City of Las Cruces®
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Council Action and Executive Summary

Item # 5 **Ordinance/Resolution#** 14-192

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of June 2, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS ACT (HOME) RECOVERABLE GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION (TDS) FOR ACQUISITION AND NEW CONSTRUCTION OF AFFORDABLE HOUSING UNITS.

PURPOSE(S) OF ACTION:

Approve a HOME agreement for affordable housing development.

COUNCIL DISTRICT: 4 & 5		
Drafter/Staff Contact: Jan Lauterbach	**Department/Section:** Community Development/ Planning & Neighborhood Services	**Phone:** 528-3134
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

Annual Action Plans presented to and adopted by City Council outline how the HOME entitlement funds and Community Housing Development Organization (CHDO) set-aside funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan. On May 7, 2012, City Council approved Resolution 12-181 adopting the 2012 Action Plan, which allocated $235,007.00 ($198,507.00 entitlement + $36,500.00 CHDO) to TDS for acquisition and new construction of affordable single family housing units.

TDS desires the use of HOME funds in the amount of $235,007.00 for HOME eligible expenses in the development of ten single-family, owner-occupied affordable housing units. The homes will be offered for sale to households earning less than 80% of area medium income (AMI). The

amount of HOME funds allocated to each unit results in a direct reduction in the sale price to the individual homeowners, allowing them a more affordable mortgage with their permanent lender. Six homes will be located in Tierra Grande Subdivision and the remaining four will be located in the Legends West North Subdivision Phase 1.

In order to comply with HOME regulations, the HOME Recoverable Grant Agreement between the City of Las Cruces and TDS, shown in Exhibit "A," must be executed.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", HOME Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	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__.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development: (Fund 2000)	20184360-722190-11420	$198,507.00	$198,507.00	0.00	N/A
Community Development: (Fund 2000)	20184360-722190-11213	$36,500.00	$36,500.00	0.00	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the HOME Agreement between the City of Las Cruces and Tierra Del Sol Housing Corporation providing funding for acquisition and new construction of affordable housing units.
2. Vote "No"; this will deny the approval of HOME funding to Tierra Del Sol Housing Corporation for affordable housing development.
3. Vote to "Amend"; further direction would come from City Council.
4. Vote to "Table"; further direction would come from City Council.

REFERENCE INFORMATION:

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

1. Resolution No. 12-181

RESOLUTION NO. 14-192

A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS ACT (HOME) RECOVERABLE GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION (TDS) FOR ACQUISITION AND NEW CONSTRUCTION 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) that provides the City of Las Cruces, as a Participating Jurisdiction, an opportunity to administer the federally funded HOME Program from the U.S. Department of Housing and Urban Development, in accordance with the goals of the City's Consolidated Plan; and

WHEREAS, the 2012 Action Plan outlines how the Home Investment Partnerships Act (HOME) and Community Development Block Grant (CDBG) entitlement funds for Program Year (PY) 2012 will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, City Council approved Resolution 12-181 accepting the 2012 Action Plan, allocating PY 2012 HOME funding to TDS, a Community Housing Development Corporation (CHDO) in the amount of $235,007.00 ($36,500.00 CHDO and $198,507.00 Non-CHDO) for acquisition and construction expenses in the development of affordable housing; and

WHEREAS, TDS desires to construct ten units of owner-occupied single-family affordable housing units that will be sold to income qualifying households working through the TDS homeownership center; and

WHEREAS, in order to comply with the regulatory requirements of the HOME program, the City must execute a HOME agreement with TDS.

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

(I)

THAT the HOME agreement between the City of Las Cruces and Tierra Del Sol Housing Corporation, as shown in Exhibit "A," attached hereto and made part of the Resolution, is hereby approved.

(II)

THAT the Assistant City Manager/COO, as the official representative of the City, is hereby authorized to sign the agreement 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 _____, 2014.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by:_____

Seconded by:_____

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

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

PY 2012 HOME PROGRAM RECOVERABLE GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION

This **HOME PROGRAM RECOVERABLE GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of 700 N Main St., Las Cruces, New Mexico 88001 (hereinafter referred to as "City") and Tierra Del Sol Housing Corporation, a non-profit agency, and Community Housing Development Organization (CHDO), whose DUN's number is 097966923 and whose address is 210 E. Idaho Ste. B, Las Cruces, New Mexico 88005 (hereinafter referred to as "Developer/Subrecipient").

