  
HUMANITY**

By:

\_\_\_\_\_

\_\_\_\_\_ Date

By:

\_\_\_\_\_

\_\_\_\_\_ Date

## Exhibit "B"

**AFFORDABLE HOUSING GRANT  
AGREEMENT BETWEEN  
THE CITY OF LAS CRUCES  
AND  
MESILLA VALLEY HABITAT FOR HUMANITY**

This **AFFORDABLE HOUSING GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City" or "Lender") and **MESILLA VALLEY HABITAT FOR HUMANITY**, a Non-Profit Organization, whose address is 720 Santa Fe St, Las Cruces, New Mexico, 88003 (hereinafter referred to as "Developer and/or Owner").

**WITNESSETH:**

**WHEREAS**, the City of Las Cruces acquired property in the amount of Fourteen Thousand Six Hundred Fifty Dollars and No Cents (\$14,650.00) in 2004 through the Street Maintenance Fund for the purpose of road realignment;

**WHEREAS**, the property located at the southeast corner of Picacho and Virginia Streets and having a legal description more specifically described in **Attachment "A"** (herein referred to as "Property") has been vacant since the City purchase in 2004;

**WHEREAS**, Mesilla Valley Habitat for Humanity, as a Qualifying Grantee under the City's Affordable Housing General Oversight Ordinance, desires to purchase the property for the development and new construction of affordable housing;

**WHEREAS**, the City desires to enter a purchase contract referenced as Exhibit "C" in Resolution 09-\_\_\_ with Habitat for Humanity for a purchase price of \$18,686.80 which consists of the payback of the original \$14,650.00 to the Street Maintenance Fund plus the City's estimated annual cost of maintaining the property during the ownership period ;

**WHEREAS**, the City desires to Grant to Habitat for Humanity, for other valued consideration, the equity value of \$11,313.20 which is the difference between the appraised value of \$30,000.00 and the sales price of the property to Habitat at \$18,686.80;

**WHEREAS**, the parties desire to enter into this Agreement in order to grant, for other valued consideration, the value of the built in equity and execute the purchase agreement for the cash price of the property to Habitat for development and construction of the current project at this time, and to ensure compliance with the requirements of the City's Affordable Housing General Oversight Ordinance and to secure other covenants and promises from the

Developer regarding the use of the property and other valued consideration to benefit low-income persons, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), a copy of which document for the current year is attached hereto as **Attachment "B"** and is incorporated herein by this reference.

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

## **SECTION 1. DEFINITIONS**

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

1. 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 HUD for the Las Cruces Metropolitan Statistical Area (MSA).
2. Affordable or Affordability – means as defined in Section 3, Paragraph 3 of this Agreement, and adding the provision that household expenses for principal, interest, taxes, and insurance (PITI) should not exceed 40% of annual gross income for households classified as Low Income, Very Low Income and Extremely Low Income households.
3. Affordability Period – if the subsidy per lot is \$1 to \$14,999, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy per lot is from \$15,000.00 up to and including \$40,000.00, then the affordability Period is ten (10) years from the date of the Mortgage; or if the subsidy per lot is greater than \$40,000.00, then the Affordability Period is fifteen (15) years from the date of the Mortgage; or if the subsidy is used for new construction, then the Affordability Period is twenty (20) years from the date of the Mortgage.
4. Annual Gross Income – 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.
5. Eligible Person or Eligible Household – means one or more natural persons or a family who are determined by the City 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. HUD – means the United States Department of Housing and Urban Development, its successors or assigns.
7. Grant Documents – means this Agreement, the Note, 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.
8. Low Income Housing – means housing that is Affordable to Low Income and Moderate Income Persons.
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 MSA, which includes the City of Las Cruces, as determined by HUD.
11. Note – means that certain promissory note of even date herewith given by the Developer to the City evidencing the grant contemplated by this Agreement.
12. Project – means the development and construction of one or more owner occupied, single family residence(s) that shall be exclusively owned and occupied by Low Income or Moderate Income Persons.
13. Project Completion – means that the new construction work on the unit(s) contemplated under this Agreement has been completed, the unit(s) has met all requirements of the City's Affordable Housing General Oversight Ordinance, received the Certificate of Occupancy by the City, and the unit(s) is occupied by qualified homeowners.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the City of Las Cruces Affordable Housing General Oversight Ordinance, or as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

