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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 17 Ordinance/Resolution# 10-039 Council District: 5

For Meeting of July 20, 2009
 (Adoption Date)

TITLE: A RESOLUTION APPROVING A HOME PROGRAM AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR DIRECT DOWN PAYMENT ASSISTANCE OF AFFORDABLE HOUSING UNITS.

PURPOSE(S) OF ACTION: Approve a HOME Agreement between the City of Las Cruces and Tierra del Sol Housing Corporation.

| | | | | | |
|--|--------------------|--|------------------------|------------------------|--------------|
| Name of Drafter: Jan Lauterbach <i>JL.</i> | | Department: Community Development <i>CD</i> | | Phone: 528-3134 | |
| Department | Signature | Phone | Department | Signature | Phone |
| Community Department | <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> | 541-2076 |

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Act (HOME). The City of Las Cruces, as a recipient of HOME funding, desires to provide funds in accordance with the goals of the City's 2006-2010 Consolidated Plan which outlines affordable housing and community development needs. The 2008 Action Plan, as amended, outlines how the HOME and CDBG entitlement funds for Program Year 2008 (PY 2008) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan.

The 2008 Action Plan, as amended, approved by Resolution #09-140 allocated a total of \$55,789.59 in PY 2008 HOME funds to be used to provide direct down payment assistance to first time-homebuyers working through Tierra del Sol Housing Corporation's homeownership program. The funding to be provided to the homeowners will be divided among 11 households with 10 households each receiving \$5,000.00, and 1 household receiving \$5,789.59 in direct down payment assistance. These down payment subsidies will be very beneficial in helping the different households qualify for their permanent mortgages' with a private lender and meeting their down payment requirements. Direct downpayment assistance to homeowners is an eligible expense under the HOME program.

In order to comply with the regulatory requirements of the HOME program, the City must execute the HOME Agreement with Tierra del Sol Housing Corporation as shown in Exhibit "A."

SUPPORT INFORMATION:

| Fund Name / Account Number | Amount of Expenditure | Budget Amount |
|--|------------------------------|----------------------|
| HOME 2008 TDS DWN PN 2000-20184210-722190-11408 | \$55,789.59 | \$55,789.59 |

1. Resolution
2. Exhibit "A" - HOME Agreement
3. Attachment "B" - Resolution 09-140

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution authorizing the Agreement between the City of Las Cruces and Tierra del Sol Housing Corporation. This action will allow assistance to 11 households in obtaining financing for affordable housing homeownership.
2. Vote NO and deny the Resolution authorizing the Agreement between the City of Las Cruces and Tierra del Sol Housing Corporation. The action will not allow for direct down payment assistance for 11 households.
3. Modify the Resolution and vote YES to approve the modified Resolution. Such action may require City staff to reprogram the funds to another project and/or possibly resulting in an amendment to the 2008 Action Plan.
4. Table/Postpone the Ordinance/Resolution and direct staff accordingly.

RESOLUTION NO. 10-039**A RESOLUTION APPROVING A HOME PROGRAM AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR DIRECT DOWN PAYMENT ASSISTANCE OF AFFORDABLE HOUSING UNITS.**

The City Council is informed that:

WHEREAS, the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Act (HOME) in which the City of Las Cruces is a Participating Jurisdiction for the HOME Program from the U.S. Department of Housing and Urban Development; and

WHEREAS, the 2008 Action Plan, as amended, outlines how the Home Investment Partnerships Act (HOME) and Community Development Block Grant (CDBG) entitlement funds for Program Year 2008 will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, the City Council approved Resolution 09-140 accepting the 2008 Action Plan, as amended, allocating a total of \$55,789.59 in Program Year 2008 HOME funds to be used to provide direct down payment assistance to first-time homebuyers working with Tierra del Sol Housing Corporation through their program to obtain owner occupied affordable housing; and

WHEREAS, Tierra del Sol Housing Corporation desires to provide direct down payment assistance to 11 households in the Paseo del Oro Subdivision to help meet their mortgage financing needs; and

WHEREAS, in order to comply with the regulatory requirements of HOME, the City must execute a HOME agreement with Tierra del Sol Housing Corporation.