WITNESSETH:

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

WHEREAS, the recipient has submitted a proposal to utilize Two Hundred Thirty-Five Thousand Seven Dollars and No Cents ($235,007.00) ($198,507.00 entitlement + $36,500.00 CHDO) in Program Year (PY) 2012 HOME funds for the acquisition and new construction of 10 lots in the Tierra Grande and Legends West North Subdivisions, located more specifically as described on the attached **Attachment "A"** (hereinafter referred to as "Property");

WHEREAS, acquisition and new construction of single-family owner-occupied affordable housing units are eligible activities under the HOME Program; and

WHEREAS, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Developer/Subrecipient 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 Developer/Subrecipient 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 is 10 years per Lot.

3. Affordability Period – if the subsidy per lot is $1 to $14,999, then the Affordability Period is five (5) years; if the subsidy per lot is from $15,000 up to and including $40,000, then the Affordability Period is ten (10) years; or if the subsidy per lot is greater than $40,000, then the Affordability Period is fifteen (15) 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 at the point of time for each individual unit contemplated under this agreement has been closed out in HUD's Integrated Disbursement and Information System (IDIS) as authorized in 24 CFR Part 92.502(d)(1).

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. All homebuyers receiving HOME assistance or

purchasing united developed with HOME funds are required to receive housing counseling by a HUD approved housing counseling agency.

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. Recoverable Grant Documents – this Agreement, the Deed Restrictions and Covenants Agreement and all agreements, certificates, schedules, notes, statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the grant contemplated hereby.

10. Low Income Housing – housing that is Affordable to Low Income Persons.

11. Low Income Person or Low Income Household – one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income adjusted for family size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

12. Owner-Occupied – 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..

13. Project – the acquisition of and new construction of ten owner occupied, single-family units, in which all units shall be exclusively occupied by Extremely Low, Very Low or Low Income Persons.

14. Project Completion – that the necessary title transfer requirements and construction work have been performed; the project complies with the requirement of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD. All units contemplated under this agreement must be completed June 30, 2016 which complies with the FY 2012 and FY 2013 Appropriations Act.

15. Sale of Homebuyer Units – All units contemplated under this agreement must be sold within 6 months of completion date of the project(s) individual HOME-assisted units. Sold units are defined as units that:
    1) have a "ratified sales contract" or
    2) actual "permanent closing" that includes completion of title transfer and execution of warranty deed to an income qualified household that will occupy the unit as their primary residence.
    3) Maximum sales price of the individual units cannot exceed 95% of area median purchase price as defined by HUD at the time of sale. Proceeds from the sale may be retained by the CHDO for activities that benefit low-income families.

16. Property - All that certain real property located in the county of Dona Ana, State of New Mexico, described as Lots 61, 51, 45, 42, 27, and 36 of Tierra Grande Subdivision, and Lots 331, 332, 333, and 334 of Legends West North Subdivision Phase 1, See attached **Attachment "A"** for full legal description.

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.

18. Commitment Date – for purposes of determining the project completion deadline, the commitment date is the date of the signed agreement for use of specific program year funds by and between the Department of Housing and Urban Development and the City of Las Cruces.

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. RECOVERABLE GRANT AMOUNT AND USE OF FUNDS

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

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

   Under the terms and conditions of this Agreement, the City agrees to grant the Developer/Subrecipient a total of Two Hundred Thirty-Five Thousand Seven Dollars and No Cents ($235,007.00) for the acquisition and new construction of the Property. The grant funds to the Developer/Subrecipient shall be in the form of a recoverable grant on the terms set forth in this Agreement and the owners' Deed Restriction and Covenants Agreement, as required by the City. The Owners' shall secure a Deed Restrictions and Covenants Agreement on the Property (the "Deed Restrictions") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.

3. Disbursement: The initial disbursement of funds must occur within 12 months of the date of agreement. Subsequent disbursements may take place monthly with the final disbursement to be taken no sooner than 30 days prior to project completion.

   The City shall disburse the grant proceeds for eligible expenses only after approval by the City of invoices submitted and verified in accordance with this Agreement and applicable HOME regulations. Notwithstanding anything to the contrary in this Agreement, the City also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the City accordingly.

4. Use of Grant Money: The Developer/Subrecipient shall use the grant proceeds for eligible acquisition and new construction expenses permitted under applicable HOME regulations and as set forth in 24 CFR §92.206, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "D"** and incorporated herein by this reference. The Developer/Subrecipient 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 Developer/Subrecipient acknowledges and agrees that any funds not used in accordance with permitted HOME regulations must be repaid to the City. The Developer/Subrecipient acknowledges and agrees if this Project is terminated before completion, either voluntary or otherwise, the Developer/Subrecipient must repay any HOME funds invested in the Project to the City. The Developer/Subrecipient 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: As applicable, 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 Developer/Subrecipient must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was submitted.

6. Program Income: Any program income generated from the proceeds of the HOME grant 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 the end of the ten (10) year Affordability Period. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the Property requirements set forth in this Agreement or any record-keeping or use requirements mandated by HOME regulations shall survive termination n 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 $235,007.00. Payment requests are due by the fifteenth (15th) day of each month. If no payment request is needed for a particular month, the Developer/Subrecipient must submit in writing that no payment request is required for that particular month. The Developer/Subrecipient agrees to use the Payment Request form as referenced in **Attachment "E."** Payments may be contingent upon certification of the

Developer/Subrecipient'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 Grantee and the Developer/Subrecipient are exempt from HUD's matching requirements in 24 CFR §92.220 per CPD notice 07-05 issued July 11, 2007 and expiring July 11, 2008; however the exemption from the match requirement is applicable in the subsequent year from the date of the notice. According to HUD's website the City is exempt from match for program years 2009, 2010, 2011, 2012, 2013, and 2014.

10. Deadline for Sale of Homebuyer Units: for each unit contemplated under this agreement, the unit(s) must be sold to an eligible household within 6 months of project completion. Any unit not sold to an eligible homebuyer within 6 months of project completion must be converted to a HOME rental units, or repay the HOME investment. If unit is converted to a rental unit, the unit would remain a rental unit through the affordability period, unless sold to the existing tenant during the affordability period, and is subject to HOME monitoring requirement throughout the term of the affordability period.

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Developer/Subrecipient shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Developer/Subrecipient agrees to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, 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 Developer/Subrecipient, as a CHDO, shall comply with the Uniform Administrative Requirements at 24 CFR Part 84.21. The Developer/Subrecipient shall follow procedures as outlined in their Procurement Manual for construction activities. The Developer/Subrecipient 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 10 year 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. 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/Subrecipient 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).

3. Property Standards: The Developer/Subrecipient shall comply with the property standards requirements set forth in 24 CFR §92.251. The Developer/Subrecipient shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, and zoning ordinances. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, as applicable.

4. Four-Year Project Completion: HOME funds provided for the project and units proposed under this Agreement that have not been completed within four years of the commitment date, as determined by the signed agreement between the City and the Department of Housing and Urban Development, must be repaid to the City. HUD may grant a one-year extension to the completion deadline upon a request from the City that is submitted to the local HUD Field Office at least 90 days before the project's four-year deadline. The Developer/Subrecipient must coordinate the extension request with the City by providing the following: documentation that the project will not be completed by the four-year deadline due to circumstances beyond the City's control, a detailed

project completion schedule, with milestones, that will ensure the project is completed within one year or less, proof that adequate financing has been secured to ensure project completion.

5. Household Qualifying: The Developer/Subrecipient shall qualify each household purchasing a HOME-assisted unit under the guidance of the HUD Final Rule as may be revised, and in accordance with 24 CFR 5.609 including HUD's Technical Guide for Determining Income and Allowances for the HOME Program with annual income determinations based on HUD's Part 5 definition of annual income. Generally, households shall be qualified at the time of contract, to purchase housing to be constructed, or at the time of purchase in the case of a contract to purchase existing housing. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, the household must be qualified at the time the agreement is signed. All qualifying documentation shall be provided to City HOME staff for review prior to occupancy and/or permanent closing.

6. Monitoring: The City will monitor both the financial and programmatic performance of the Developer/Subrecipient throughout the development and construction process including a one year period after the sale of the unit(s). The City reserves the right to monitor the project records for a period of no less than five (5) years after 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 Developer/Subrecipient within 30-days of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

7. Records: The Developer/Subrecipient shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Developer/Subrecipient shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer/Subrecipient shall make all records available to the City, HUD, and to their respective representatives during normal business hours. The Developer/Subrecipient shall maintain all mortgages and Project financial records, including source documentation to support how HOME funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §84.53. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Developer/Subrecipient 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.

8. Reports: The Developer/Subrecipient 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 /Developer/Subrecipient's Program, status of construction progress, and status of identifying land for future affordable housing development.

9. Beneficiary Data: The Developer/Subrecipient shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Developer/Subrecipient will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary file by the Developer/Subrecipient and shall be made available to the City's monitors and/or their designees for review upon request.

10. Uniform Administrative Requirements: The Developer/Subrecipient and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Developer/Subrecipient shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Developer/Subrecipient 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.

11. Audits and Inspections: The Developer/Subrecipient's records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

One copy of the Developer/Subrecipient's reporting package shall be submitted to the City 30 after receipt of an auditor's report or 13 months after the end of the audit period, whichever occurs first. The reporting package shall include:

1. Financial statement,
2. Schedule of prior year audit findings,
3. Auditor's report, and
4. Corrective action plan that addresses each audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Developer/Subrecipient within 30 days after receipt by the Developer/Subrecipient. Failure of the Developer/Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Developer/Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Developer/Subrecipient audits and OMB Circular A-133 (Audits of States, Local Governments and Non-profit Organizations), as applicable.

12. Compliance with Davis-Bacon Act: The Developer/Subrecipient, as applicable, shall comply with 24 CFR §92.354 and all applicable provisions of the Davis-Bacon Act (40 U.S.C. §276a, et seq.) and implementing labor regulations contained in 29 CFR Part 5. The Developer/Subrecipient shall also comply with the Contract Work and Hours and Safety Standards Act (40 U.S.C. §§327-332), and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1, as applicable. The Developer/Subrecipient shall maintain records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.

13. Copeland "Anti-Kickback" Act: As applicable, the Developer/Subrecipient 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.

14. Debarment and Suspension: The Developer/Subrecipient shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Developer/Subrecipient shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Developer/Subrecipient 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 Developer/Subrecipient shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.

15. Drug-Free Workplace: The Developer/Subrecipient shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Developer/Subrecipient agrees to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "F"** and incorporated herein by reference. The

Developer/Subrecipient will complete this certification, and a copy will be kept in the files of each party.

16. Utilization of Minority/Women's Business Enterprises: The Developer/Subrecipient shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Developer/Subrecipient shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Developer/Subrecipient shall keep such records necessary to comply with 24 CFR §92.508(a)(7).

17. Section 3 Economic Opportunity: The Developer/Subrecipient 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 Developer/Subrecipient shall comply with the "Section 3" requirements attached hereto as **Attachment "G"** and incorporated herein by this reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Very Low and Low Income Persons residing in the Project Area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the area. The Developer/Subrecipient shall keep records documenting compliance with these requirements as required by 24 CFR §92.508 (a)(7).

18. Equal Employment Opportunity: The Developer/Subrecipient shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "H"** and incorporated herein by this reference. Any contracts entered into by the Developer/Subrecipient shall include a provision requiring compliance with these regulations. The Developer/Subrecipient shall keep records and documentation demonstrating compliance with these regulations.

19. Conflict of Interest: The Developer/Subrecipient shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Developer/Subrecipient 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 Developer/Subrecipient shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.

20. Anti-Lobbying Provision: The Developer/Subrecipient shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Developer/Subrecipient shall complete and comply with the "Certification Regarding Lobbying," attached hereto as **Attachment "I"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's files. The Developer/Subrecipient shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.

21. Displacement and Relocation: The Developer/Subrecipient 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.

22. Lead-Based Paint Prohibited: The Developer/Subrecipient 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 Developer/Subrecipient shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

23. Non-Discrimination and Equal Opportunity: The Developer/Subrecipient 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 Developer/Subrecipient 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 Partnership 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 Developer/Subrecipient shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Developer/Subrecipient shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Developer/Subrecipient shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered into by the Developer/Subrecipient shall include a provision requiring compliance with these regulations. The Developer/Subrecipient shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

24. Fair Housing Act: The Developer/Subrecipient 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 13-62, et. seq., and shall keep all records demonstrating compliance.

25. Affirmative Marketing: As applicable the Developer/Subrecipient and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Developer/Subrecipient and the City shall keep records necessary to comply with 24 CFR §92.508(a)(7).

26. Miscellaneous Federal Requirements: The Developer/Subrecipient shall comply with the federal requirements set forth in 24 CFR Part 5 as applicable.