## SECTION 2. GRANT AMOUNT AND USE OF FUNDS

1. Recitals: The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.
2. The Grant: Under the terms and conditions of this Agreement, the City agrees to grant the Developer and/or Owner \$11,313.20 in other valued consideration for the development and construction of the Property. The grant to the Developer and/or Owner shall be in the form of a grant on the terms set forth in the Agreement, the Promissory Note, and the Mortgage and Restrictive covenants, as required by the City. The Developer and/or Owner shall execute a promissory note in favor of the City substantially in the form attached hereto as **Attachment "C,"** (The "Note"), an incorporated herein by this reference. The Developer and/or Owner shall secure a Mortgage and Restrictive Covenants on the Property (the "Mortgage") substantially in the form attached hereto and incorporated herein by reference as **Attachment "D"**.
3. Use of Grant Equity: The Developer and/or Owner shall use the grant equity amount as other valued consideration to reduce the sale price to the homeowner(s) and ensure the affordability of the property under applicable regulations and as set forth in City's Affordable Housing General Oversight Ordinance, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "E"** and incorporated herein by this reference. The Developer and/or Owner shall keep all financial records for the Project, including source documentation to support how the Grant Equity was awarded to the homebuyer(s), 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 City. The Developer and/or Owner shall provide the City of Las Cruces with any certifications or other proof which it may require in order for the City of Las Cruces and the New Mexico Mortgage Finance Authority (MFA) to confirm that the Qualifying Grantee and the proposed project are in compliance with all applicable federal, state and local laws, rules and ordinances.
4. Resale Requirement. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose family qualifies as a low-income family, as defined by the United States Department of Housing and Urban Development, and will use the Property as its principal residence. The Owner further represents and warrants that his /her family, if any and the Owner met income eligibility

requirements at the time the Grant was committed to the Property, through the Agent, Mesilla Valley Habitat for Humanity.

5. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through the end of the twenty (20) year Affordability Period. 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 City of Las Cruces Affordable Housing Oversight Ordinance.

### SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Developer and/or Owner shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Developer and/or Owner agree to comply with all of the City of Las Cruces Affordable Housing General Oversight Ordinance, HUD regulations, 42 U.S.C. §§12701-12839, all 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 therewith. The Developer and/or Owner also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Building Code.
2. Units to be Assisted: The single family unit(s) constructed at the property as described in Attachment "A" attached.
3. Period of Affordability/Restrictive Covenant: The assisted unit(s) shall be maintained as affordable housing for the twenty-year Affordability Period. In order to ensure compliance with this twenty-year Affordability Period, the Developer and/or Owner shall execute a Mortgage and Restrictive Covenant, a copy of which is attached hereto as **Attachment "D"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any grant or mortgage or the transfer of ownership. The Developer and/or Owner acknowledge that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Affordable Housing Grant Agreement affordability requirements which requires repayment of the Grant proceeds, if the Project does not meet the Affordability requirements for the Affordability Period.
4. Property Standards: The Developer and/or Owner shall comply with the property standards requirements set forth in 24 CFR §92.251. The

Developer and/or Owner shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, zoning ordinances, and HUD's Section 8 Housing Quality Standards (HQS), as per 24 CFR §982.401. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973. Covered multi-family dwellings, as defined in 24 CFR §100.201, must meet the design and construction requirements set forth in 24 CFR §100.205, which implements the Fair Housing Act. The Developer and/or Owner shall maintain the Property in compliance with state and local codes, as well as HQS as per 24 CFR §982.401 for the 20-year Affordability Period.