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

(I)

THAT the Agreement between the City of Las Cruces and Tierra del Sol Housing Corporation as shown in Exhibit "A," attached hereto and made part of this resolution, is hereby approved.

(II)

THAT the City Manager, as the official representative of the City, is hereby authorized to sign all Agreements on the City's behalf.

(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.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Archuleta: _____

Councillor Small: _____

Councillor Jones: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

Exhibit A

**HOME PROGRAM
AGREEMENT BETWEEN
THE CITY OF LAS CRUCES
AND
TIERRA DEL SOL HOUSING CORPORATION**

This **HOME PROGRAM 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 **TIERRA DEL SOL HOUSING CORPORATION**, a non-profit organization, whose address is P.O. Box 2626, Anthony, New Mexico 88021 (hereinafter referred to as "Sub-recipient").

WITNESSETH:

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

WHEREAS, the City has allocated through its 2008 Action Plan, as amended, a total Fifty Five Thousand Seven Hundred Eighty Nine Dollars and Fifty-Nine Cents (\$55,789.59) to Tierra del Sol Housing Corporation, a Community Housing Development Organization (CHDO), partnering with the City of Las Cruces in the production of affordable housing;

WHEREAS, the Sub-recipient desires to utilize the allocated \$55,789.59 of Program Year 2008 HOME funding for eleven lots at an amount of \$5,000.00 per lot for direct down payment assistance with the final lot receiving \$5,789.59 in assistance. All lots to be receiving assistance are located in the Paseo del Oro Subdivision being developed by Tierra del Sol Housing Corporation and providing direct down payment assistance is an eligible activity under the HOME Program;

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.

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 – as defined in Section 3, Paragraph 2 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 or Deed Restriction and Covenants; 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 or Deed Restriction and Covenants; or 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 Deed Restriction and Covenants; if the subsidy is provided on lots which are also receiving other assistance with HOME funds for acquisition, then the affordability period will be added to the Affordability Period from the initial HOME assistance for a combined period not to exceed 25 years. The Affordability Period will begin on the date of the HOME Mortgage or Deed Restriction and Covenants.
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 Note, Deed Restriction and 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. Note – means that certain promissory note of even date herewith given by the Owner to the City evidencing the subsidy contemplated by this Agreement.
13. 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.
14. Project – the direct subsidy for down payment assistance for eleven (11) lots of Owner Occupied, single-family, units within the Paseo Del Oro Subdivision Phase 1 and 2 which shall be exclusively occupied by Extremely Low Income Person, Very Low Income Person or Low Income Persons.

15. 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.
16. Property – Eleven lots to be identified and finalized prior to the signing the individual notes and deed restriction and covenants, but all located in the Paseo Del Oro Subdivision Phase 1 and 2 the complete legal description of which is shown on **Attachment “A”** made a part hereof.
17. 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 SUBSIDY 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 individual owners through the Sub-recipient a total of Fifty Five Thousand Seven Hundred Eighty Nine and Fifty-Nine Cents (\$55,789.59) for the direct down payment assistance of 11 lots to be identified in Paseo Del Oro Subdivision Phase 1 & 2. The subsidies to the owners' shall be in the form of individual grants on the terms set forth in this Agreement, the Promissory Note, and the Deed Restriction and Covenants, as required by the City. The Owners' shall execute promissory notes' in favor of the City substantially in the form attached hereto as **Attachment “C,”** (The “Note”), and incorporated herein by this reference. Each Note shall be secured by Deed Restriction and Covenants on the Property (the “Deed Restriction”) substantially in the form attached hereto and incorporated herein by reference as **Attachment “D”**.
3. Disbursement: All grant subsidy 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 subsidy proceeds only after approval by the City of invoices and documentation 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 Subsidy Money: The Sub-recipient shall use the grant proceeds for direct down payment assistance to eligible households 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 "E"** 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 Though not anticipated to be generated by this project, any program income generated from the proceeds of the HOME grant shall be returned to the City in accordance with 24 CFR §92.503(a) and 24 CFR §92.504(c)(2)(ii).