27. Religious Organizations: The Developer/Subrecipient 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.

28. Financial Accountability: The Developer/Subrecipient 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."

29. Environmental Review: The agreement is a conditional commitment of funding pending the completion of an acceptable environment assessment of the project properties. No draws can be submitted and no funds disbursed until the project has received environmental clearance. The Project will be assessed and comply in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.

30. Reversion of Assets: Upon the Agreement's expiration, the Developer/Subrecipient 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 Developer/Subrecipient 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 Developer/Subrecipient;

   b) If the Developer/Subrecipient is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;

   c) If at any time any material representation made by the Developer/Subrecipient in any written certification or communication submitted by the Developer/Subrecipient to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;

   d) If the Developer/Subrecipient does not disclose to the City, upon demand, the names of all persons with whom the Developer/Subrecipient has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and

   e) If any default shall occur under the Mortgage and Restrictive Covenants, or any Grant Documents executed in connection with this grant by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not

cured within the applicable cure period set forth in the Grant Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Developer/Subrecipient thereof.

Notwithstanding any of the foregoing provisions to the contrary, if the Developer/Subrecipient 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 Developer/Subrecipient 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 Developer/Subrecipient 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 Deed

Restrictions and Covenants, or other Grant Documents to the contrary, this indemnification provision shall survive closing.

SECTION 6. INSURANCE

1. Insurance: Without limiting the Developer/Subrecipient's indemnification, the Developer/Subrecipient 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 Developer/Subrecipient's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.

    b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer/Subrecipient shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.

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

        i. Commercial General Liability Insurance: The Developer/Subrecipient 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 Developer/Subrecipient must be included under such policy and with coverage to meet all requirements of the State of New Mexico.

iii. Flood Insurance: The Developer/Subrecipient 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 Developer/Subrecipient or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Developer/Subrecipient with respect to the Program. The Developer/Subrecipient is not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Developer/Subrecipient for any purpose.

3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.

4. Entire Agreement/Modification: This Agreement, together with **Attachments "A"** through **"I"** attached hereto, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Developer/Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Developer/Subrecipient 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 Developer/Subrecipient.

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. Housing Development Coordinator (HOME)

Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004
(575) 528-3134

B. Rose Garcia, Executive Director
210 E. Idaho, Ste. B
Las Cruces, New Mexico 88005
(575) 541-0477

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

_____
Brian Denmark, Assistant City Manager/COO

_____
Date

APPROVED AS TO FORM:

_____
City Attorney

ATTACHMENT "A"

LEGAL DESCRIPTION

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

TIERRA GRANDE LOTS:
Lots 27, 36, 42, 45, and 51, 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 Pages(s) 232-233 of Plat Records.

AKA:
5119 Vista de Tierra Rd.
5047 Vista de Tierra Rd.
5006 Vista de Tierra Rd.
5030 Vista de Tierra Rd.
5078 Vista de Tierra Rd.

Lot 61, 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.

AKA:
5158 Vista de Tierra Rd.

LEGENDS WEST NORTH LOTS:
Lots 331, 332, 333, and 334 of Legends West North, Phase 1 in the City of Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on Plat No. 4509, filed for record in the Office of the County Clerk of said county on December 27, 2006, and recorded in Book 22, Pages 83-91, Plat Records.

AKA:
2912 La Union Ct.
2916 La Union Ct.
2920 La Union Ct.
2924 La Union Ct.

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY - 2014 INCOME LIMITS

PERSONS ELIGIBILE AND QUALIFIED TO RECEIVE SAID SERVICES AS ESTABLISHED BY THE U.S. DEPARTMENTOF HOUSING AND URBAN DEVELOPMENT (HUD) 2014

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

EFFECTIVE DATE, May 1, 2014

MEDIAN FAMILY INCOME (MFI): $44,000

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	$9,950	$16,550	$26,450	$30,800
2	$11,350	$18,900	$30,200	$35,200
3	$12,750	$21,250	$34,000	$39,600
4	$14,150	$23,600	$37,750	$44,000
5	$15,300	$25,500	$40,800	$47,500
6	$16,450	$27,400	$43,800	$51,050
7	$17,550	$29,350	$46,850	$54,550
8	$18,700	$31,200	$49,850	$58,100

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2014 Income limits from website at http://www.huduser.org/datasets/il/il14/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: , 2014

_____, a unmarried/married man/woman, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having a mailing address of P.O. Box 20000, Las Cruces, NM, 88004 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of _____, Las Cruces, NM 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 _____ Dollars and __ Cents ($_____) ("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:

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, 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.

Resale Provisions. During the affordability period, the Lender provided the Owner consent to sell the property to a another qualified low income buyer as outlined in Section D, Transfer of Property, of this Agreement, the Lender and Owner agree to the resale provisions as follows:

1. Ensuring Affordability to Subsequent Buyers: If during the affordability period the property is sold to a subsequent buyer, the price at resale must ensure the original HOME-assisted Owner a fair return on investment (ie., the homebuyer's downpayment plus capital improvements made to the house), while also ensuring that the property is sold at a price that is affordable to a reasonable range of low-income buyers. The Fair Return on Investment will be measured by the Consumer Price Index (CPI) for shelter over the period of ownership, for similarly sized cities, not seasonally adjusted. For purposes of calculating the fair return on investment, the types of capital improvements that the City will include in its basis for calculating fair return are limited to value added improvements such as kitchen remodel, bath remodel, new windows, new siding and the addition of living space. The homeowner must document the improvements with receipts for the improvement. The purchase price at subsequent sale during the Affordability Period is required to be at a price that is affordable to a family earning between 45-80% 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.

2. 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

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.

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.

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.

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 _____, 2014.

_____ _____

, Owner/Borrower ,Owner/Borrower

Acknowledgment

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____.

_____
Notary Public

My commission expires:

_____

ATTACHMENT "D"

(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)

Tierra Del Sol Housing Corporation previously acquired 6 lots in the Tierra Grande subdivision and will acquire 4 lots in the Legends West Subdivision on which to construct 10 owner-occupied single family dwelling units. Program Year 2012 HOME funds in the amount of $235,007.00 will be used for acquisition of the lots in Legends West Subdivision as well as hard construction costs on all 10 affordable housing units. Each of the units will received an estimated $23,500.00 in HOME assistance. The amount of HOME-assistance to the families will provide for a direct reduction in the sales price to each individual family.

Private loans will provide for the additional construction costs associated with the units. Construction on all units is expected to begin within one year of the execution of this agreement with all units under contract with qualified income eligible households working with Tierra Del Sol's homeownership center at the time of construction. All units must be completed with a certificate of occupancy and closed with the families through a title company by June 30, 2016.

ATTACHMENT "E"

(PAYMENT REQUEST FORM)

City of Las Cruces®
PEOPLE HELPING PEOPLE

INVOICE

Date _____

Agency Name Tierra Del Sol Housing Corporation
Property Address:_____

Original contract balance	**$ 235,007.00**
Balance as of end of previous month	
Invoice Expenses:	
	$
GRAND TOTAL:	**$**
Remaining Balance:	$_____

Certification:

I, _____,as_____ _of_____, hereby certify that the information provided on this invoice is for reimbursement for eligible development and construction expenses incurred in the month of _____for Tierra Del Sol Housing Corporation , a Community Housing Development Organization.

_____
Printed Name

_____
Signature

_____
Date

ATTACHMENT "F"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

CERTIFICATION

1. The Developer/Subrecipient certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer/Subrecipient's/Developer/Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The Developer/Subrecipient's policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation and employee assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A".

D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

2. The Developer/Subrecipient shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Developer/Subrecipient 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: PY 2012 Single Family Housing Development Tierra Grande and Legends West

Date:

_____

The Developer/Subrecipient 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):

210 E. Idaho Ste. B	2912 La Union Ct.
5047 Vista De Tierra	2916 La Union Ct.
5119 Vista De Tierra	2920 La Union Ct.
5006 Vista De Tierra	2924 La Union Ct.
5030 Vista De Tierra	
5078 Vista De Tierra	
5158 Vista De Tierra	

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

TIERRA DEL SOL HOUSING CORPORATION

By:

_____
Rose Garcia

_____
Date

ATTACHMENT "G"

SECTION 3 CLAUSE

A. The work to be performed under this contract is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the Project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.

C. The Developer/Subrecipient 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 Developer/Subrecipient 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 Developer/Subrecipient is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Developer/Subrecipient 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.

TIERRA DEL SOL HOUSING
CORPORATION

By:

_____
Rose Garcia

_____
Date

ATTACHMENT "H"

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

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

TIERRA DEL SOL HOUSING
CORPORATION

By:

_____
Rose Garcia

_____
Date

ATTACHMENT "I"

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Developer/Subrecipient 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.

TIERRA DEL SOL HOUSING
CORPORATION

By:

_____
Rose Garcia

_____
Date