5. Monitoring: The Developer and/or Owner shall assist the City with its obligation to income qualify the homeowner prior to occupancy. The City will also comply with its obligations to conduct on-site inspections for compliance with property standard requirements during the construction process through the issuance of a Certificate of Occupancy. The Developer shall keep records to document compliance with these inspections.
6. Records: The Developer and/or Owner shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Developer and/or Owner 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 and/or Owner shall make all records available to the City, MFA, HUD, and to their respective representatives during normal business hours. The Developer and/or Owner shall maintain all Mortgages and Project financial records, including source documentation, 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 City 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 and/or Owner 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.
7. Reports: The Developer and/or Owner shall submit monthly reports with such reports due by the 15<sup>th</sup> of each month. These reports shall status of participants in the Developer and/or Owner program, status of

construction progress and status of identifying land for future affordable housing development.

8. Beneficiary Data: The Developer and/or Owner shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Developer and/or Owner will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary file by the Developer and/or Owner and shall be made available to the City's monitors and/or their designees for review upon request.
9. Uniform Administrative Requirements: The Developer and/or Owner and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Developer and/or Owner shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Developer and/or Owner also agree to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
10. Audits: The Developer and/or Owner 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 and/or Owner agree 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 MFA request. The Developer and/or Owner shall submit its annual audit to the City within one hundred twenty (120) days of the end of the Developer and/or Owner's fiscal year.
11. Copeland "Anti-Kickback" Act: As applicable the Developer and/or Owner shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.
12. Debarment and Suspension: The Developer and/or Owner shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Developer and/or Owner shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Developer and/or Owner have entered into a contract or subcontractor with a debarred or suspended party, no Affordable Housing funds will be provided as reimbursement for the work done by that

debarred or suspended contractor or subcontractor. The Developer and/or Owner shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.

13. Drug-Free Workplace: The Developer and/or Owner shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Developer and/or Owner agree to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "F"** and incorporated herein by reference. The Developer and/or Owner will complete this certification, and a copy will be kept in the files of each party.
14. Utilization of Minority/Women's Business Enterprises: The Developer and/or Owner shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Developer and/or Owner shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Developer and/or Owner shall keep such records necessary to comply with 24 CFR §92.508(a)(7).
15. Equal Employment Opportunity: The Developer and/or Owner shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "G,"** and incorporated herein by this reference. Any contracts entered into by the Developer and/or Owner shall include a provision requiring compliance with these regulations. The Developer and/or Owner shall keep records and documentation demonstrating compliance with these regulations.
16. Conflict of Interest: The Developer and/or Owner shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Developer and/or Owner who exercise or have exercised any functions or responsibilities with respect to activities assisted with an Affordable Housing grant or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a Affordable Housing Grant-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or

business ties, during their tenure or for one year thereafter. The Developer and/or Owner shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.

17. Anti-Lobbying Provision: The Developer and/or Owner shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Developer and/or Owner shall complete and comply with the "Certification Regarding Lobbying", attached hereto as **Attachment "H"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's files. The Developer and/or Owner shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.
18. Lead-Based Paint Prohibited: The Developer and/or Owner shall not use lead-based paint in the Project or anywhere on the Property and shall comply with 24 CFR §92.355, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, J, K, M, and R. The Developer and/or Owner shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
19. Non-Discrimination and Equal Opportunity: The Developer and/or Owner shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, familial status, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Developer and/or Owner shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Developer and/or Owner shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Developer and/or Owner shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Developer and/or Owner shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered

into by the Developer and/or Owner shall include a provision requiring compliance with these regulations. The Developer and/or Owner shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

20. Fair Housing Act: The Developer and/or Owner shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-65, et. seq., and shall keep all records demonstrating compliance.
21. Affirmative Fair Housing Marketing: The Developer and/or Owner and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Developer and/or Owner shall keep records necessary to comply with 24 CFR §92.508(a)(7).
22. Miscellaneous Federal Requirements: The Developer and/or Owner shall comply with the federal requirements set forth in 24 CFR Part 5, Subpart A.
23. Religious Organizations: The Developer and/or Owner shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.
24. Financial Accountability: The Developer and/or Owner shall have financial accountability standards that conform to the requirements detailed in 24 CFR §84.21, "Standards for Financial Management Systems" and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
25. Environmental Review: The Project has been assessed in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.

