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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 4 Ordinance/Resolution# 13-054

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of October 15, 2012
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AMENDMENT #2 TO THE HOME INVESTMENT PARTNERSHIPS ACT (HOME) AGREEMENT EXECUTED BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY PROVIDING ADDITIONAL FUNDING IN THE AMOUNT OF \$140,000.00 FOR THE CONSTRUCTION OF AFFORDABLE HOUSING UNITS IN SIERRA NORTE HEIGHTS SUBDIVISION PHASE 1.

PURPOSE(S) OF ACTION:

To approve Amendment #2 to a HOME agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity.

COUNCIL DISTRICT: 5		
<u>Drafter/Staff Contact:</u> Jan Lauterbach	<u>Department/Section:</u> Community Development/ Planning & Neighborhood Services	<u>Phone:</u> 528-3134
<u>City Manager/Signature:</u> 		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a document that outlines affordable housing and community development needs. Annual Action Plans presented to and adopted by City Council outline how the HOME entitlement funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan.

On May 3, 2010, City Council approved Resolution 10-272 adopting the 2010 Action Plan, which as amended, allocated HOME funds to Community Action Agency of Southern New Mexico (CAASN), a Community Housing Development Organization (CHDO), totaling \$120,200.00 (\$91,300.00 Non-Community Housing Development Organization (Non-CHDO), and \$28,900.00 CHDO) for the production of affordable housing.

On May 16, 2011, City Council approved Resolution 11-219 approving a HOME Agreement with CAASNM to use the \$120,200.00 for acquisition of vacant land and construction for 6 units of single family, owner-occupied affordable housing in Sierra Norte Heights Subdivision Phase 1. Six lots were purchased by CAASNM on May 31, 2011, expending \$114,043.65 of the allocated HOME funds leaving a remaining balance of \$6,156.35 for construction costs.

Due to CAASNM's concerns with their capacity to continue the project, City Council approved Resolution 12-191 on May 7, 2012, authorizing the assignment of the HOME Agreement, through Amendment #1, to Mesilla Valley Habitat for Humanity (MVHFH). The resolution allowed CAASNM to transfer the vacant lots to MVHFH which subsequently took place on May 31, 2012.

MVHFH completed a replat of the vacant lots received from CAASNM, in order to meet subdivision construction covenants, and will construct 4 single family owner-occupied units of affordable housing. MVHFH now desires additional HOME funds allocated from PY 2011 of \$140,000.00 (\$105,000.00 Non-CHDO and \$35,000.00 CHDO) for eligible construction expenses of the units.

PY2011 Action Plan as amended, allocated total funding to MVHFH in the amount of \$288,733.00 that includes the requested \$140,000.00 through Resolutions 11-217 and 12-159. MVHFH has expended \$50,000.00 on other projects leaving a balance of \$198,633.00 Non-CHDO and \$40,000.00 CHDO funds available for use.

In order to comply with the HOME regulations, Amendment #2 to the HOME Program Recoverable Grant Agreement between the City of Las Cruces and MVHFH as shown in Exhibit "A" must be executed.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Amendment #2 to HOME Program Recoverable Grant Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Total funding allocated to MVHFH through PY2011 Action Plan as amended is \$288,733.00 (\$248,633.00 Non-CHDO, \$40,100.00 CHDO) approved through Resolutions 11-217 and 12-159. To date \$50,000.00 has been expended leaving a remaining balance of \$238,733.00 (\$198,633.00 Non-CHDO, \$40,100.00 CHDO).

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development (Fund 2000)	20184340-722190-11418	\$105,000.00	\$198,633.00	\$93,633.00	Future affordable housing development
Community Development (Fund 2000)	20184340-722190-11212	\$35,000.00	\$40,100.00	\$5,100.00	Future affordable housing development

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve Amendment #2 to the HOME Program Recoverable Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity providing additional funding for eligible construction expenses of 4 affordable housing units in the Sierra Norte Heights Subdivision Phase 1.
2. Vote "No"; this will not approve Amendment #2 to the HOME Program Recoverable Grants Agreement. Such action would cause significant financial hardship for Mesilla Valley Habitat for Humanity in the construction of affordable housing.
3. Vote to "Amend"; further direction would come from City Council.

