City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 **Ordinance/Resolution#** 14-104

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of December 2, 1013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION APPROVING AMENDMENTS FOR TWO HOME INVESTMENT PARTNERSHIPS ACT (HOME) AGREEMENTS BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR THE DEVELOPMENT AND CONSTRUCTION OF OWNER-OCCUPIED, SINGLE-FAMILY AFFORDABLE HOUSING UNITS.**

PURPOSE(S) OF ACTION:

Approve amendments for two HOME agreements.

COUNCIL DISTRICT: 5		
Drafter/Staff Contact: Jan Lauterbach	**Department/Section:** Community Development/ Planning & Neighborhood Services	**Phone:** 575-528-3134
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

City Council approved Resolution 11-048, allowing for two HOME Agreements between the City of Las Cruces and Tierra Del Sol Housing Corporation. This is consistent with City Council approval of the 2009 and 2010 Action Plans. The HOME Agreements allocated Program Years 2009 ($100,302.00) and 2010 ($199,292.00) HOME funding totaling $299,594.00 for development and construction of affordable housing units in Paseo Del Oro Subdivision Phase III.

At the present time, all available funding has been expended on design and engineering related services for this subdivision phase, yet no physical development has taken place. In order to satisfy performance requirements related to affordable housing delivery as stated in the HOME agreements, Tierra Del Sol Housing Corporation is seeking amendment of the agreements to identity a project ready development location where affordable housing credit for the necessary 15 affordable housing units can be achieved within the required time thresholds. This new project ready location is within the Tierra Grande Subdivision. There will be no other affordable housing funds used in the accomplishment of the state performance delivery.

The Department of Housing and Urban Development (HUD) is allowing for the transfer location for the use of funds from the Paseo Del Oro Subdivision to the Tierra Grande Subdivision. In order to be in compliance with HUD guidelines, amendments to the PY 2009 and 2010 HOME agreements must be executed to reflect the corrected property locations for use of the funds.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Amended HOME Grant Agreement for Program Year 2009.
3. Exhibit "B", Amended HOME Grant Agreement for Program Year 2010.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
N/A	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

Community Development Fund (2000) - HOME funds from PY 2009 in amount of $100,302.00 (20184250-722190-11412) and PY 2010 in the amount of $199.292.00 (20184290-722190-1414 & 11210) have all been expended.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow the amendments to the two HOME Agreements reflecting the new property locations and allow for the construction of the units.
2. Vote "No"; this will not allow for the amendments to the two HOME Agreements reflecting the new property locations and could cause default with the HOME Project in which the City would be liable to HUD in the amount of the expended funds.
3. Vote to "Amend"; this would be based on Council's direction.
4. Vote to "Table"; this would require direction from Council to staff.

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 No. 11-048

RESOLUTION NO. 14-104

A RESOLUTION APPROVING AMENDMENTS FOR TWO HOME INVESTMENT PARTNERSHIPS ACT (HOME) AGREEMENTS BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR THE DEVELOPMENT AND CONSTRUCTION OF OWNER-OCCUPIED, SINGLE-FAMILY 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). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs; and

WHEREAS, on August 16, 2010, the Las Cruces City Council considered and approved Resolution No. 11-048, in conjunction with the PY 2009 and PY 2010 Action Plans allocating a total of $209,594.00 (2009-$100,302.00, 2010- $199,292.00) with two HOME Agreements between the City of Las Cruces and Tierra Del Sol Housing Corporation for the development and new construction of owner-occupied, single-family affordable housing units in the Paseo Del Oro Subdivision Phase III; and

WHEREAS, Tierra Del Sol Housing Corporation has requested to change the property location on which to construct the affordable housing units from the Paseo Del Oro Subdivision Phase III to the Tierra Grande Subdivision, amending the two HOME Agreements to reflect the new property locations; and

WHEREAS, in order to comply with HOME regulations, the amendments to the two HOME Grant Agreements between the City of Las Cruces and Tierra Del Sol Housing Corporation are required to be executed.

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

(I)

THAT the amendments for the two HOME Grant Agreements between the City of Las Cruces and Tierra Del Sol Housing Corporation, as shown in Exhibit "A" and Exhibit "B," attached hereto and made part of this Resolution, is hereby approved.

(II)

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

DONE AND APPROVED this _____ day of _____, 20__.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

AMENDMENT TO THE 2009 HOME PROGRAM GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION

This **amended GRANT AGREEMENT and Attachments** is an amendment to, but not in lieu of the **original GRANT AGREEMENT and original Attachments,** executed on August 24, 2010, under the Authority of City of Las Cruces Resolution 11-048, in its entirety.