#### **SECTION 4. DEFAULTS AND REMEDIES**

1. Events of Default: The following shall constitute an Event of Default under this Agreement:
  - a) If the Developer and/or Owner fail to comply with any regulations governing City of Las Cruces Affordable Housing General Oversight Ordinance grant or awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure

continues for a period of thirty (30) days following written notice thereof given by the City to the Developer and/or Owner;

- b) If the Developer and/or Owner is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;
- c) If at any time any material representation made by the Developer and/or Owner in any written certification or communication submitted by the Developer and/or Owner to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
- d) If the Developer and/or Owner does not disclose to the City, upon demand, the names of all persons with whom the Developer and/or Owner has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and
- e) If any default shall occur under the Note, Mortgage and Restrictive Covenant, or any Grant Documents executed in connection with this loan by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Grant Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Developer and/or Owner thereof.

Notwithstanding any of the foregoing provisions to the contrary, if the Developer and/or Owner have failed to cure any default within five (5) days prior to the expiration of any applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

- 2. No Waiver: Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.
- 3. Remedies: Upon the occurrence of any uncured Event of Default or any other breach of this Agreement, the City shall be free to terminate this Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of this Agreement, or other Grant Documents, statutory law, equity, or under common law. The City may

also exercise any one or more of the actions contained in 24 CFR §85.43(a)(1-5). All remedies shall be deemed cumulative and, to the extent permitted by law the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to.

## SECTION 5. INDEMNIFICATION

1. Environmental Indemnification: The Developer and/or Owner shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as indicia of ownership, management or control of the Property by the City, and the Developer and/or Owner hereby recognize and acknowledge that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Mortgage, or other Grant Documents to the contrary, this indemnification provision shall survive closing.

## SECTION 6. INSURANCE

1. Insurance: Without limiting the Developer and/or Owner's indemnification, the Developer and/or Owner shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Valid certificates and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.
  - a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Developer and/or Owner's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such

loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.

- b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer and/or Owner shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.
- c) The Policies of Insurance which must be secured are:
  - i. Commercial General Liability Insurance: The Developer and/or Owner must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than the limits of liability set forth in the New Mexico Tort Claims Act, which limits of liability are presently \$1,000,000.
  - ii. Worker's Compensation Coverage: All employees of the Developer and/or Owner must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
  - iii. Flood Insurance: The Developer and/or Owner shall provide Flood Insurance as required under applicable HUD regulations.

## **SECTION 7. MISCELLANEOUS PROVISIONS**

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City.
2. No partnership or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Developer and/or Owner with respect to the Program. The Development or Developer and/or Owner are not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Developer and/or Owner for any purpose.
3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.
4. Entire Agreement/Modification: This Agreement, together with **Attachments "A" through "H"** attached hereto, constitutes the entire

agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Developer and/or Owner may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Developer and/or Owner from its obligations under this Agreement. The City may, in 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 result in a change in the funding, scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the City and the Developer and/or Owner.

5. Notices: Whenever by the terms of this Agreement notice shall be given to either party, such notice shall be in writing and shall be hand delivered, sent by regular mail, or sent electronically to:
  - A. Neighborhood Services Program Specialist (HOME)  
Community Development Department  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, New Mexico 88004
  - B. Mesilla Valley Habitat for Humanity  
720 N Santa Fe St.  
Las Cruces, NM 88001  
Attn: Ed Johnson, Executive Director
6. Compliance with All Laws: Notwithstanding anything to the contrary, the Program shall be operated consistent with all applicable federal, state, and local laws and regulations.
7. Governing Law: This Agreement shall be construed in accordance with the laws of the State of New Mexico.

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

**DEVELOPER AND/OR OWNER**

**MESILLA VALLEY HABITAT FOR HUMANITY**

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

\_\_\_\_\_  
Date

**CITY OF LAS CRUCES**

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

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

**ATTACHMENT "A"**

**LEGAL DESCRIPTION**

**Lots 11, 12, 13, Block 6 Cox's First Subdivision, in the City of Las Cruces, Dona Ana County, New Mexico as shown and designated on the plat thereof filed in the office of the County Clerk of said county on September 21, 1910 on Book 4, Page 20 of Plat Records.**

## ATTACHMENT "B"

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

<b>HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size</b>				
<b>EFFECTIVE DATE, March 19, 2009</b>				
<b>MEDIAN FAMILY INCOME (MFI): \$43,000</b>				
<b>FAMILY SIZE * # OF PERSONS</b>	<b>EXTREMELY LOW INCOME (30% of Median)</b>	<b>VERY LOW INCOME (50% of Median)</b>	<b>LOW INCOME (80% of Median)</b>	<b>MODERATE INCOME (100% of Median)</b>
1	\$9,300	\$15,450	\$24,700	\$30,100
2	\$10,600	\$17,650	\$28,250	\$34,400
3	\$11,950	\$19,850	\$31,750	\$38,700
4	\$13,250	\$22,050	\$35,300	\$43,000
5	\$14,300	\$235,800	\$38,100	\$46,440
6	\$15,350	\$25,600	\$40,950	\$49,880
7	\$16,450	\$27,350	\$43,750	\$53,320
8	\$17,500	\$29,100	\$46,600	\$56,760

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

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

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

## ATTACHMENT "C"

## PROMISSORY NOTE

\$11,313.20

Las Cruces, New Mexico  
\_\_\_\_\_, 2009

**FOR VALUE RECEIVED**, the undersigned **MESILLA VALLEY HABITAT FOR HUMANITY**. ("Maker"), a non-profit corporation, with its address at 720 N Santa Fe St. Las Cruces, NM 88001, promise to pay, in the event of default, as defined in Section 4 of the Grant Agreement, to the order of the **CITY OF LAS CRUCES** ("Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, with an address of PO Box 20000, Las Cruces, New Mexico, 88004, or its assigns, the principal sum of ELEVEN THOUSAND THREE HUNDRED THIRTEEN DOLLARS AND TWENTY CENTS (\$11,313.20), or so much thereof as shall have been advanced by the City of behalf of the Maker by Holder from time to time, together with all charges as provided herein and in the Mortgage (as hereinafter defined) the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

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

The grant authorized shall be for twenty (20) years or until the Maker sells or refinances the Project, whichever occurs first. This Note shall not bear any interest. The Grant to the Maker shall be in the form of a forgivable grant amortized over the 20 year period beginning July 1, 2010. The Grant will be forgiven each year by an amount equal to 1/20<sup>th</sup> of the total grant amount for the duration of the affordability period of twenty (20) years.

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

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

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

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

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

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

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

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

If (2) default be made, and not timely cured, under the terms of any mortgage loan to which the Mortgage is subordinate; (3) Maker shall dissolve or otherwise fail to maintain its status as a New Mexico non-profit corporation; (4) Maker sells or conveys the Project to a third party without the prior written consent of the Holder; (5) Maker sells or conveys the Project to a third party who does not agree

in writing to assume all of obligations of Maker, its successors and assigns under the Agreement, this City Note and the Mortgage; or (6) default be made in the performance of any of the other covenants contained in this City Note, the Grant Agreement or in the Mortgage, and such default shall continue for a period in excess of that time provided for remedy thereunder, then, in any such event, the whole unpaid principal balance shall, upon ten (10) days written notice to the Maker, at once or at any time thereafter during the continuance of such default, at the option of the Holder thereof, become due and payable. The undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and the Mortgage to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions

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

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

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

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

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

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



## CITY OF LAS CRUCES

### MORTGAGE AND RESTRICTIVE COVENANTS AGREEMENT

**Mortgage of Property**

**Date:** \_\_\_\_\_

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

#### **Mortgage Covenants**

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

- (a) The performance of all of Owner's obligations and agreements contained in this Agreement, and
- (b) The conditions and obligations imposed upon the use of the Property contained herein.

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

#### **Restrictive Covenants**

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity, in the amount of \$11,313.20 ("Grant") for development and construction. The Grant will be made to the Owner through the City of Las Cruces Affordable Housing General Oversight Ordinance pursuant to Article IV. Chapter 13 of the City of Las Cruces Municipal Code amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the Grant and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the

receipt and sufficiency of which is hereby acknowledged, Lender and Owner agree as follows:

- A. Affordability. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of the Mortgage; or if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage; if the subsidy is for new construction acquisition, then the Affordability Period is twenty (20) 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 Grant was committed to the Property, through the Agent, Mesilla Valley Habitat for Humanity.
- C. Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Owner agrees that the entire Grant will be due and payable upon any such unapproved sale or transfer except as provided for in Paragraph (E).
- D. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Grant will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of law, (2) the transfer is to a member of Owner's immediate family ("Heir") (for purposes of this Agreement the term "immediate family" means parents, siblings or children only), (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Grant, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Grant and to otherwise comply with all the terms and conditions of this Agreement.
- E. Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed



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

Mesilla Valley Habitat for Humanity identified a section of vacant infill City owned property for purchase and proposes to construct an owner-occupied affordable housing unit(s) on the property located at the southeast corner of Picacho and Virginia Streets. The vacant land was purchased by the City of Las Cruces in 2004 for a road realignment project from the Street Maintenance fund.

The sale to Habitat for Humanity will reimburse the Street Maintenance fund, the original sales price plus estimated annual maintenance costs for the time period the property was under City ownership. Habitat will purchase the property with private funds and the Federal HOME funds will only be used to help with eligible construction costs and not the property acquisition. The constructed dwelling(s) will be offered for sale through Habitat for Humanity as affordable to a low income household(s) earning less than 50% of the area medium income.

**ATTACHMENT "F"****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 and/or Owner knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or the HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Developer and/or Owner will comply with the other provisions of the Act and with other applicable laws.

**CERTIFICATION**

1. The Developer and/or Owner certify 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 and/or Owner's workplace 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 and/or Owner'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 engaged in the performance of the Grant be 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 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 and/or Owner 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 and/or Owner 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.

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

**Name of Subgrantee:** Mesilla Valley Habitat for Humanity

**Program Name:** New Construction Virginia/Picacho Streets

**Date:** \_\_\_\_\_

The Borrower 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):

Lots 11, 12, 13, Block 6 Cox's Subdivision

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

**ATTEST:**

**MESILLA VALLEY HABITAT FOR  
HUMANITY**

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

Date: \_\_\_\_\_

**ATTACHMENT "G"**

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

In carrying out this Agreement, the Developer and/or Owner and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Developer and/or Owner 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 and/or Owner 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 and/or Owner shall state in all solicitations or advertisements for employees placed by or on behalf of the Developer and/or Owner that it is an Equal Opportunity or Affirmative Action employer.

**ATTEST:**

**MESILLA VALLEY HABITAT FOR  
HUMANITY**

By:

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

\_\_\_\_\_  
Date

**ATTACHMENT "H"**

**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 Developer and/or 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 failure.

**ATTEST:**  
**MESILLA VALLEY HABITAT FOR HUMANITY**

By: \_\_\_\_\_  
 Ed Johnson, Executive Director

Date: \_\_\_\_\_

**REAL ESTATE PURCHASE AGREEMENT**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 between Mesilla Valley Habitat for Humanity, whose address is 720 N. Santa Fe Street, Las Cruces, New Mexico 88001 (hereafter "Purchaser"); and the City of Las Cruces, a New Mexico municipal corporation (hereafter "City").

The City, in consideration of the mutual covenants herein contained, agrees to sell and convey, and Purchaser agrees to purchase Lots 11, 12, 13, Block 6 Cox's Subdivision as depicted in Exhibit "A", which is attached and made a part hereof, (hereafter "Property") with all improvements thereon, and all rights, hereditaments, easements and appurtenances thereunto belonging.

**TERMS AND CONDITIONS:****1. Purchase Price.**

Purchaser shall, at their sole cost and expense, prepare and secure approval for a necessary replat of the property in accordance with all City of Las Cruces regulations within six (6) months from the date of execution of this agreement

The purchase price for the Property shall be \$18,686.80, payable in cash or equivalent upon approval by City Council.

**2. Property Conveyance.**

The City shall execute and deliver a Quitclaim Deed conveying the Property to the Purchaser soon after approval by City Council.

**3. Costs and Fees.**

The Purchaser shall be solely responsible for the cost of recording documents in the Dona Ana County Record.

**4. Compliance with Statutes.**

The City states that it has complied with the requirements of New Mexico Statutes and the Las Cruces Municipal Code and has authorization to sell the property.

**5. Governing Laws.**

This agreement shall be subject to the laws of the State of New Mexico.

**6. Risk of Loss.**

All risk of loss or damage to the Property will pass from the City to Purchaser at upon filing of the QuitClaim Deed. In the event that material loss or damage, or material adverse change occurs prior to closing, Purchaser may, without liability, refuse to accept the conveyance of title. Possession of the Property will be release to Purchaser at closing.

**7. Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on all of the parties.

**8. Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, postage prepaid, to the City of Las Cruces, ATTN: Land Management, P .O. Box 20000, Las Cruces, NM 88004; and to Mesilla Valley Habitat for Humanity, 720 N. Santa Fe Street, Las Cruces, New Mexico 88001 or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

Done and approved on the date first written above,

THE CITY OF LAS CRUCES

MESILLA VALLEY HABITAT FOR HUMANITY

\_\_\_\_\_  
Mayor

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

(SEAL)

ATTEST:

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

APPROVED AS TO FORM:

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

RESOLUTION NO. 07-340

A RESOLUTION APPROVING THE 2007 ACTION PLAN AS PART OF THE 2006-2010 CONSOLIDATED PLAN FOR THE CITY OF LAS CRUCES. THE RESOLUTION INCLUDES NECESSARY AMENDMENTS TO THE 2006-2010 CONSOLIDATED PLAN TO REFLECT THE BLIGHT DESIGNATION FOR DOWNTOWN LAS CRUCES. THE RESOLUTION AUTHORIZES THE CITY STAFF TO SUBMIT THE ACTION PLAN AND CONSOLIDATED PLAN AMENDMENTS TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND AUTHORIZES THE ACTION PLAN TO BE INCORPORATED INTO THE CITY'S BUDGET FOR FY 2007/08.

The City Council is informed that:

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

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

**WHEREAS**, as part of the efforts related to revitalizing Downtown Las Cruces, a study was completed that determined that Downtown met the State of New Mexico requirements to be declared a "Blight" Area, as reflected in Resolution No. 07-037, adopted by the City Council on August 7, 2006; therefore, making the Downtown Area eligible for CDBG funding and necessary to be incorporated into the overall Consolidated Plan for 2006-2010, and

**WHEREAS**, for the 2007 Action Plan, the City will receive entitlement, carryover, and program income for both the CDBG and HOME Programs from HUD in the amount of \$1,656,405.50 to address the City's affordable housing and community development needs for its low- and moderate-income areas and residents.

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

**(I)**

**THAT** the 2007 Action Plan and all necessary support documentation, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved and adopted.

**(II)**

**THAT** the 2006-2010 Consolidated Plan is hereby amended to reflect the designation of the Downtown Area as a "Blight Area" in accordance with New Mexico State Statutes, as determined by the City Council with the Adoption of Resolution No. 07-037 on August 7, 2006, and such amendment is reflected in Exhibit "B," attached hereto and made part of this Resolution, and with such designation the Downtown Area is automatically eligible for CDBG funding.

**(III)**

**THAT** Staff is hereby authorized to secure necessary signatures and transmit the amended 2006-2010 Consolidated Plan and the 2007 Action Plan to the U.S. Department of Housing and Urban Development on the City's behalf.

**(IV)**

**THAT** the 2007 Action Plan is hereby authorized to be incorporated into the City's FY 2007/08 budget, once developed.

**(V)**

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

DONE AND APPROVED this 7th day of May, 2007.

APPROVED:

William Mattiace  
Mayor William Mattiace

ATTEST:

Ester Martinez  
City Clerk  
(SEAL)

Moved by: Connor

Seconded by: Archuleta

APPROVED AS TO FORM:

John A. P...  
City Attorney

VOTE:

Mayor Mattiace:	<u>Aye</u>
Councillor Fietze:	<u>Absent</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Trowbridge:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Miyagishima:	<u>Aye</u>