4. Vote to "Table"; further direction would come from City Council.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution 10-272
2. Resolution 11-217
3. Resolution 11-219
4. Resolution 12-191
5. Resolution 12-159

RESOLUTION NO. 13-054

A RESOLUTION APPROVING AMENDMENT #2 TO THE HOME INVESTMENT PARTNERSHIPS ACT (HOME) AGREEMENT EXECUTED BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY PROVIDING ADDITIONAL FUNDING IN THE AMOUNT OF \$140,000.00 FOR THE CONSTRUCTION OF AFFORDABLE HOUSING UNITS IN SIERRA NORTE HEIGHTS SUBDIVISION PHASE 1.

The City Council is informed that:

WHEREAS, the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME) and 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 document that outlines affordable housing and community development needs; and

WHEREAS, annual Action Plans presented to and adopted by City Council outline how the HOME entitlement funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, on May 3, 2010, the Las Cruces City Council approved Resolution No. 10-272, adopting the 2010 Action Plan which allocated HOME funding to Community Action Agency of Southern New Mexico (CAASNM) in the amount of \$120,200.00 (\$91,300.00 Non-Community Housing Development Organization (Non-CHDO) and \$28,900.00 CHDO) for the acquisition of lots and the new construction of owner-occupied, single family affordable housing units; and

WHEREAS, on May 16, 2011 the Las Cruces City Council approved Resolution No. 11-219, approving a HOME Agreement with CAASNM for the acquisition of vacant lots and new construction of affordable housing units in the Sierra Norte Heights Subdivision Phase 1; and

WHEREAS, CAASNM completed the purchase of 6 vacant lots for a total of \$114,043.65 in the Sierra Norte Heights Subdivision Phase 1 leaving \$6,156.35 available for HOME eligible construction expenses; and

WHEREAS, on May 7, 2012 City Council approved Resolution 12-191 authorizing the assignment of the HOME Agreement, through Amendment # 1, to Mesilla Valley Habitat for Humanity (MVHFH), also allowing for CAASNM to transfer the vacant lots to MVHFH which subsequently took place on May 31, 2012; and

WHEREAS, MVHFH completed a replat of the vacant lots, received from CAASNM, in order to meet subdivision construction covenants and will construct 4 single family owner-occupied units of affordable housing and now desires additional HOME funds allocated from Program Year (PY) 2011 of \$140,000.00 (\$105,000.00 Non-CHDO and \$35,000.00 CHDO) for eligible construction expenses of the units; and

WHEREAS, on May 2, 2011, City Council approved Resolution 11-217, the 2011 Action Plan, allocating HOME funds in the amount of \$124,733.00 (\$84,633.00 Non-CHDO, \$40,100.00 CHDO) to MVHFH for acquisition and new construction of affordable housing; and

WHEREAS, on March 19, 2012 City Council approved Resolution 12-159 amending the 2011 Action Plan providing additional funding in the amount of \$164,000.00 to MVHFH for affordable housing development; and

WHEREAS, total funding available to MVHFH from the 2011 Action Plan was \$288,733.00 (\$248,633.00 Non-CHDO, \$40,100.00 CHDO); having expended \$50,000.00 on other projects, the remaining balance of \$198,633.00 Non-CHDO and \$40,100.00 CHDO funds are available for use; and

WHEREAS, with the approval of additional funds to be provided and in order to comply with HOME regulations and continuance of the project to develop affordable housing units in Sierra Norte Heights Subdivision Phase 1, Amendment #2 to the HOME Program Recoverable Grant Agreement between the City of Las Cruces and MVHFH is required to be executed.

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

(I)

THAT Amendment #2 of the HOME Program Recoverable Grant Agreement between the City of Las Cruces and MVHFH, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the Assistant City Manager of the City of Las Cruces is hereby authorized to execute Amendment #2 of the HOME Program Recoverable Grant Agreement with MVHFH on behalf of the City of Las Cruces.

(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 _____, 2012.

APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

Exhibit "A"

**AMENDMENT #2 TO THE
PY 2010 HOME PROGRAM RECOVERABLE GRANT
AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND
MESILLA VALLEY HABITAT FOR HUMANITY**

This Amended HOME Program Recoverable Grant Agreement and Attachments is an amendment to, but not in lieu of the original PY 2010 HOME Program Recoverable Grant Agreement and original Exhibits, executed on May 17, 2010, under the Authority of City of Las Cruces Resolution 11-219, and amended May 7, 2012, under the Authority of City of Las Cruces Resolution 12-191, in their entirety.

This amended HOME PROGRAM RECOVERABLE 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 the MESILLA VALLEY HABITAT FOR HUMANITY, a New Mexico non-profit agency, whose address is 720 Santa Fe Street, Las Cruces, New Mexico 88001 (hereinafter referred to as "Developer").

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; and

WHEREAS, the original PY 2010 HOME Program Recoverable Grant Agreement was executed between the City of Las Cruces and Community Action Agency of Southern New Mexico (CAASNМ), utilizing a total of One Hundred Twenty Thousand Two Hundred Dollars and No Cents (\$120,200.00) of Program Year (PY2010) HOME funds (\$91,300.00 Non-CHDO, \$28,900.00 CHDO) for the acquisition and new construction of 6 units of affordable housing in the Sierra Norte Heights Subdivision Phase 1, located more specifically as described on the attached Attachment "A" (hereinafter referred to as "property") ; and

WHEREAS, CAASNМ completed the purchase of 6 vacant lots utilizing a total of \$114,043.65, leaving \$6,156.35 remaining for HOME eligible construction expenses; and

WHEREAS, Amendment #1 to original agreement provided authorization Mesilla Valley Habitat for Humanity to assume the HOME Agreement, providing for the transfer the vacant lots and funding to Mesilla Valley Habitat for Humanity to complete the construction of up to 6 single family affordable housing dwelling units.

WHEREAS, Mesilla Valley Habitat for Humanity completed a replat of the vacant lots, in order to meet subdivision building covenants, and will construct 4 single family owner-occupied units of affordable housing.

WHEREAS, now Mesilla Valley Habitat for Humanity desires additional HOME funds allocated from PY 2011, in the amount of \$140,000.00 (\$105,000.00 Non-CHDO and \$35,000.00 CHDO) for construction expenses for 4 single family dwelling units in Sierra Norte Heights Subdivision Phase 1, with each unit receiving an additional \$35,000.00 for HOME eligible construction expenses. This brings the total amount under the grant to \$260,200.00 (\$120,200.00 PY2010 and, \$140,000.00 PY 2011).

WHEREAS, the parties desire to enter into this Amended Agreement in order commit the additional funding of PY 2011 HOME funds of \$140,000.00 to Mesilla Valley Habitat for Humanity for HOME eligible construction expenses and to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Developer regarding the use of funds to benefit low-income person, 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 Sponsor and Owner agree as follows:

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

SECTION 1. DEFINITIONS: the following are amended:

15. Property – All that certain real property located in the County of Dona Ana, State of New Mexico, described as Lots 146, 148, 151, and 153 of Sierra Norte Heights Subdivision Phase 1. See **Attachment "A"** for full legal description.

SECTION 2. RECOVERABLE GRANT AMOUNT AND USE OF FUNDS: the following are amended:

2. The Recoverable Grant: The City has applied for and received funds from the United State Government under the Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990, Title 24 CFR 92, and Catalog of Federal Domestic Assistance (CFDA) No. 14.239.

Under the terms and conditions of this Agreement, the City agrees to grant the Developer a total of Two Hundred Sixty Thousand Two Hundred Dollars and No Cents (\$260,200.00) for the acquisition and new

construction of the Property. The grant funds to the Developer shall be in the form of a recoverable grant on the terms set forth in this Agreement and the owners' Deed Restrictions and Covenants Agreement on the Property (the "Deed Restrictions") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.

3. **Disbursement:** PY 2010 grant funds and PY 2011 grant funds must be disbursed no later than June 30, 2014. This provision herein shall not be extended; unless a one-time extension is requested and approved by the City and the Developer.

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 the 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.