The **amended GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City" or "Lender") and **TIERRA DEL SOL HOUSING CORPORATION**, a New Mexico non-profit corporation whose address is 210 E. Idaho Suite A, Las Cruces, New Mexico 88005 (hereinafter referred to as "Sub-recipient").

WITNESSETH:

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

WHEREAS, the Sub-recipient has submitted a proposal which was approved under the authority of City of Las Cruces Resolution 11-048, to utilize One Hundred Thousand Three Hundred Two Dollars and No Cents ($100,302.00) in Program Year (PY) 2009 HOME funds for the development and new construction of property located and more specifically described on the attached Amended **Attachment "A"** (hereinafter referred to as "Property");

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

WHEREAS, the parties desire to enter into this Amended Agreement in order to change the location of the property on which the homes will be constructed, to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Sponsor and Owner 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

3. Affordability Period – if the Subsidy per lot is $1 to $14,999, then the Affordability Period if five (5) year from the date of completion for each individual unit; if the subsidy per lot is from $15,000 up to and including $40,000.00, then the Affordability Period is ten (10) years from the date of completion for each individual unit; or if the subsidy per lot is greater than $40,000.00, then the affordability Period if fifteen (15) years from the date of completion for each individual unit. The Affordability Period will begin on the date of completion for each individual unit.

12. Owner-Occupied - Upon completion of construction and during the Affordability Period, the Developer/Subrecipient is required to annually confirm all units remain owner-occupied and provide supporting documentation annually to City staff. During the affordability period, the Developer/Subrecipient/Owner agree 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. 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 purchase only to a buyer whose family qualifies as a low-income family earning between 45-80% of Area Median Income (AMI) and will use the property as their principal residence. The Owner and/or Subrecipient further represents and warrants that the owner(s) met income eligibility requirements at the time the Contract(s) to build the unit(s) was executed.

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Period of Affordability Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing during 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 project completion date; 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 project completion date; if the HOME assistance/subsidy is greater than $40,000, then the Affordability Period is ten (10) years from the project completion date; or if the subsidy is for new construction or acquisition of rental housing, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the effective project completion date for each individual unit. In order to ensure compliance with the Affordability Period, the owner(s) of the Property, shall execute a Deed Restriction and Covenants Agreement, a copy of which is attached hereto as **Attachment "C"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Developer acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Mortgage which requires resale of the HOME unit to another eligible person or household, if the Project does not meet the Affordability requirements for the Affordability Period. These resale provisions conform to 24 CFR Part 92.254 (a)(5)(i) and are detailed in the Deed Restrictions and Covenants Agreement as shown in Attachment "C" , Restrictive Covenants Section C, executed between the City of Las Cruces and the individual owner(s).

Attachments

1. Attachment A: Legal Description, hereby replaces the original Attachment A Legal Description in its entirety.

2. Attachment B: Standards of Eligibility – 2013 Income Limits, hereby replaces the original Attachment B in its entirety.

3. Attachment C: City of Las Cruces Deed Restrictions and Covenants Agreement, hereby replaces the original Attachment C in its entirety.

4. Attachment D: Scope of Work, Project Schedule, and Budget, hereby replaces the original Attachment D in its entirety.

5. All other sections, Exhibits, and or Attachments shall remain as originally Agreed to and shall remain in full force and effect.

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

SIGNATURE ON NEXT PAGE

TIERRA DEL SOL HOUSING CORPORATION

_____
Rose Garcia, 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"

AMENDED LEGAL DESCRIPTION

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

Lots 39, 53, and 60, TIERRA GRANDE SUBDIVISION, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on June 5, 2007, in Book 22 Page(s) 232-233 of Plat Records.

Lots 2 and 8, TIERRA GRANDE SUBDIVISION REPLAT NO. 1, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on April 28, 2008, in Book 22 Page(s) 479-480 of Plat Records.

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY – 2013 INCOME LIMITS

PERSONS ELIGIBILE AND QUALIFIED TO RECEIVE SAID SERVICES AS ESTABLISHED BY THE U.S. DEPARTRMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) 2013

HUD INCOME GUIDELINES
LAS CRUCES MSA INCOME LIMITS
Income Levels by Family Size

EFFECTIVE DATE, December 11, 2012

MEDIAN FAMILY INCOME (MFI): $45,000

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	$9,900	$16,450	$26,350	$31,500
2	$11,300	$18,800	$30,100	$36,000
3	$12,700	$21,150	$33,850	$40,500
4	$14,100	$23,500	$37,600	$45,000
5	$15,250	$25,400	$40,650	$48,600
6	$16,400	$27,300	$43,650	$52,200
7	$17,500	$29,150	$46,650	$55,800
8	$18,650	$31,050	$49,650	$59,400

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2013 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: , 2013

_____, a single 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 88001, 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 finding on any successors, heirs,

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

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

Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Tierra Del Sol Housing Corporation in the amount of Twenty Thousand Sixty Dollars and Forty Cents ($20,060.40) ("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 10 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 it's assigns, 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 median income (AMI) 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 Contract to build the unit was executed with the Agent, Tierra Del Sol Housing Corporation.

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:

a. 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% AMI that will not pay more than 30% of their gross income for principal, interest, taxes and insurance and that 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 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 sold for less or the same price as the original purchase price.

b. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds prorations 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 _____, 2013.

_____ _____

, Owner/Borrower ,Owner/Borrower

Acknowledgment

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____.

_____
Notary Public

My commission expires:

_____

ATTACHMENT "D"

(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)

Tierra Del Sol Housing Corporation, a New Mexico non-profit corporation, has purchased 5 lots in the Tierra Grande Subdivision on which to construct single-family owner-occupied affordable housing units. Upon completion of construction the home will be sold at a price that is equal to or less than 95% of area medium sales price to income eligible households earning 80% or less than area medium income working through Tierra Del Sol's homeownership center. Each household purchasing a unit under this agreement will receive a credit upon closing in the amount of $20,060.40 equal to the amount of HOME-assistance provided. With the amount of HOME-assistance afforded to the households, each unit is required to have a 10 year affordability period.

The five units to be built must be constructed with project completion date no later than June 30, 2014. Tierra Del Sol Housing Corporation is responsible for all development costs. If the project is not complete by June 30, 2014, the project will be considered an incomplete project and the amount of HOME funds invested shall be returned to the City. The City will be responsible to return the HOME funds to the Department of Housing and Urban Development.

Exhibit "B"

AMENDMENT TO THE 2010 HOME PROGRAM GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION

This **amended GRANT AGREEMENT and Attachments** is an amendment to, but not in lieu of the **original GRANT AGREEMENT and original Attachments,** executed on August 24, 2010, under the Authority of City of Las Cruces Resolution 11-048, in its entirety.

The **amended GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City" or "Lender") and **TIERRA DEL SOL HOUSING CORPORATION**, a New Mexico non-profit corporation whose address is 210 E. Idaho Suite A, Las Cruces, New Mexico 88005 (hereinafter referred to as "Sub-recipient").

WITNESSETH:

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

WHEREAS, the Sub-recipient has submitted a proposal which was approved under the authority of City of Las Cruces Resolution 11-048, to utilize One Hundred Ninety-Nine Thousand Two Hundred Ninety-Two Dollars and No Cents ($199,292.00) in Program Year (PY) 2010 HOME ($170,392.00 Non-CHDO + $28,900.00 CHDO) funds for the development and new construction of property located and more specifically described on the attached Amended **Attachment "A"** (hereinafter referred to as "Property");

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

WHEREAS, the parties desire to enter into this Amended Agreement in order to change the location of the property on which the homes will be constructed, to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Sponsor and Owner 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

3. Affordability Period – if the Subsidy per lot is $1 to $14,999, then the Affordability Period if five (5) year from the date of completion for each individual unit; if the subsidy per lot is from $15,000 up to and including $40,000.00, then the Affordability Period is ten (10) years from the date of completion for each individual unit; or if the subsidy per lot is greater than $40,000.00, then the affordability Period if fifteen (15) years from the date of completion for each individual unit. The Affordability Period will begin on the date of completion for each individual unit.

12. Owner-Occupied - Upon completion of construction and during the Affordability Period, the Developer/Subrecipient is required to annually confirm all units remain owner-occupied and provide supporting documentation annually to City staff. During the affordability period, the Developer/Subrecipient/Owner agree 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. 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 purchase only to a buyer whose family qualifies as a low-income family earning between 45-80% of Area Median Income (AMI) and will use the property as their principal residence. The Owner and/or Subrecipient further represents and warrants that the owner(s) met income eligibility requirements at the time the Contract(s) to build the unit(s) was executed.

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Period of Affordability Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing during 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 project completion date; 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 project completion date; if the HOME assistance/subsidy is greater than $40,000, then the Affordability Period is ten (10) years from the project completion date; or if the subsidy is for new construction or acquisition of rental housing, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the effective project completion date for each individual unit. In order to ensure compliance with the Affordability Period, the owner(s) of the Property, shall execute a Deed Restriction and Covenants Agreement, a copy of which is attached hereto as **Attachment "C"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Developer acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Mortgage which requires resale of the HOME unit to another eligible person or household, if the Project does not meet the Affordability requirements for the Affordability Period. These resale provisions conform to 24 CFR Part 92.254 (a)(5)(i) and are detailed in the Deed Restrictions and Covenants Agreement as shown in Attachment "C" , Restrictive Covenants Section C, executed between the City of Las Cruces and the individual owner(s).

Attachments

1. Attachment A: Legal Description, hereby replaces the original Attachment A Legal Description in its entirety.

2. Attachment B: Standards of Eligibility – 2013 Income Limits, hereby replaces the original Attachment B in its entirety.

3. Attachment C: City of Las Cruces Deed Restrictions and Covenants Agreement, hereby replaces the original Attachment C in its entirety.

4. Attachment D: Scope of Work, Project Schedule, and Budget, hereby replaces the original Attachment D in its entirety.

5. All other sections, Exhibits, and or Attachments shall remain as originally Agreed to and shall remain in full force and effect.

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

SIGNATURE ON NEXT PAGE

TIERRA DEL SOL HOUSING CORPORATION

_____
Rose Garcia, 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"

AMENDED LEGAL DESCRIPTION

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

Lots 24, 30, 33, 35, 48, 49, 54, and 57, TIERRA GRANDE SUBDIVISION, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on June 5, 2007, in Book 22 Page(s) 232-233 of Plat Records.

Lots 5 and 11, TIERRA GRANDE SUBDIVISION REPLAT NO. 1, in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on April 28, 2008, in Book 22 Pages(s) 479-480 of Plat Records.

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY – 2013 INCOME LIMITS

PERSONS ELIGIBILE AND QUALIFIED TO RECEIVE SAID SERVICES AS ESTABLISHED BY THE U.S. DEPARTRMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) 2013

HUD INCOME GUIDELINES
LAS CRUCES MSA INCOME LIMITS
Income Levels by Family Size

EFFECTIVE DATE, December 11, 2012

MEDIAN FAMILY INCOME (MFI): $45,000

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	$9,900	$16,450	$26,350	$31,500
2	$11,300	$18,800	$30,100	$36,000
3	$12,700	$21,150	$33,850	$40,500
4	$14,100	$23,500	$37,600	$45,000
5	$15,250	$25,400	$40,650	$48,600
6	$16,400	$27,300	$43,650	$52,200
7	$17,500	$29,150	$46,650	$55,800
8	$18,650	$31,050	$49,650	$59,400

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2013 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: , 2013

_____, a single 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 88001, 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 finding on any successors, heirs,

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

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

Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Tierra Del Sol Housing Corporation in the amount of Nineteen Thousand Nine Hundred Twenty-Nine Dollars and Twenty Cents ($19,929.20) ("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 10 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 it's assigns, 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 median income (AMI) 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 Contract to build

the unit was executed with the Agent, Tierra Del Sol Housing Corporation.

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:

a. 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% AMI that will not pay more than 30% of their gross income for principal, interest, taxes and insurance and that 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 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 sold for less or the same price as the original purchase price.

b. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds prorations 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.

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this_____ day of _____, 2013.

_____ _____

, Owner/Borrower ,Owner/Borrower

Acknowledgment

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____.

_____
Notary Public

My commission expires:

_____

ATTACHMENT "D"

(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)

Tierra Del Sol Housing Corporation, a New Mexico non-profit corporation, has purchased 10 lots in the Tierra Grande Subdivision on which to construct single-family owner-occupied affordable housing units. Upon completion of construction the home will be sold at a price that is equal to or less than 95% of area medium sales price to income eligible households earning 80% or less than area medium income working through Tierra Del Sol's homeownership center. Each household purchasing a unit under this agreement will receive a credit upon closing in the amount of $19,929.20 equal to the amount of HOME-assistance provided. With the amount of HOME-assistance afforded to the households, each unit is required to have a 10 year affordability period.

The ten units to be built must be constructed with project completion date no later than June 30, 2015. Tierra Del Sol Housing Corporation is responsible for all development costs. If the project is not complete by June 30, 2015, the project will be considered an incomplete project and the amount of HOME funds invested shall be returned to the City. The City will be responsible to return the HOME funds to the Department of Housing and Urban Development.

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of December 2, 2013 (Adoption Date)

TITLE: **A RESOLUTION APPROVING AMENDMENTS FOR TWO HOME INVESTMENT PARTNERSHIPS ACT (HOME) AGREEMENTS BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR THE DEVELOPMENT AND CONSTRUCTION OF OWNER-OCCUPIED, SINGLE-FAMILY AFFORDABLE HOUSING UNITS.**

Purchasing Manager's Request to Contract (PMRC) {Required?} **Yes** ☐ **No** ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Community Development Staff Contact		528-3134	11/15/13
Department Director		528-3067	11/15/13
Other			
Assistant City Manager /CAO		541-2078	11/15/13
Management & Budget Manager		541-2107	11/15/13
Assistant City Manager/COO		-2271	11/20/13
City Attorney		2128	11/20/13
City Clerk		x2115	11/21/13

Rev. 8/2011