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 to project completion and then through any period from project completion to the start of the affordability period commencing on the date the HOME mortgage or deed restriction and covenants is signed by the individual homeowners continuing through to the end of the 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 \$59,789.59. Payment requests are due at least 10 days prior the permanent loan closings of the individual owners. The Sub-recipient agrees to use the Invoice form as referenced in **Attachment "F."** Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 24 CFR Part 84, Subpart C, "Financial and Program Management."
9. HOME Match Requirement: The use of HOME funds generally requires a match of local monies; however, through CPD Notice 07-05, issued July 11, 2007, the City's HOME match percentage is reduced to 0% for the Fiscal Year 2007 and the subsequent Fiscal Year 2008.

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 or Deed Restriction and Covenants; 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 or Deed Restriction and Covenants; or 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 Deed Restriction and Covenants ; if the subsidy is provided on lots which are also receiving other assistance with HOME funds for acquisition, then the affordability period will be added to the Affordability Period from the initial HOME assistance for a combined period not to exceed 25 years. The Affordability Period will begin on the date of the HOME Mortgage or Deed Restriction and Covenants. In order to ensure compliance with the Affordability Period, the individual owners, of the properties shall each execute a Deed Restriction and Covenants agreement, 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 loan or mortgage or the transfer of ownership. The Sub-recipient and owners' acknowledge that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Deed Restriction and Covenants 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, 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.
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 City shall maintain the Notes' and Deed Restriction and Covenants from the individual households after closing and through the affordability period and 5 years beyond. The Sub-recipient shall maintain all 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 15th 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. 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.
11. 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.
12. 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 "G"** and incorporated herein by reference. The Sub-recipient will complete this certification, and a copy will be kept in the files of each party.
13. 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).
14. 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 "H"** 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).

15. 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 "I"**, 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.
16. 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.
17. 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 "J"** 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.

18. 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.
19. 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, an 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).
20. 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).
21. 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.

22. 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).
23. Miscellaneous Federal Requirements: The Sub-recipient shall comply with the federal requirements set forth in 24 CFR Part 5, Subpart A.
24. 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.
25. 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."
26. 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.
27. 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 Note, Deed Restriction and 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 Note, Deed Restriction and 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 "J"** 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 Services Programs Specialist-Affordable Housing
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004

B. Rose Garcia, Executive Director
Tierra del Sol Housing Corporation
P.O. Box 2626
Anthony, New Mexico 88021

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.

TIERRA DEL SOL HOUSING CORPORATION

Rose Garcia, Executive Director

Date

CITY OF LAS CRUCES

Terrence Moore, City Manager

Date

ATTEST:

APPROVED AS TO FORM:

Esther Martinez, City Clerk
SEAL

City Attorney

ATTACHMENT "A"**LEGAL DESCRIPTION**

To be amended for specific Lots and Blocks for each Deed Restriction Covenants filed for each unit subsidized with HOME direct down payment assistance in the Paseo Del Oro Subdivision Phase I & II.

Lot , Block , Paseo Del Oro Subdivision Phase I and Phase II, in the City of Las Cruces, Dona Ana County New Mexico, as shown and designated on the plat thereof, filed on the office of the County Clerk of said County on September 15, 2008, in Book 22 Page(s) 557-558 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**

| HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size | | | | | |
|--|---|--|---|---|--|
| EFFECTIVE DATE, March 19, 2009 | | | | | |
| MEDIAN FAMILY INCOME (MFI): \$43,000 | | | | | |
| 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 | \$9,300 | \$15,450 | \$24,700 | \$30,100 | |
| 2 | \$10,600 | \$17,650 | \$28,250 | \$34,400 | |
| 3 | \$11,950 | \$19,850 | \$31,750 | \$38,700 | |
| 4 | \$13,250 | \$22,050 | \$35,300 | \$43,000 | |
| 5 | \$14,300 | \$23,800 | \$38,100 | \$46,440 | |
| 6 | \$15,350 | \$25,600 | \$40,950 | \$49,880 | |
| 7 | \$16,450 | \$27,350 | \$43,750 | \$53,320 | |
| 8 | \$17,500 | \$29,100 | \$46,600 | \$56,760 | |

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

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

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

ATTACHMENT "C"

PROMISSORY NOTE

\$ _____

Las Cruces, New Mexico
_____, 2009

FOR VALUE RECEIVED, the undersigned _____ ("Maker"), with an address of _____, promise to pay, in the event of default, as defined in the Deed Restriction and Covenants 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 _____, or so much thereof as shall have been advanced by the City of behalf of the Maker by Holder from time to time, together with all charges as provided herein and in the Deed Restriction and Covenants (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 HOME Program 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 five (5) years or until the Maker sells or refinances the Project, whichever occurs first. This Note shall not bear any interest. The Grant to the Maker and Co-Maker shall be in the form of a forgivable Grant fully forgiven at the end of the five year affordability period beginning July 1, 2010 if no default occurs during the 5 year period. The Grant will be forgiven in total at the end of the affordability period of five (5) years.

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

The entire principal balance shall become immediately due and payable upon: (1) default under the terms of the HOME Program 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 deed restriction and covenants between the City of Las Cruces and _____, granted by the Maker to the Holder, conveying a mortgage and security interest in the Project and the real property constituting the site therefore, which Deed Restriction and Covenants 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 Deed Restriction and Covenants are incorporated herein by reference.

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

If (2) default be made, and not timely cured, under the terms of any mortgage loan to which the Deed Restriction and Covenants is subordinate; (3) Maker sells or conveys the Project to a third party without the prior written consent of the Holder; (4) Maker sells or conveys the Project to a third party who does not agree in writing to assume all of obligations of Maker, its successors and assigns under the Agreement, this City Note and the Deed Restriction and Covenants; or (5) default be made in the performance of any of the other covenants contained in

this City Note, the HOME Program Agreement to the sub-recipient or in the Deed Restriction and Covenants, and such default shall continue for a period in excess of that time provided for remedy thereunder, then, in any such event, the whole unpaid principal balance shall, upon ten (10) days written notice to the Maker, at once or at any time thereafter during the continuance of such default, at the option of the Holder thereof, become due and payable. The undersigned Maker hereof shall pay on demand to the Holder of this Note all costs and expenses incurred by such Holder in pursuing its remedies under this Note and the Deed Restriction and Covenants to collect any and all sums due under this City Note, all of which shall include, without limitation, such reasonable attorney's fees incurred in taking any and all such actions

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

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

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

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

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

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

SIGNATURES ON NEXT PAGE

This Note is executed in Las Cruces, New Mexico on the _____ day of _____, 2009.

By: _____, Owner _____, Owner

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

This instrument was acknowledged before me on this _____ day of _____, 2009, by _____

Notary Public

My commission expires: _____

**ATTACHMENT
"D"**

CITY OF LAS CRUCES

DEED RESTRICTION AND COVENANTS

Deed Restrictions of Property

Date:

_____, ("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, 88003 ("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.

Deed Restrictions

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

- (a) The performance of all of Owner's obligations and agreements contained in this Agreement, and
- (b) The conditions and obligations imposed upon the use of the Property contained herein.
- (c) This instrument and these restrictions are subordinate to the rights and liens, if any, under any valid outstanding Deed of Trust, currently of record. Foreclosure of such prior recorded lien or transfer in lieu of foreclosure shall extinguish this instrument and these restrictions. However, if any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Affordability Period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner, or those with whom the former owner has family or business ties, in the Property the Affordability Period shall be revived according to its original terms.
- (d) In the event of a refinancing during the Affordability Period, the Property must continue to be subject to these deed restrictions, however, the initial date hereof will continue as the baseline for the Affordability Period.
- (e) The provisions of this instrument are hereby declared covenants running with the land and are fully 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 (Deed Restriction and Covenants) 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, Tierra del Sol Housing Corporation, in the amount of _____ ("Grant and/or Loan") for direct down payment assistance. 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. If the subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the date of this Agreement; if the subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of this Agreement; if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of this Agreement; or if the subsidy is for new construction or acquisition, then the Affordability Period is 20 years; if the subsidy is provided on lots which are also receiving other assistance with HOME funds for acquisition, then the affordability period will be added to the Affordability Period from the initial HOME assistance for a combined period not to exceed 25 years. The Affordability Period will begin on the date of the HOME Agreement.
- B. Owner Occupied. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose family qualifies as a low-income family, as defined by the United States Department of Housing and Urban

Development, and will use the Property as its principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Grant was committed to the Property, through the Agent, Tierra del Sol Housing Corporation.

- 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 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 of the Grant to become transferred/sold to another owner.
- F. Right of Redemption. If this Agreement is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

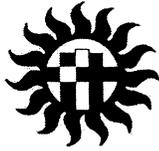
Owner(s) acknowledges having read all the provisions of this Deed Restrictions and Covenants Agreement, and agrees to its terms.

SIGNATURES ON THE NEXT PAGE

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

Tierra del Sol Housing Corporation, a New Mexico non-profit corporation is the owner and developer of Paseo Del Oro Subdivision Phases I and II, a mixed income subdivision located on North Elks. With at least 45 of the 103 lots in the subdivision to be occupied by low-income households, there is a significant need to provide down payment assistance to the households who are unable to provide their own down payment for financing the permanent mortgage loan. The City's Federal HOME dollars from PY 2004 and PY 2005 have also been committed to the project for acquisition and infrastructure. With the commitment of HOME funds 28 lots will become HOME-assisted lots maintaining low income affordability for a period of at least 20 years. The lots/ homeowners needing the direct down payment assistance subsidy will be a mixture of HOME and non-HOME lots with 10 lots receiving \$5,000.00 and 1 lot receiving the remaining \$5,789.59 in assistance for a total of \$55,789.59 in PY 2008 HOME funds. The lots receiving only the HOME direct subsidy assistance for down payment will maintain a affordability period of 5 years and the lots receiving HOME direct subsidy assistance and HOME assistance for acquisition will maintain affordability for a period of 25 years.

(PAYMENT REQUEST FORM)



City of Las Cruces
PEOPLE HELPING PEOPLE

INVOICE

Date _____

Agency Name Tierra del Sol Housing Corporation
Project Name Direct Down Payment Assistance
Client Name _____
Lot #: _____ Block#: _____ Paseo del Oro Subdivision, Phase: _____

Original contract balance **\$ 55,789.59**
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 request for down
payment assistance, an eligible HOME expense incurred in the month of _____
for Tierra del Sol Housing Corporation, a Community Housing
Development Organization.

Printed Name

Signature

Date

ATTACHMENT "G"**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: Tierra del Sol Housing Corporation

Program Name: Tierra del Sol Housing Corporation

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):

Paseo Del Oro Subdivision Phase I and II

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

ATTEST:

**TIERRA DEL SOL HOUSING
CORPORATION**

By:

Rose Garcia, Executive Director

Date

By:

Date

ATTACHMENT "H"**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:

**TIERRA DEL SOL HOUSING
CORPORATION**

By:

Rose Garcia, Executive Director Date

By:

Date

ATTACHMENT "I"

**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:

**TIERRA DEL SOL HOUSING
CORPORATION**

By:

Rose Garcia, Executive Director

Date

By:

Date

ATTACHMENT "J"

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:
TIERRA DEL SOL HOUSING
CORPORATION**

By:

Rose Garcia, Executive Director

Date

By:

Date

RESOLUTION NO. 09-140

A RESOLUTION APPROVING AMENDMENT NUMBER THREE (3) TO THE 2008 ACTION PLAN FOR THE CITY OF LAS CRUCES, AS IT RELATES TO UTILIZING EXCESS PROGRAM INCOME FOR BOTH THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP PROGRAMS. THE RESOLUTION AMENDS THE CITY'S ADOPTED FY2009 BUDGET TO REFLECT THIS AMENDMENT.

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces is an Entitlement Community for the Community Development Block Grant (CDBG) Program and a Participating Jurisdiction for the HOME Investments Partnerships (HOME) Program from the U.S. Department of Housing and Urban Development; and

WHEREAS, each program year requires an estimate of program income collected for each program for use for eligible projects and activities; and

WHEREAS, at the end of Program Year 2007 (City Fiscal Year 2008), the CDBG Program had an excess program income of \$37,185. and the HOME Program had an excess program income of \$11,885.62 that requires programming to be used within Program Year 2008 (City Fiscal Year 2009) along with excess HOME funding equaling \$55,789.59 from 2005 to be used in Program Year 2008; and

WHEREAS, additional criteria and clarifications are being made to the 2008 Action Plan activities related to the additional program income collected; and

WHEREAS, the City's Fiscal Year 2009 adopted budget is required to be adjusted to reflected this change.

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

(I)

THAT the City of Las Cruces Program Year 2008 Action Plan, Amendment #3, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the City's FY 2009 adopted Budget, as shown in Exhibit "B," attached hereto and made part of this Resolution, is amended and approved.

(III)

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

DONE and APPROVED this 1st day of December, 2008.

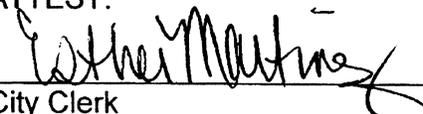
(SEAL)

APPROVED:



Mayor

ATTEST:



City Clerk

VOTE:

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

Moved by: Archuleta

Seconded by: Jones

APPROVED AS TO FORM:



City Attorney

**U.S. Department of Housing Urban Development
CPD Consolidated Plan
Listing of Proposed Projects**

Participating Jurisdiction:

City of Las Cruces, NM

| Project ID/Local ID: | 2008-08 | HUD Matrix Code: | 13 | Help the Homeless? Help those with HIV/AIDS? | N | |
|-----------------------------|--|---|----------------------------------|---|---------------------------------------|-----------------------------|
| Project Title: | Down payment assistance | Eligibility Citation: | 92.205(a)(2) & 206 (c) | | N | |
| Project Priority: | High | Accomplishments: | Households (Code 04) | | | |
| | | Acc. Enumerated | 9 | | | |
| | | Performance Measurements: | # | Title | | |
| Project Objective: | Increase the supply of affordable, owner-occupied housing | Proposed Objective: | 2 | Provide Decent Affordable Housing | | |
| | | Proposed Outcome: | 2 | Affordability | | |
| | | Benefit Determination (CDBG) | | | N/A | |
| | | Project Requirements (HOME) | | | 92.254 | |
| Project Description: | Increase the supply of affordable, owner-occupied housing. | Continuing Proj? Yes or No: | No | If Yes, Yrs? | N/A | |
| | | To provide direct down payment assistance to first time-homebuyers within various subdivisions and locations of the City through Tierra del Sol Housing Corporation, including in Sierra Norte or Paseo del Oro Subdivisions. Would be partnered with investments made in projects 2004 - and 2005- or stand alone. | | | | |
| Start Date: | 1-Jul-08 | Completion Date: | 30-Jun-09 | CHDO - Yes/No: | Yes | |
| Sub-recipient: | Tierra del Sol | Location/Address: | 210 E. Idaho Avenue | | | |
| Consolidated Plan: | 2006-2010 | Prog Year: | 2008 | Strategic Plan Goal: | Goal A - Obj A1 - Aff Hsg development | |
| PY: | Project # | CDBG | HOME | AMENDMENT | TOTAL | |
| 2006 | --- | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| 2007 | --- | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| 2008 | 06 | \$0.00 | \$0.00 | \$55,789.59 | \$55,789.59 | |
| 2009 | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| 2010 | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| TOTAL | | \$0.00 | \$0.00 | \$55,789.59 | \$55,789.59 | |
| Year | Project # | Activity # | Action Plan - Amendment # | Project Description | Sub-recipient | \$ Amend. Amount |
| 2008 | 08 | | 2008 - #3 | Down payment assistance Additional Program Income collected and Unrestricted 2005 HOME funds (HOME Entitlement) | Tierra del Sol Tierra del Sol | \$55,789.59 -\$55,789.59 |