8. **Payment:** It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$260,200.00. Payment requests are due by the fifteenth (15th) day of each month. If a payment request is needed for a particular month, the Developer must submit in writing that no payment request is required for that particular month. The Developer agrees to use this Payment Request form as referenced in Attachment "E". Payments may be contingent upon certification of the Developer's financial management system in accordance with the standard specified in 24 CFR Part 84, Subpart C, "Financial and Program Management,"

SIGNATURES ON NEXT PAGE

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

Brian Denmark, Assistant City Manager/COO
City of Las Cruces

Date

APPROVED AS TO FORM:

City Attorney

Attachment "A"

All that certain real property located in the County of Dona Ana State of New Mexico, described as follows:

Lots 146, 148, 151, and 153 of Sierra Norte Heights Subdivision Phase 1, Replat 1, located in the City of Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on the plat thereof filed for record in the office of the County Clerk of Dona Ana, New Mexico on August 14, 2012, and recorded in Plat Record Book 23 at Page 339.

Attachment "B"

HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size				
EFFECTIVE DATE, February 9, 2012				
MEDIAN FAMILY INCOME (MFI): \$43,800				
FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)
1	\$10,050	\$16,700	\$26,750	\$30,650
2	\$11,450	\$19,100	\$30,550	\$35,050
3	\$12,900	\$21,500	\$34,350	\$39,400
4	\$14,300	\$23,850	\$38,150	\$43,800
5	\$15,450	\$25,800	\$41,250	\$47,300
6	\$16,600	\$27,700	\$44,300	\$50,800
7	\$17,750	\$29,600	\$47,350	\$54,300
8	\$18,900	\$31,500	\$50,400	\$57,800

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2012 Income limits from website at <http://www.huduser.org/datasets/il/il11/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"

**CITY OF LAS CRUCES
HOME PROGRAM
DEED RESTRICTIONS AND COVENANTS AGREEMENT**

Date: _____, 2012

_____, a single/married man/woman, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having a mailing address of P.O. Box 20000, Las Cruces, NM, 88004 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of _____ Las Cruces, NM 88007, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

Deed Restrictions

This Deed Restrictions and Covenants Agreement ("Agreement") secures; (1) the performance of all of Owner's obligations and agreements are contained within this agreement; (2) the conditions and obligations imposed upon the use of the Property are contained herein; and (3) the performance of the following obligations and is upon the statutory Deed Restrictions condition for the breach of which it is subject to foreclosure as provided by law;

- (A) This instrument and these restrictions are subordinate to the rights and liens, if any, under any valid outstanding Mortgage/Deed of Trust, currently of record. Foreclosure of such prior recorded lien or transfer in lieu of foreclosure shall extinguish this instrument and these restrictions; However, if any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Affordability Period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner, or those with whom the former owner has family or business ties, in the Property the Affordability Period shall be revived according to its original terms.
- (B) In the event of a refinancing during the Affordability Period, the Property must continue to be subject to these deed restrictions; however, the initial date hereof will continue as the baseline for the Affordability Period.

- (C) The provisions of this instrument are hereby declared covenants running with the land and are fully binding on any successors, heirs, and assigns of Owner who may acquire any rights, title, or interest in or to the Property, or any part of it. Owner, its successors, heirs, and assigns hereby agree and covenant to abide by and fully perform the provisions of this instrument.

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

Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity in the amount of _____ (\$_____) ("Grant and/or Loan") for development and 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 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 of ___ years. The Affordability Period will begin on the date of the execution of this Deed Restrictions and Covenants Agreement.
- B. Owner Occupied. Annually during the Affordability Period, upon request from their agent Tierra Del Sol Housing Corporation or the City, the owner(s) is required to provide documentation to their agent confirming the owner is occupying the unit as their principal residence. 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 household qualifies as a low-income family, earning between 45-80% of area medium income as will use the property as their 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. Resale Provisions. During the affordability period, the Lender provided the Owner consent to sell the property to a another qualified low income buyer as outlined in Section D, Transfer of Property, of this Agreement, the Lender and Owner agree to the resale provisions as follows:

1. Ensuring Affordability to Subsequent Buyers: If during the affordability period the property is sold to a subsequent buyer, the price at resale must ensure the original HOME-assisted Owner a fair return on investment (ie., the homebuyer's downpayment plus capital improvements made to the house), while also ensuring that the property is sold at a price that is affordable to a reasonable range of low-income buyers. The Fair Return on Investment will be measured by the Consumer Price Index (CPI) for shelter over the period of ownership, for similarly sized cities, not seasonally adjusted. For purposes of calculating the fair return on investment, the types of capital improvements that the City will include in its basis for calculating fair return are limited to value added improvements such as kitchen remodel, bath remodel, new windows, new siding and the addition of living space. The homeowner must document the improvements with receipts for the improvement. The purchase price at subsequent sale during the Affordability Period is required to be at a price that is affordable to a family earning between 45-80% Area Medium Income (AMI) that will not pay more than 30% of their gross income for principal, interest taxes and insurance and shall not exceed 95% of median purchase price limits as established by the Department of Housing and Urban Development (HUD). The percentage of AMI is based on income levels adjusted for family size established by the Department of Housing and Urban Development (HUD), for the Las Cruces Metropolitan Statistical Area at the time of the proposed sale.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home fold for less or the same price as the original purchase price.

2. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds pro-rations credited to the new buyer are applicable in the following scenarios:

- i. Net Proceeds of new Sales Price in excess of 10% of the Original Sales Prices: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of more than 10% of the original HOME-assisted Owner's sales price, the Owner/Seller shall provide a credit to the new buyer for the full amount of the HOME funds grant provided and must also provide a credit to the new buyer on the net proceeds in excess of 10% based on a prorated amount of the net proceeds due less the homeowner's investment and any capital improvements. Net proceeds defined is the amount of money received by the seller from the sales transaction after deducting the costs involved in making the transaction.
- ii. Net Proceeds of new Sales Price between 1% and 10% above the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of 10% or less than the original HOME-assisted Owners sales price, the Owner/Seller shall provide a credit to the new Homeowner for the full amount of the HOME funds grant provided and Owner/Seller may retain all other net proceeds from the sale.
- iii. New Sales Price that is equal to Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is equal to the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period and must also provide a credit to the new buyer based on a prorated amount of the net proceeds due.
- iv. New Sales Price that is less than the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is less than the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period that is based upon the percentage of decrease between the original sales price and the sales price to the subsequent owner. The original owner is entitled to any remaining net proceeds.
- v. Net Proceeds – Pro-rata Calculations Defined: Net Proceeds and HOME Funds credits will be prorated to the subsequent buyer based on the term of the affordability period and the year during the affordability period that the property is being sold. For example, if the affordability period is five years, the proration is based on 20% per year. Likewise, if the affordability period is 10 years, the proration

is based on 10% per year, and if the affordability period is 15 years, the proration is 6.67% per year. The time period for prorated amounts is calculated on the earliest whole year period from the sales date. For example, if the home is sold at 4 years and 6 months, year 4 will be considered the sale year. The chart below is provided to outline the seller/buyer proration percentages for net proceeds and HOME funds due to seller and the subsequent buyer during the term of the affordability period:

Subsequent Sale Year	Affordability Period (years)		
	5	10	15
	Owner/Subsequent Buyer Proration (%)		
1	20/80	10/90	7/93
2	40/60	20/80	13/87
3	60/40	30/70	20/80
4	80/20	40/60	27/73
5	100/0	50/50	34/66
6		60/40	40/60
7		70/30	47/53
8		80/20	54/46
9		90/10	60/40
10		100/0	67/33
11			74/26
12			80/20
13			87/13
14			94/6
15			100/0

- D. 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. Lenders consent shall be granted only if new/subsequent owner meets the obligations specified within Section B above.
- E. 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") and 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.

F. Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed contemporaneously herewith, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the full amount or pro-rata share of the Grant to become transferred/sold to another qualified owner as specified within Section B above.

G. Right of Redemption. If this Agreement is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

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

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this _____ day of _____, 2012.

,Owner/Borrower

,Owner/Borrower

Acknowledgment

STATE OF NEW MEXICO)

) ss

COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____.

Notary Public

My commission expires:
