# City of Las Cruces®
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## Council Action and Executive Summary

**Item #** 16 **Ordinance/Resolution#** 10-096 **Council District:** 2

**For Meeting of** September 21, 2009
**(Adoption Date)**

**TITLE: A RESOLUTION APPROVING AN AFFORDABLE HOUSING GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES FOR THE USE OF STATE LEGISLATIVE FUNDS FOR DEVELOPMENT, RENOVATION, REHABILITATION AND CONSTRUCTION OF NEW UNITS, OFFICE, AND A MEETING/TRAINING ROOM AT THE TRANSITIONAL HOUSING FOR HOMELESS VETERANS COMPLEX.**

**PURPOSE(S) OF ACTION:** Approve an Affordable Housing Grant Agreement between the City of Las Cruces and Housing Authority of the City of Las Cruces for the use of State Legislative funds.

| **Name of Drafter:** Vera Zamora | | **Department:** Community Development | | **Phone:** 528-3194 | |
|---|---|---|---|---|---|
| **Department** | **Signature** | **Phone** | **Department** | **Signature** | **Phone** |
| Community Development | | 528-3060 | Budget | | 541-2300 |
| | | | Assistant City Manager | | 541-2271 |
| Legal | | 541-2128 | City Manager | | 541-2076 |

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The voters of the State of New Mexico amended the State's Constitution to authorize local governments to provide services, funds, and land for the development of affordable housing without violating the State's Anti-Donation Clause via the New Mexico Affordable Housing Act ("Act). This Act authorized the New Mexico Mortgage Finance Authority (MFA) to establish rules to ensure compliance with the Act and to promote affordable housing. As called for in the City's Strategic and Consolidated Plans, City Staff developed the Affordable Housing General Oversight Ordinance approved by City Council as Ordinance #2319 on September 5, 2006, for incorporation as Article IV of Chapter 13 of the Las Cruces Municipal Code 1997, as amended. This ordinance establishes general oversight procedures to ensure that both State and local housing assistance grantees meet the applicable requirements of the Affordable Housing Act.

The Housing Authority of the City of Las Cruces as owner has secured State Legislative appropriations totaling $487,627.00 to plan, design, renovate, and construct new units for the Transitional Housing for Homeless Veterans Complex. The Las Cruces City Council approved Resolutions #08-037 and #09-098 authorizing the acceptance for State of New Mexico Department of Finance and Administration funding the complex and authorizing the City to be fiscal agent to the Housing Authority of the City of Las Cruces. The legislative funds will be used

(Continued on page 2)

to plan, design and renovate units, to construct new units, office, and a meeting/training room, all for use by Homeless Veterans in the City of Las Cruces and Dona Ana County.

The Transitional Housing for Homeless Veterans targets homeless veterans in Las Cruces and Dona Ana County who would otherwise be homeless or living in unsafe conditions, and includes 20 one-bedroom apartment units that will be renovated and developed to include 2 to 4 additional accessible units, an office, and a meeting/training room. The property is owned and managed by the Housing Authority of the City of Las Cruces. Mesilla Valley Community of Hope provides case management, in-take and screening for the participants.

An Affordable Housing Grant Agreement must be executed between the City of Las Cruces and the Housing Authority of the City of Las Cruces in order to comply with the NM Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance. The City will serve as fiscal agent with regard to state appropriations to the Housing Authority of the City of Las Cruces to complete the project.

**SUPPORT INFORMATION:**

| Fund Name / Account Number | Amount of Expenditure | Budget Amount |
|---|---|---|
| State Appropriations Funding | | |
| 4012-40123080-63602 | $209,927.00 | $209,927.00 |
| 4012-40123080-63601 | $50,000.00 | $50,000.00 |
| 4012-40803170-64101 | $227,700.00 | $227,700.00 |

1. Proposed Resolution
2. Exhibit "A" Affordable Housing Grant Agreement
3. Attachment "B" – Ordinance No. 2319
4. Attachment "C" - Resolution 08-037
5. Attachment "D" - Resolution 09-098

**OPTIONS / ALTERNATIVES:**

1. Vote YES and approve the Resolution authorizing the Affordable Housing Grant Agreement between the City of Las Cruces and the Housing Authority of the City of Las Cruces providing funds for the Transitional Housing for Homeless Veterans Complex.

2. Vote NO and deny the Resolution not authorizing the Affordable Housing Grant Agreement between the City of Las Cruces and the Housing Authority of the City of Las Cruces.

3. Modify the Resolution and vote YES to approve the modified Resolution.

4. Table/Postpone the Resolution and direct staff accordingly.

**RESOLUTION NO. 10-096**

**A RESOLUTION APPROVING AN AFFORDABLE HOUSING GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES FOR THE USE OF STATE LEGISLATIVE FUNDS FOR DEVELOPMENT, RENOVATION, REHABILITATION, AND CONSTRUCTION OF NEW UNITS, OFFICE, AND A MEETING/TRAINING ROOM, AT THE TRANSITIONAL HOUSING FOR HOMELESSS VETERANS COMPLEX.**

The City Council is informed that:

**WHEREAS,** the state legislature appropriated funding totaling $487,627.00 for The Housing Authority of the City of Las Cruces to plan, design, renovate, and construct new units for the Transitional Housing for Homeless Veterans Complex for Homeless Veterans in the City of Las Cruces and Dona Ana County; and

**WHEREAS,** the Las Cruces City Council approved Resolutions #08-037 and #09-098 authorizing acceptance for State of New Mexico Department of Finance and Administration funding and authorizing the City to be fiscal agent to the Housing Authority of the City of Las Cruces to plan, design and renovate units, to construct new units in an apartment complex, and to construct an office and a meeting/training room, all for the use by Homeless Veterans in the City of Las Cruces and Dona Ana County; and

**WHEREAS,** in order to comply with the applicable State of New Mexico Affordable Housing Act requirements and the City of Las Cruces Affordable Housing General Oversight Ordinance to secure and expend funding towards the project, an Agreement must be executed.

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

**(I)**

**THAT** the Affordable Housing Grant Agreement between the City of Las Cruces and The Housing Authority of the City of Las Cruces, as shown in Exhibit "A," attached hereto and made part of this resolution, is hereby approved.

**(II)**

**THAT** the City Manager, as the official representative of the City, is hereby authorized to sign 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 _____, 2009.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Archuleta: ____
Councillor Small: ____
Councillor Jones: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

# AFFORDABLE HOUSING GRANT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES

This **AFFORDABLE HOUSING GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of P.O. Box 20000, Las Cruces, New Mexico 88004 (hereinafter referred to as "City" or "Grantor") and **THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES,** a New Mexico public housing agency, whose address is 926 S. San Pedro Las Cruces, NM 88001 (hereinafter referred to as "Grantee").

**WITNESSETH:**

**WHEREAS,** the City Council approved through Resolutions #08-037 and # 09-098 authorizing the acceptance for State of New Mexico Department of Finance and Administration funding and authorizing the City to be fiscal agent to the Housing Authority of the City of Las Cruces to plan, design and renovate units, to construct new units in an apartment complex and to construct meeting rooms and offices, all for use by Homeless Veterans in Dona Ana County;

**WHEREAS,** the State has appropriated funding in the amount of Four Hundred Ninety-Four Thousand, Three Hundred Ninety-Seven Dollars and No Cents ($494,397.00) for development and construction costs of the Transitional Housing for Homeless Veterans property, an affordable transitional housing complex located at 3350 Oak Street, Las Cruces, New Mexico 88001 more specifically described on the attached Attachment **"A"** (hereinafter referred to as "Property");

**WHEREAS,** the parties desire to enter into this Agreement in order to secure payment for development and construction costs for the project and to ensure compliance with the applicable requirements with the State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance and to secure other covenants and promises from the Grantee regarding the use of funds to benefit homeless veterans,

**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 Grantee 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. Veteran – means having at least 180 days of regular active duty service and being honorably discharged or released, or having at least 90 days of active duty service, at least one day of which was during wartime and honorably discharged or released.

2. Affordable – means consistent with minimum rent and/or income limitations.

3. Affordability Period – means all time between project completion (i.e. construction completion and certificate of occupancy issuance) and July 1, 2010 and then Twenty (20) years from that date.

4. Household – means one or more persons occupying a housing unit.

5. Eligible Person or Eligible Household – means one or more natural persons or a family who are homeless and determined to be a Veteran of United States military service.

6. Transitional Housing – means temporary housing occupancy limited to a 24 month period.

7. Grant Documents - means this Agreement, the Note, the Mortgage and Declaration of Restrictive covenant and all agreements, certificates, schedules, notes statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the grant contemplated hereby.

8. Note – means that certain promissory note of even date herewith given by the Grantee and Owner to the City evidencing the grant contemplated by this Agreement.

9. Project – means the planning, design, renovation/rehabilitation of existing units and construction of new units and meeting rooms and offices for use by homeless veterans at the Transitional Housing for Homeless Veterans at 3350 Oak Street property where the Veterans Transitional Housing Program is located.

10. Project Completion – means that the construction work on all of the units contemplated under this Agreement has been completed, the project has received the Certificate of Occupancy for the new units by the City and all the units are occupied by qualified tenants, the final drawdown has been disbursed for the Project, and/or reported to the City and the State of New Mexico.

## SECTION 2. GRANT AMOUNT AND USE OF FUNDS

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

2. The Grant: Under the terms and conditions of this Agreement, the City agrees to grant the Grantee Four Hundred Ninety-Four Thousand Three Hundred Ninety-Seven Dollars and No Cents ($494,397.00) for the development and construction of the Project. The funding to the Grantee and Owner shall be in the form of a forgivable grant on the terms set forth in this Agreement, the Promissory Note, the Mortgage, the Declaration of Restrictive Covenant, and other grant documents as required by the City. The Grantee and Owner shall execute a promissory note in favor of the City substantially in the form attached hereto as **Attachment "B,"** (the "Note"), and incorporated herein by this reference. The Note shall be secured by a mortgage on the Property (the "Mortgage") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"** between the City and Owner.

3. Disbursement: The City shall disburse the grant proceeds only, as it relates to eligible expenses through the State Procurement Law and the Housing Authority of the City of Las Cruces Procurement Code processes. The Grantee will request reimbursement for payments made to qualified contractor(s) selected through the State Procurement Law and the Housing Authority of the City of Las Cruces Procurement Code. The grantee will provide documentation of invoices and shall certify and provide copies to the City that the portion of work then being billed has been satisfactorily completed by a licensed and bonded contractor. Failure to submit such invoices and supporting documentation may result in the non-availability of funds for payment and/or the denial of payment by the City.

4. Use of Grant Funds: The Grantee on behalf of the City shall use the grant proceeds for eligible expenses in accordance with the Scope of Work, and Floor Plans attached hereto as **Attachment "D"** and incorporated herein by this reference, and in accordance with permitted applicable State of New Mexico Affordable Housing Act regulations and the City of Las Cruces Affordable Housing General Oversight Ordinance with exception to the Low Income and Moderate Income restrictions. The Grantee acknowledges and agrees that all work must be completed by a licensed and bonded contractor and all construction must comply with all state and local building codes, rules and regulations. All required permits and inspections of the renovation are the responsibility of the Grantee. The Grantee acknowledge and agree if this Project is terminated before completion, either voluntary or otherwise, the Grantee and Owner must repay any state legislative funds invested in the Project to the City. The

Grantee shall keep all financial records for the Project, including source documentation to support how state legislative 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. Term: The term of this Agreement shall commence on effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through to project completion and then through any period from project completion to the start of the Affordability Period commencing on July 1, 2010 to the end of the twenty (20) year Affordability Period. The total funds must be expended on or before June 30, 2012, and 60% of the funding must be expended on or before June 30, 2011. 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 State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance regulations shall survive termination of this Agreement.

## SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Grantee and Owner shall comply with all applicable federal, local, and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Grantee agrees to comply with the applicable State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance regulations with exception to the Low Income and Moderate Income restrictions, as amended from time to time, whether set forth herein or not, and agree to execute or amend documents as necessary to be in compliance therewith. The Grantee also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Building and Zoning Code.

2. Rental Requirements: The Grantee agrees that they shall maintain units as Affordable Housing for so long as any or all of the Affordable Housing funds which have been awarded, loaned, or otherwise conveyed to the Grantee are unpaid and outstanding or the Affordability Period, which ever is longer.

Every unit is subject to rent controls designed to make sure that rents are affordable to the homeless veterans clients served at the transitional housing complex based on the rent charged for the units set forth herein.

All units are subject to Fair Market rents as established and published annually by HUD. A copy of the rent chart reflecting this year's rents is attached hereto as **Attachment "E"** and incorporated herein by this reference. The City will provide the Grantee with information on updated Fair Market rent limits, as they are made available by HUD so that rents may be adjusted, not to exceed the maximum Fair Market Rent limits. In calculating allowable rents, the Grantee shall subtract from the Fair Market rents any tenant paid utilities according to the utility allowances prepared by the Housing Authority of the City of Las Cruces, a current copy of which is attached hereto as **Attachment "F"**. The Grantee acknowledges that the City must review and approve all rents proposed by the Grantee and Owner to ensure compliance with the State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance regulations as applicable by this Agreement.

Any proposed increases in rents for the units must be submitted to the City for review and approval at least forty-five (45) days before the proposed effective date. The Grantee can apply these rent increases to new leases and at the time of renewal of existing leases. However, before implementing any rent increase for a tenant renewing or extending an outstanding lease, the Grantee shall provide written notice to such tenant of the proposed rent increase not less than 30 days before entering into any renewal or extension of such outstanding lease.

Notwithstanding anything herein to the contrary, the Grantee shall at all times during the term of this Agreement comply with all relevant applicable provisions pursuant to this Agreement of the State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance. The Grantee shall keep records demonstrating that the units meet the affordability requirements as stated in this Agreement. Records must also be kept for each household and made available to the City of Las Cruces, MFA, the Department of Finance and Administration and the New Mexico State Auditor upon request for a period of six (6) years following completion of all the Records and Audits.

3. Tenant Selection and Re-Certification: The Grantee shall undertake the initial review of eligibility of prospective tenants for the veteran's transitional housing units. In determining eligibility, the Grantee acknowledges that the City must examine the source documents evidencing the prospective tenant's eligibility for participation in the Veterans Transitional Housing Program. The Grantee shall also adopt

written tenant selection policies. All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be made available for review by the City's Community Development Department – Neighborhood Services Section or Successors or Assigns. The Grantee acknowledges that documentation must be kept verifying the eligibility of tenants.

During the Affordability Period, the Grantee shall re-verify tenant eligibility annually with similar documentation as submitted at initial lease up. This information must be maintained in the tenants' files and made available for review by the City, State, or NM State Auditor.

4. Period of Affordability/Restrictive Covenant: All units shall be maintained as affordable housing for the twenty-year Affordability Period commencing on or before, but no later than July, 1, 2010. In order to ensure compliance with this twenty-year Affordability Period, the Grantee shall execute a Declaration of Restrictive Covenants, a copy of which is attached hereto as **Attachment "G"** 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 Grantee acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Note and Mortgage which requires repayment of the state legislative proceeds, if the Project does not meet the Affordability requirements for the Affordability Period.

5. Property Standards: The Grantee agrees that they shall maintain any land or building received as a Housing Assistance Grant as multi-family Affordable Housing in accordance with Section 13-106 (a)(2)(b) of the City of Las Cruces General Oversight Ordinance as applicable. The Grantee shall keep records to document compliance with these property standards. At Project Completion, the Property shall meet all applicable local codes, ordinances, zoning ordinances, and HUD's Section 8 Housing Quality Standards (HQS), as per 24 CFR §982.401. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973. Covered multi-family dwellings, as defined in 24 CFR §100.201, must meet the design and construction requirements set forth in 24 CFR §100.205, which implements the Fair Housing Act. The Grantee and Owner shall maintain the Property in compliance with state and local codes, as well as HQS as per 24 CFR §982.401 for the 20-year Affordability Period.

6. Monitoring: The Grantee shall assist the City in its obligation to conduct on-site inspections for compliance with property standard requirements listed herein and shall provide information as requested so that the City

can verify tenant rents, and other state and local requirements pursuant to this Agreement on an annual basis. The Grantee shall keep records to document compliance with these inspections and monitoring review and the resolutions of any findings of concern.

The City will monitor both the financial and programmatic performance of the Grantee on an annual basis during the Affordability Period. Substandard performance, as determined by the City, will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Grantee and/or Owner within 30-days of time after being notified by the City, Agreement suspension or termination procedures may be initiated.

The City will also conduct an on-site inspection of the Property in order to verify compliance with property standards. On-site inspection of the units will be conducted in accordance with Section 8 Housing Quality Standards (HQS) as referenced in 24 CFR §982.401.

7. Records: The Grantee shall comply with records that must be maintained for this Project. The Grantee and Owner shall maintain all records pertaining to the Project at its principal place of business for a period of no less than six (6) years after Project Completion; except that records of individual tenant eligibility verifications, Project rents, and Project inspections must be retained for the most recent 5-year period, until five years after the Affordability Period terminates. The Grantee shall make all records available to the City and to their respective representatives during normal business hours. The Grantee shall maintain all leases the Grantee or City shall maintain Project financial records. All supporting documents shall be maintained in accordance with the requirements set forth in this Agreement. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 6-year period, the Grantee and must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 6-year period, whichever is later. This section shall survive the termination of this Agreement.

8. Reports: Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Grantee shall submit annual reports at the end of the City's fiscal year (June 30th) with such reports due by the last business day of July. These reports shall include, but not be limited to, the financial statements for the Project, and, for the units, a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, and rental rates.

Quarterly Reports must be provided to include a summary of statistical data indicated services provided under this Agreement.

9. Audits: The Grantee shall comply with the audit provisions contained in 24 CFR §85.26 and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507) and OMB Circular A-133. Audits shall be conducted annually. The Grantee and Owner agree to allow the City's Community Development Department, Financial Services Department, and Internal Auditor, or their successors or Assigns, to conduct any audits the City feels necessary at any time during the term of this Agreement or pursuant to any State or HUD request. The Grantee shall submit its annual audit to the City within one hundred twenty (120) days of the end of the Grantee and Owner's fiscal year.

10. Copeland "Anti-Kickback" Act: The Grantee shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

11. Debarment and Suspension: The Grantee shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Grantee 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 Grantee has entered into a contract or subcontracted with a debarred or suspended party, no state funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Grantee shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.

12. Drug-Free Workplace: The Grantee 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 Grantee, agrees to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "H"** and incorporated herein by reference. The Grantee will complete this certification, and a copy will be kept in the files of each party.

13. Utilization of Minority/Women's Business Enterprises: The Grantee 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 Grantee 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 Grantee shall keep such records necessary to comply with 24 CFR §92.508(a)(7).

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

15. Conflict of Interest: The Grantee shall comply, during the procurement and construction period, with the City's Ethics Ordinance as contained within Chapter 2 of the Las Cruces Municipal Code, 1997 as amended.

16. Anti-Lobbying Provision: The Grantee 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. The Grantee shall complete and comply with the "Certification Regarding Lobbying", attached hereto as **Attachment "J"** and made a part hereof by this reference. A copy of this document will be kept on file with the City. The City shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.

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

18. Non-Discrimination and Equal Opportunity: The Grantee shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, familial status, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Grantee shall fully comply with the requirements of

24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Grantee 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 Grantee 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 Grantee 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 City, Grantee, and Owner shall include a provision requiring compliance with these regulations. The Grantee shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

19. Fair Housing Act: The Grantee shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-65, et. seq., and shall keep all records demonstrating compliance.

20. Affirmative Fair Housing Marketing: The Grantee shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Grantee and Owner agree to complete HUD Form 935.2, as attached in **Attachment "K,"** and submit it to the City. The Grantee shall keep records of its efforts to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups. At a minimum, the Grantee shall: (a) indicate in its promotional material that the Property provides fair housing opportunities; (b) provide notice of the availability of the units to community groups and non-profit service organizations; and (c) publish the notice of the availability of the units in a community newspaper. The Grantee shall keep records necessary to comply with 24 CFR §92.508(a)(7).

21. Religious Organizations: The Grantee 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.

22. Financial Accountability: The Grantee 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."

## SECTION 4. DEFAULTS AND REMEDIES

1. Events of Default: The following shall constitute an Event of Default under this Agreement:

   a) If the Grantee fails to rent the Property to qualified homeless veterans at Affordable rents as set forth in this Agreement;

   b) If the Grantee fails to comply with any regulations governing awards, 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 Grantee;

   c) If the Grantee 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;

   d) If at any time any material representation made by the Grantee in any written certification or communication submitted by the Grantee and 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;

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

   f) If any default shall occur under the Note, Mortgage, Declaration of Restrictive Covenant, 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 Grantee thereof.

   Notwithstanding any of the foregoing provisions to the contrary, if the Grantee 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. Notwithstanding any of the foregoing provisions to the contrary, if an Event of Default occurs, prior to exercising any remedies hereunder, the Grantor shall give Grantee written notice of such default. Grantee shall have a period of ten (10) days after receipt of such notice, or such longer period of time as may be set forth herein, to cure the default prior to exercise of remedies by the Grantor. The Grantor hereby agrees that any cure of any default made or tendered by Grantee shall be (a) deemed to be a cure by the Grantee.

**SECTION 5. INDEMNIFICATION**

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

## SECTION 6. INSURANCE

1. Insurance: Without limiting the Grantee's indemnification, the Grantee and shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Valid certificates and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.

    a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Grantee's and 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 Grantee 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 Grantee 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 Grantee must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than the limits of liability set forth in the New Mexico Tort Claims Act, which limits of liability are presently $1,000,000.
        ii. Worker's Compensation Coverage: All employees of the Grantee must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
        iii. Flood Insurance: The Grantee shall provide Flood Insurance as required under applicable HUD and City regulations.

## SECTION 7. MISCELLANEOUS PROVISIONS

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City.

2. No partnership or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Grantee and Owner with respect to the Program. The Grantee is not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Grantee for any purpose other than for actual construction of the project on the property.

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 **"K"** 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 Grantee 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 Grantee 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 Grantee.

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
   Community Development Department
   City of Las Cruces
   P.O. Box 20000
   Las Cruces, New Mexico 88004

   B. The Housing Authority of The City of Las Cruces
   926 S. San Pedro
   Las Cruces, NM 88001

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.

**PROJECT GRANTEE:**

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**

_____
Printed Name and Title

_____
Signature

_____
Date

**CITY OF LAS CRUCES**

_____
Terrence Moore, City Manager
City of Las Cruces

_____
Date

APPROVED AS TO FORM:

_____
City Attorney

## ATTACHMENT "A"

## LEGAL DESCRIPTION

### The Housing Authority of the City of Las Cruces
### Veterans Transitional Living Complex

A tract of land situate in Las Cruces, Dona Ana County, New Mexico, in Section 23, T.23S., R.2E., N.M.P.M. of the U.S.R.S. Surveys, being Lots 16, 17 18 and the South 35 feet of Lots 13, 14, and 15 and the adjacent vacated alley of Block 3, Rio Grande Land Company's Subdivision Mesilla Park Tract filed August 25, 1887 in Book 2 Page 31, Dona Ana County Records and being more particularly described in Exhibit "A", attached hereto and made a part hereof.

SUBJECT to all reservations contained in the Patent property taxes for the current year and subsequent years, and all covenants, easements and restrictions of record.

20210

EXHIBIT "A"

A tract of land situate in Las Cruces, Dona Ana County, New Mexico, in Section 23, T.23S., R.2E., N.M.P.M. of the U.S.R.S. Surveys, being Lots 16, 17, 18, & the south 35 feet of Lots 13, 14 & 15 and the adjacent vacated alley of Block 3, Rio Grande Land Company's Subdivision Mesilla Park Tract filed August 25, 1887, in Book 2 Page 31, Dona Ana County records and being more particularly described as follows, to wit:

Beginning at a 1/2" iron rod set on the north line of Union Avenue for the southeast corner of the tract herein described; whence the southeast corner of Lot 18, Block 3, Rio Grande Land Company's Mesilla Park Tract bears N.61 deg. 45'00"E., 6.75 feet;

Thence from the point of beginning and along the north line of Union Avenue, S.61 deg. 45'00"W., 143.25 feet to an iron pipe found on the east line of a 16 foot wide alley for the southwest corner of this tract;

Thence leaving the north line of Union Avenue and along the east line of the alley, N.28 deg. 15'00"W., 193.00 feet to a 1/2" iron rod found for the northwest corner of this tract;

Thence leaving the east line of the alley, N.61 deg. 45'00"E., 150.00 feet to a 1/2" iron rod found on the west line of Oak Avenue for the northeast corner of this tract;

Thence along the west line of Oak Avenue, S.28 deg. 15'00"E., 176.00 feet to a 1/2" iron rod set;

Thence N.89 deg. 59'50"W., 0.08 feet to a point of a curve;

Thence around the arc of a curve to the right, having a radius of 25.00 feet, through a central angle of 42 deg. 50'27", with an arc length of 18.69 feet and whose long chord bears S.21 deg. 25'31"W., 18.26 feet to the point of beginning containing 0.661 acre of land, more or less.

State of New Mexico
County of Dona Ana ss
RECEPTION NO. 28270
I hereby certify that this instrument was filed for recording and duly recorded on
AUG 27 2004
at 3:13 o'clock P M
Book 346 Page 1026 1027
of the Records of said County.
Rita Ortiz County Clerk
By [signature]

STATE OF NEW MEXICO COUNTY CLERK DONA ANA COUNTY

1027

5055268452 HOUSING AUTH. LAS C 08:52:50 a.m. 08-17-2009 3/4

**ATTACHMENT "B"**

**PROMISSORY NOTE**

$494,397.00

Las Cruces, New Mexico
_____, 2009

**FOR VALUE RECEIVED,** the undersigned **THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES** ("Maker"), a New Mexico public housing agency , with its address at 926 S. San Pedro, Las Cruces, New Mexico, 88001, promise to pay, in the event of default, as defined in Section 4 of the Grant Agreement, to the order of the **CITY OF LAS CRUCES** ("Holder"), a New Mexico municipal corporation, organized and existing under the Constitution and laws of the State of New Mexico and its charter, with an address of PO Box 20000, Las Cruces, New Mexico, 88004, or its assigns, the principal sum of FOUR HUNDRED NINETY-FOUR THOUSAND, THREE HUNDRED NINETY-SEVEN DOLLARS AND NO CENTS ($494,397.00), or so much thereof as shall have been advanced by the City of behalf of the Maker by Holder from time to time, together with all charges as provided herein and in the Mortgage (as hereinafter defined) the principal balance thereof outstanding from time to time at the applicable rate of interest as hereinafter specified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**

By:_____
Printed Name: _____
Title: _____

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

This instrument was acknowledged before me on this _____ day of _____, 2009, by _____of The Housing Authority of the City of Las Cruces, a New Mexico public housing authority.

_____
Notary Public

My commission expires: _____

## ATTACHMENT "C"

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (hereinafter referred to as the "Agreement") is made this _____ day of _____, 2009, between the Mortgagor, **THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES C.**, a New Mexico public housing agency, whose address is 926 S. San Pedro, Las Cruces, New Mexico 88001 (hereinafter referred to as "Grantor"), and the Mortgagee, **THE CITY OF LAS CRUCES**, a New Mexico municipal corporation, organized and existing under its charter and the Constitution and laws of the State of New Mexico, with a principal address of 200 N. Church Street, Las Cruces, New Mexico 88001 (hereinafter referred to as "Grantee").

**WHEREAS,** the Grantor and Grantee have entered into an Affordable Housing Grant Agreement (hereinafter referred to as "Grant Agreement"), a copy of which is on file in the City Clerk's Office for the City of Las Cruces, New Mexico, and the definitions and terms of which are incorporated herein by this reference as if fully set forth herein, and which provides, among other things, that the Grantor will use Grantee State of New Mexico Legislative funds on their behalf for the development, rehabilitation, and/or new construction of the Property, and being more particularly described in **Exhibit "A,"** and upon construction completion and occupancy, the Grantor will utilize the property for the rental of the Property to Homeless Veterans at Affordable rents; and

**WHEREAS,** to ensure that the construction of the Property is completed and the Property is leased to Homeless Veterans at Affordable rents, the Grantor has executed a note in favor of Grantee in the principal sum of Four Hundred Ninety-Four Thousand Three Hundred Ninety-Seven Dollars and No Cents ($494,397.00), which indebtedness is evidenced by the Grantor's promissory note dated of even date herewith (hereinafter referred to as "Note"), a copy of which is attached hereto as **Exhibit "B,"** due and payable as provided in the Note.

This Mortgage secures the performance of the following obligations: (1) the indebtedness evidenced by the City Note as disbursed by the City on behalf of the Grantor in accordance with the provisions set forth in this City Note and all renewals, extensions and modifications thereof, and the performance of all covenants contained therein, and the payment of such amounts, if any, advanced, or costs incurred by Grantee in accordance herewith to protect the security of this Mortgage or in connection with the enforcement of this Mortgage or City Note; and (2) the performance of the covenants, agreements and obligations of Grantor herein contained and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law.

For consideration paid, Grantor does hereby MORTGAGE, GRANT, BARGAIN, SELL, ASSIGN, GRANT A SECURITY INTEREST IN and CONVEY TO Grantee, its successors and assigns, all of Grantor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter held or acquired, with mortgage covenants.

(a) All of Grantor's fee simple estate and interest in that certain parcel of real property situated in the City of Las Cruces, County of Dona Ana, and State of New Mexico, and being more particularly described on **Exhibit "A"** attached hereto and made a part hereof containing 0.661 acre of land, more or less.

(b) All and singular the buildings and improvements, structures, additions, tenements, easements, hereditaments, and appurtenances belonging or in anywise appertaining to the aforesaid real property ("Real Property"), now existing or hereafter acquired, installed, or constructed and the revision or reversions, remainder and remainders rents, issues, and profits thereof and also all the estate, right, title, interest, property, claim and demand whatsoever of Grantor of, in, and to the same, and of, in and to every part and parcel thereof;

(c) All right, title and interest of Grantor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Property to the centerline thereof;

(d) All right, title and interest of Grantor in all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and other articles of personal property and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in anyway in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Real Property or the Project, together with any proceeds realized from the sale, transfer or conversion of any of the above (subject to the right of replacement described in the City Note);

(e) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards or judgments, and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Grantor;

(f) To the extent assignable, any and all plans, specifications, site plans, drawings, renderings and schematics; however characterized, from time to time prepared for use in connection with the construction and operation of the Project;

(g) To the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, the rendering of any

services, the supply of any materials or the conduct of operations in the management of the Real Property and/or the Project including without limitation, construction contracts, architect agreements, development agreements, management agreements with respect to operations, franchise agreements and other similar agreements;

(h) To the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Real Property and/or the Project, including, without limitation, building permits, environmental certificates, certificates of occupancy, certificates of operation, room permits, elevator licenses, warranties and guaranties; and

(i) All municipal or utility deposits made by or on behalf of Grantor or made in connection with the Real Property and/or the Project, together with all escrow accounts or reserves maintained or required to be maintained by Grantor hereunder, and any and all other assets, revenues and profits of any kind of the Project.

All of the property described in the foregoing subparagraphs (a) through (i) shall sometimes hereinafter be collectively referred to as the "Property". All of the assignments hereinabove referenced are subject to the right of the Grantor to collect, receive, apply, manage, and use the rights assigned until the occurrence of an event of default hereunder. The maximum amount of unpaid indebtedness, exclusive of interest thereon, which may be outstanding at any time, is Four Hundred Ninety-Four Thousand Three Hundred Ninety-Seven Dollars and No Cents ($494,397.00).

In addition to the other debt or obligation secured hereby, this Mortgage shall secure unpaid balances or advances made for the payment of taxes, tax increment payments, assessments, insurance premiums, and other costs incurred for the protection of the Real Property or the Project, if not paid by Grantor as required by law or this Mortgage.

Grantor represents and warrants that it has full right and authority to grant this Mortgage, and that it shall warrant and defend the lien and interest of the Grantee in the Property against all claims and demands whatsoever, except any encumbrances acceptable to Grantee, and that Grantor shall maintain the priority of the lien of and the security interest granted by this Mortgage upon the property until the Mortgage is defeased as provided herein.

The Grantor, at its expense, shall cause this Mortgage and instruments supplemental hereto and financing statements and all necessary supplements appropriate continuation statements, to be recorded, registered, and filed in such manner and in such places as may be directed from time to time by Grantee as required in order to establish, preserve, and protect the lien of this Mortgage as a lien on all real property, fixtures, and interests therein included in the Property,

and a valid security interest in all personal property, fixtures and interest therein included in the Property, including in each such case and without limitation, any such properties acquired after the execution hereof.

All property of every kind acquired by the Grantor after the date hereof which, by the terms hereof, is intended to be subject to the lien of this Mortgage, shall immediately upon the acquisition thereof by the Grantor, and without further mortgage or assignment, become subject to the lien of this Mortgage as fully as though now owned by the Grantor and specifically described herein. Grantor shall take such actions and execute such additional instruments as the Grantee shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such after-acquired property.

Upon notification of the pending sale of any parcel comprising the Project, Grantee shall release and reconvey such parcel from the charge and lien of this mortgage subject to the condition concurrent of the consummation of such sale and the payment of principal from the proceeds of such sale as required by the City Note. Further, Grantor shall modify the Mortgage, if required, to amend the legal description of the Real Property to conform to any replatting of the Real Property. Further, Grantee shall execute all documents and instruments necessary to subordinate this Mortgage to any mortgage securing the construction loan(s) for the Project.

This Mortgage constitutes a security agreement as to all or any part of the Property, which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property, which is or may become fixtures.

Grantor shall pay promptly when due all taxes, tax increment payments, assessments, and other governmental charges on the property which, if not paid, may become a lien on the Property or any part thereof.

During construction of the Project, until issuance of Certificates of Occupancy for each unit and, if applicable, a letter of acceptance by the City for public infrastructure, Grantor, at its expense, shall keep or cause to be kept, the Property fully insured by a policy or policies of Builder's Risk and Fire Insurance (in an amount not less than the outstanding balances of the Grant evidenced by the City Note and of any mortgage to which this Mortgage is subordinate) against fire with extended coverage and in good order and condition, ordinary wear and tear excepted, and shall make all necessary or appropriate repairs, replacements, and renewals thereof. All policies of insurance required by this paragraph shall be endorsed to indicate Grantee as an insured Mortgagee.

In the event of any damage or injury to the Project, the Grantor agrees that it shall either repay its obligations under the City Note in full, or it shall take any

and all actions necessary to restore the Project substantially to its condition prior to the damage or injury, and shall apply any proceeds of such insurance coverage to the extent necessary to the costs of such restoration.

If the Grantor shall fail to make any payments or perform any act required to be paid or performed hereunder or under the City Note, Grantee may (but shall be under no obligation to do so), upon five (5) days written notice to the Grantor and to the Lender of any mortgage loan to which this Mortgage is subordinate, make such payment or perform such act for the account of and at the expense of Grantor. All payments so made by the Grantee and all costs, fees and expenses incurred in connection therewith shall, together with interest thereon as provided herein, be additional indebtedness secured by this Mortgage, to the extent permitted by law, and shall be paid by the Grantor to the Grantee on demand. In any action brought to collect such indebtedness, or to foreclose this Mortgage, the Grantee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision rendered in any such proceedings.

Notwithstanding any other provisions of this Mortgage, the City Note, or the Grant Agreement, upon any failure by Grantor to pay when due any obligation under the City Note, or failure to pay any other obligation under the City Note, and such failure is not cured as provided in the lease agreement, after receipt of written notice from the Grantee, such failure to pay or cure shall constitute an immediate default entitling the Grantee to exercise any remedy hereafter described in this paragraph, or elsewhere in this Mortgage or the Grant Agreement. Upon any failure to observe or perform any other obligation under this Mortgage, which has not been remedied or cured within ten (10) days after receipt of written notice thereof from Grantee, or for such longer period as the Grantee shall agree to in writing, then the Grantee at its option may declare a default to have occurred hereunder. Subject to the foregoing provisions, with respect to either a default in failure to make payment or any other default, the remedies available to Grantee include its ability at any time at its election to exercise any or all or any combination of the remedies conferred upon or reserved to it under this Mortgage, the City Note, the Grant Agreement, or now or hereafter existing at law or in equity. Without limitation, the Grantee may declare the entire Grant Amount of the City Note immediately due and payable without notice or demand, the same being expressly waived by the Grantor; may proceed at law or equity to collect all amounts secured by this Mortgage and due hereunder, whether at maturity or by acceleration; may foreclose the lien of this Mortgage as against all or any part of the Property; and may exercise any rights, powers, and remedies it may have as a secured party under the Uniform Commercial Code, or other similar laws in effect from time to time.

Each right, power, and remedy of the Grantee provided for in the Grant Agreement, the City Note, and Mortgage, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every other

right, power, or remedy provided for in this Mortgage, the Grant Agreement, or the City Note, now or hereafter existing at law or in equity, and the exercise or beginning of exercise or partial exercise by the Grantee of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Grantee of any or all such rights, power or remedies.

No failure by the Grantee to insist upon the strict performance of any term whereof to exercise any right, power, or remedy consequent upon a breach hereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, and the Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach.

PROVIDED, however, that if the Grantor shall well and truly pay to Grantee, its successors and assigns, not less than the total of the indebtedness secured hereby and shall fully keep and perform all the conditions, covenants and agreements to be kept and performed by Grantor under this Mortgage, then this Mortgage shall be void; otherwise to remain in full force and effect in law and equity forever.

The existence and lien of this Mortgage shall not impede or affect the right of Grantor from time to time with respect to all or a portion of the Real Property, to dedicate public areas by subdivision plat or otherwise, including streets, easements and park areas, grant to public utilities and other agencies entitled thereto ordinary and necessary easements, and apply for and obtain zoning acceptable to Grantor.

Unless Grantee or Grantor gives written instructions to the other party of a change in the person or address set forth below, all notices, demands or requests permitted or required to be given under the provisions of this Mortgage or the Grant Agreement shall be hand-delivered or mailed, registered or certified mail, return receipt requested to the following addresses:

**Grantee:**

The City of Las Cruces
Attn: Director, Community Development Department
P.O. Box 20000
Las Cruces, New Mexico 88004

**Grantor:**

The Housing Authority of the City of Las Cruces
926 S. San Pedro
Las Cruces, NM 88001

In the event of foreclosure of this Mortgage, the period of redemption shall be one month in lieu of the statutory redemption period of nine months.

**IN WITNESS, WHEREOF,** Grantor, The Housing Authority of the City of Las Cruces, hereunto duly authorized, has caused this instrument to be executed on this the _____ day of _____, 2009

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**

By:_____

Printed Name: _____

Title: _____

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

This instrument was acknowledged before me on this _____ day of _____, 2009, by _____, of The Housing Authority of the City of Las Cruces, a public housing agency on behalf of said agency.

_____
Notary Public

My commission expires:

_____

## ATTACHMENT "D"

## SCOPE OF WORK, PROJECT PLANS

The Housing Authority of The City of Las Cruces, a New Mexico public housing agency, as the owner of a 0.661 acre of land, more or less located at 3350 Oak Street, in the City of Las Cruces, as the grantee have submitted a proposal to plan, design and renovate units, to construct new units in an apartment complex and to construct meeting rooms and offices, all for use by Homeless Veterans in Dona Ana County in a Veterans Transitional Living Complex.

State Legislature appropriations from years 2007-2008 and other funds are to finance the development and construction of the facility. All renovations will be completed by a licensed and bonded contractor and all construction must comply with all state and local building codes, rules and regulations.

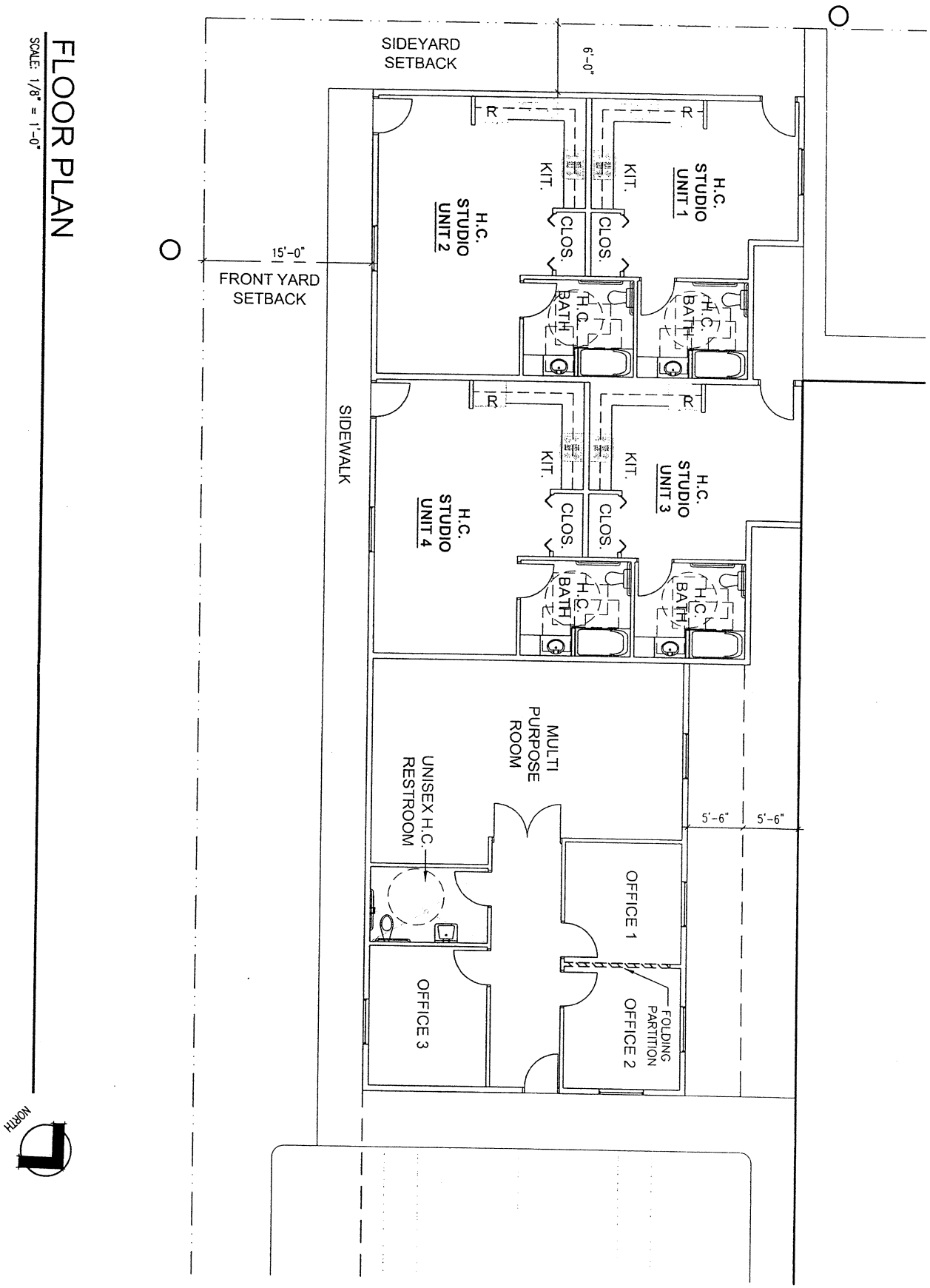
The rental complex targets homeless veterans, in Dona Ana County who would otherwise be homeless or living in unsafe conditions.

The complex includes 20 one bedroom apartment units and will be renovated and developed to include 2 to 4 additional accessible units, and office and a meeting/training room. The complex is owned and managed by the Housing Authority of the City of Las Cruces. Mesilla Valley Community of Hope provides case management, in-take and screening for the participants.

The veterans are linked to supportive services with a goal of helping them live independently and transition into permanent housing.

# FLOOR PLAN

SCALE: 1/8" = 1'-0"




Oak Street Apartments
Transitional Housing for Homeless Verterans

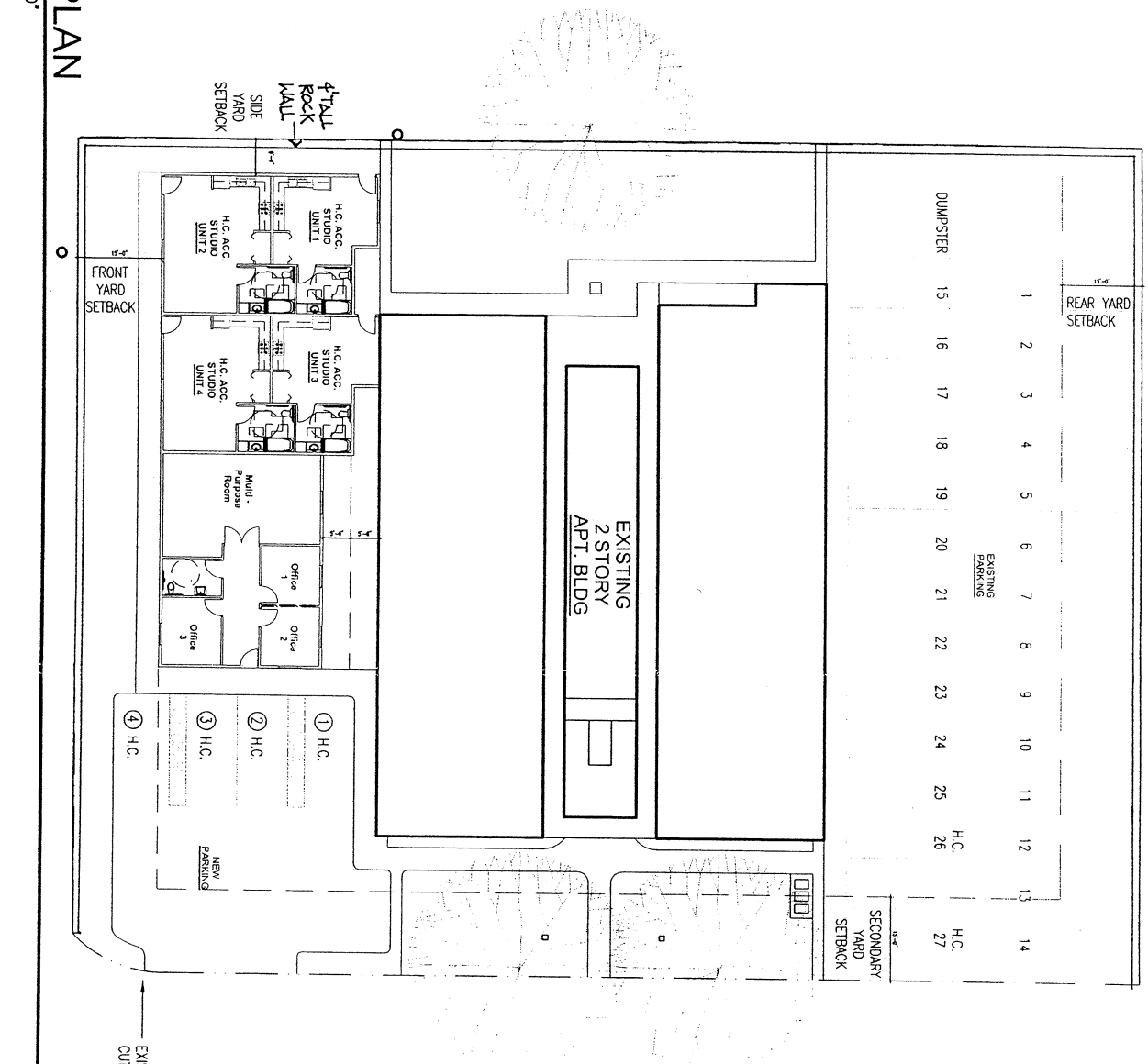
3350 Oak Avenue
Las Cruces. New Mexico

project no. XXXXXXX

ASA Architects
Studio
Albuquerque
Las Cruces
Roswell

# SITE PLAN

SCALE: 1" = 20'-0"




HILTON

## OPINION OF PROBABLE COST:

3000 S.F. NEW SINGLE STORY
CONSTRUCTION @ 150.00$/S.F. =
$450,000.00

## PARKING

PARKING IS 1 P.S./ UNIT = 24
OFFICE IS 1 P.S. / 400 S.F. = 2
MULTI-PUROPSE IS 1 P.S. / 400 S.F. = 2

PARKING FOR RESIDENCE IS BASED ON ACQUIRING ZONING VARIANCE.

Oak Street Apartments
Transitional Housing for Homeless Verterans

3350 Oak Avenue
Las Cruces. New Mexico

project no. XXXXXXX

ASA Architects
Studio

## ATTACHMENT "E"

## 2008 FAIR MARKET RENT CHART

### Final FY 2009 FMRs By Unit Bedrooms

| | Efficiency | One-Bedroom | Two-Bedroom | Three-Bedroom | Four-Bedroom |
|---|---|---|---|---|---|
| **Final FY 2009 FMR** | $460 | $496 | $553 | $763 | $847 |

# ATTACHMENT "F"
# UTILITY ALLOWANCE

**Allowances for Tenant-Furnished Utilities and Other Services**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 07/31/2007)

**Las Cruces Housing Authority - Section 8**
**926 S. San Pedro, Las Cruces, NM 88001**

**Apartments with 5 or more units**

**01/01/2009**

| Utility or Service | | Monthly Dollar Allowances | | | | | |
|---|---|---|---|---|---|---|---|
| | | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | 5 BR |
| Heating | a. Natural Gas | 5 | 7 | 11 | 13 | 15 | 17 |
| | b. Bottle Gas | 12 | 16 | 25 | 29 | 34 | 38 |
| | c. Electric | 8 | 11 | 19 | 21 | 26 | 28 |
| | d. Other | - | - | - | - | - | - |
| Cooking | a. Natural Gas | 6 | 6 | 8 | 9 | 10 | 11 |
| | b. Bottle Gas | 13 | 15 | 17 | 20 | 22 | 24 |
| | c. Electric | 6 | 6 | 6 | 6 | 6 | 6 |
| | d. Other | - | - | - | - | - | - |
| Air Conditioning | | 16 | 21 | 24 | 29 | 30 | 34 |
| Electrical Services | | 19 | 20 | 22 | 25 | 29 | 32 |
| Water Heating | a. Natural Gas | 5 | 7 | 9 | 12 | 15 | 16 |
| | b. Bottle Gas | 8 | 9 | 20 | 28 | 34 | 37 |
| | c. Electric | 10 | 13 | 18 | 25 | 29 | 33 |
| | d. Other | - | - | - | - | - | - |
| Water | | 8 | 9 | 11 | 14 | 17 | 21 |
| Sewer | | 8 | 10 | 13 | 17 | 22 | 27 |
| Trash Collection | | - | - | - | - | - | - |
| Range/Microwave | | 11 | 11 | 11 | 11 | 11 | 11 |
| Refrigerator | | 13 | 13 | 13 | 13 | 13 | 13 |
| Other | | - | - | - | - | - | - |

**Actual Family Allowances** To be used by the family to compute allowance.
Complete below for the actual unit rented.

Name of Family

Address of Unit

Number of Bedrooms

| Utility or Service | per month cost |
|---|---|
| Heating | $ |
| Cooking | |
| Other Electric | |
| Air Conditioning | |
| Water Heating | |
| Water | |
| Sewer | |
| Trash Collection | |
| Range/Microwave | |
| Refrigerator | |
| Other | |
| **Total** | $ |

Previous editions are obsolete

form HUD-52667 (12/97)
ref. Handbook 7420.8

## ATTACHMENT "G"

## RESTRICTIVE REAL ESTATE COVENANTS

Made in Las Cruces, New Mexico Date: _____

This Agreement is made by **THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES, INCORPORATED**, a New Mexico public housing agency (hereinafter referred to as "Owner") whose address is 926 S. San Pedro, Las Cruces, New Mexico 88001, in favor of the **CITY OF LAS CRUCES**, a municipal corporation (hereinafter referred to as "City").

### 1. Recitals

A. The Housing Authority of the City of Las Cruces (hereinafter referred to as "Grantee") whose address is 926 S. San Pedro, Las Cruces, New Mexico 88001, will renovate units, construct new units, and construct meeting rooms and offices at a Veterans Transitional Housing complex.

B. The Owner is the owner in fee simple of that certain real estate ("Real Property") in Dona Ana County, New Mexico, which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof and containing 0.661 acre of land, more or less.

C. The City has advanced certain sums of money in accordance with the State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance to the Grantee and Owner. Such sum benefits the Real Property of the Owner.

D. In consideration for the assistance given by the City for the benefit of the Grantee and Owner, the Grantee and Owner have agreed to restrictions on the use and rental of the Real Property in order to implement the applicable policies and obligations of the State of New Mexico Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance with exception to the Low Income and Moderate Income restrictions.

### 2. Definitions

"Veteran" means having at least 180 days of regular active duty service and being honorably discharged or released, or having at least 90 days of active duty service, at least one day of which was during wartime and honorably discharged or released.

"Transitional Housing" means temporary housing occupancy limited to a 24 month period

"Housing Quality Standards" means the standards set forth in 24 CFR Part 887 to maintain a decent, safe and sanitary living environment.
"Project" has the meaning given in the Affordable Housing Grant Agreement.

"Section 8 Fair Market Rent" means that rent established by the U.S. Department of Housing and Urban Development as authorized under 24 CFR Part 882.

Except as otherwise expressly provided herein, all capitalized terms shall have the meaning given in the Affordable Housing Grant Agreement.

**3. Restrictive Covenants**

During the term of this Agreement as set forth in Paragraph 5 below:

A. Use of Property. The Real Property shall be used as, and only for, residential rental purposes.

B. Rent Determination. All units must have rents which are no greater than the Fair Market Rent established annually by HUD.

If utilities are not included in the rent, an allowance must be made using the Housing Authority of the City of Las Cruces' established utility allowance levels.

C. Rent Increases. Any rent increases for any of the units must be approved by the City prior to implementation of the increase.

D. Tenant Selection and Re-Certification. The Grantee shall undertake the initial review of eligibility of prospective tenants for the veteran's transitional housing units. In determining eligibility, the Grantee acknowledges that the City must examine the source documents evidencing the prospective tenant's eligibility for participation in the Veterans Transitional Housing Program. All documentation including, but not necessarily limited to, a tenant's application, verifications, proposed rent and lease terms shall be made available for review by the City's Community Development Department – Neighborhood Services Section or Successors or Assigns.

During the Affordability Period, the Grantee shall re-verify tenant eligibility annually with similar documentation as submitted at initial lease-up. This information must be maintained in the tenants' files and made available for review by the City.

E. Lease Provisions. Each household in a non-HOME assisted unit will have an executed lease with the Grantee which is in compliance with New Mexico law.

F. Property Standards Requirements. The Project will meet all Housing Quality Standards, or other physical property standards regulated by the U.S. Department of Housing and Urban Development and local building code requirements for the duration of this Agreement.

**4. Reporting Requirements**

Upon issuance of the Certificate of Occupancy by the City of Las Cruces, the Grantee shall submit annual reports by the last business day of July. These reports shall include, but not be limited to, the financial statements for the Project, and, a certified rent roll showing household size, tenant's race and ethnicity, whether the occupant is a female head of household, date of execution of the occupants current lease, and rental rates.

**5. Term**

The term of this Agreement shall commence and the restrictions set forth herein shall automatically commence to apply, on the day and time that the Mortgage securing permanent financing for the residential apartment complex on the Real Property is recorded in the Office of the County Clerk of Dona Ana County, New Mexico. This Agreement and the Restrictive Covenants set forth herein shall automatically terminate at the earlier of: (A) 5:00 p.m., New Mexico time on the twentieth ($20^{th}$) anniversary of such recordation.

**6. Covenants Running with Real Property**

This Agreement shall be and constitute covenants running with the Real Property during the term of this Agreement and shall be enforceable by the City by legal and equitable action, including an action for injunctive relief.

**7. Binding Effect**

Upon execution of this Agreement by the Grantee and Owner, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of the parties and of their representatives.

Signed on this _____ day of _____, 2009.

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**
By:_____

Printed Name:_____

Title: _____

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

This instrument was acknowledged before me on this _____ day of _____, 2009, by _____ of The Housing Authority of The City of Las Cruces a public housing agency.

_____
Notary Public

My commission expires: _____

## ATTACHMENT "H"

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

CERTIFICATION

1. The Grantee 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 Grantee and Owner's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

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

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

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

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

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

   E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under

subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every Grant Officer or other designee on whose Grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected Grant.

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

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

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

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

2. The Grantee 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 Grantee 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:** The Housing Authority of the City of Las Cruces

**Program Name:** Transitional Housing for Homeless Veterans

**Date:** _____

The Borrower shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

3350 Oak Street, Las Cruces, NM 88005

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

**ATTEST:**

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**

By:

_____ _____

Date

## ATTACHMENT "I"

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

In carrying out this Agreement, the Grantee 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 Grantee 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 Grantee 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 Grantee shall state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that it is an Equal Opportunity or Affirmative Action employer.

**ATTEST:**

**THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES**

By:

_____ _____

Printed Name: Date

Title:

## ATTACHMENT "J" CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**ATTEST:**
**Housing Authority of the City of Las Cruces**

By: _____
Printed Name:
Title:

_____
Date

By:_____
Printed Name:
Title:

_____
Date

# ATTACHMENT "K"
# AFFIRMATIVE MARKETING PLAN

ATTACHMENT "B"

COUNCIL BILL NO. 07-001
ORDINANCE NO. 2319

AN ORDINANCE ENACTING ARTICLE IV OF CHAPTER 13 OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, WHEREBY THE CITY ADOPTS THE "AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE FOR THE CITY OF LAS CRUCES."

The City Council is hereby informed that:

**WHEREAS,** in 2004, the voters of the State of New Mexico amended the State's Constitution to authorize local governments to provide services, funds, and land for the development of affordable housing without violating the State's Anti-Donation Clause via the New Mexico Affordable Housing Act, and

**WHEREAS,** the City of Las Cruces adopted a Strategic Plan for the Development of Affordable Housing in 2005, as well as the 2006-2010 Consolidated Plan, and

**WHEREAS,** both the City's Strategic and Consolidated Plans call for the adoption of a local ordinance in accordance with the Affordable Housing Act ("Act") to encourage the development of affordable housing, and

**WHEREAS,** the New Mexico Affordable Housing Act authorized the New Mexico Mortgage Finance Authority (MFA) to promulgate rules under the Act to ensure compliance with the Act and the authority granted under the State Constitution, and

**WHEREAS,** the staff of the City of Las Cruces has developed the "Affordable Housing General Oversight Ordinance" for incorporation into the City's Municipal Code, and

**WHEREAS,** the City may adopt future ordinances to implement programs and projects of affordable housing using City services, funds, and lands in the City limits in accordance with the Act and consistent with the City's adopted 2005-2009 Strategic Plan for Affordable Housing and the 2006-2010 Consolidated Plan.

**NOW, THEREFORE,** Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

**THAT** the Affordable Housing General Oversight Ordinance for the City of Las Cruces, as shown in Exhibit "A" attached hereto and made part of this Ordinance, is hereby enacted as Article IV of Chapter 13 of the Las Cruces Municipal Code, 1997, as amended.

(II)

**THAT** this Ordinance, immediately upon its final passage and approval, shall be recorded in the Ordinance book of the City, kept for that purpose, and shall be there authenticated by the Signature of the Mayor or Mayor Pro Tem and attested to by the City Clerk. This Ordinance shall be in full force and effective five (5) days after publication in accordance with Section 3-17-5 NMSA, 1978, as amended.

(III)

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

**DONE and APPROVED** this 5th day of September, 2006.

APPROVED:

Mayor William Mattiace

ATTEST:

City Clerk
(SEAL)

Moved by: Frietze

Seconded by: Archuleta

APPROVED AS TO FORM:

City Attorney

VOTE:

| | |
|---|---|
| Mayor Mattiace: | aye |
| Councillor Frietze: | aye |
| Councillor Connor: | aye |
| Councillor Archuleta: | aye |
| Councillor Trowbridge: | aye |
| Councillor Jones: | aye |
| Councillor Miyagishima: | aye |

ATTACHMENT "C"

**RESOLUTION NO. 08-037**

**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO BE FISCAL AGENT TO VARIOUS AGENCIES AND ACCEPT A STATE OF NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION, 2007 LEGISLATIVE GRANT AGREEMENT TO FUND VARIOUS PROJECTS IN THE AMOUNT OF $1,829,682 MINUS $6,770 FOR ART IN PUBLIC PLACES.**

The City Council is informed that:

**WHEREAS,** the 2007 New Mexico Legislature appropriated in part $1,829,682 to the City of Las Cruces to fund various Agencies capital projects, and;

**WHEREAS,** the projects and their respective funding amount are as follows:

1. Project 07-3406, $50,000 to plan, design, renovate and construct new units for use by Homeless Veterans for the Housing Authority in Las Cruces in Doña Ana County.

2. Project 07-5191, $62,900 to plan, design and renovate the Amador Hotel for city use in Las Cruces in Doña Ana County.

3. Project 07-5198, $15,000 to plan, design, construct, equip, renovate and expand the Domestic Violence Shelter in Las Cruces in Doña Ana County.

4. Project 07-5200, $216,697 to plan, design, renovate and construct new units for use by Homeless Veterans for the Housing Authority of Las Cruces in Doña Ana County.

5. Project 07-5201, $477,000 to plan, design, construct, equip and furnish renovations for La Casa in Las Cruces in Doña Ana County less 1% or $4,770 for Arts in Public Places.

6. Project 07-5202, $41,900 to purchase, remodel and equip a building for La Piñon Center for sexual assault in Las Cruces in Doña Ana County.

7. Project 07-5203, $329,000 to plan and design an addition to the Mesilla Valley Hospice Facility in Las Cruces in Doña Ana County.

8. Project 07-5204, $437,185 to purchase and install equipment for use by the Mesilla Valley Hospice Facility in Las Cruces in Doña Ana County.

9. Project 07-5212, $200,000 to plan, design, construct and equip improvements, including paving, to the Mesilla Valley Community of Hope in Las Cruces in Doña Ana County less 1% or $2,000 for Arts in Public Places.

**WHEREAS,** the New Mexico Department of Finance and Administration, Local Government Division, requires that the City enter into a Grant Agreement to facilitate the receipt and expenditure of these funds.

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

**(I)**

**THAT** an agreement for a 2007 Legislative Appropriation Grant between the City of Las Cruces and the New Mexico Department of Finance

and Administration, Local Government Division, to fund various construction projects in the amount of $1,829,682 minus $6,770 for Art in Public Places be authorized.

**(II)**

**THAT** City staff and officials are authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this 6th day of August 2007.

APPROVED:

( SEAL)

Mayor

ATTEST:

City Clerk

Moved by: Connor

Seconded by: Trowbridge

VOTE:

| | |
|---|---|
| Mayor Mattiace | Aye |
| Councillor Frietze | Aye |
| Councillor Connor | Aye |
| Councillor Archuleta | Aye |
| Councillor Trowbridge | Aye |
| Councillor Jones | Absent |
| Councillor Miyagishima | Aye |

APPROVED AS TO FORM:

City Attorney

ATTACHMENT "D"

RESOLUTION NO. 09-098 .

**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO BE FISCAL AGENT TO RESPECTIVE AGENCIES, ACCEPT A STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION (DFA), LOCAL GOVERNMENT DIVISION, 2008 LEGISLATIVE GRANT AGREEMENT TO FUND PROJECTS IN THE AMOUNT OF $1,654,000 MINUS $11,240 FOR ART IN PUBLIC PLACES, AND ADJUST THE FY 2008/2009 BUDGET.**

The City Council is informed that:

**WHEREAS**, the 2008 New Mexico Legislature appropriated in part $1,654,000 to the City of Las Cruces to fund various capital projects, and;

**WHEREAS**, the projects and their respective funding amounts are listed in attached Exhibit "A", and;

**WHEREAS**, the New Mexico Department of Finance and Administration (DFA), Local Government Division, requires that the City enter into a Grant Agreement to facilitate the receipt and expenditure of these funds.

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

(I)

**THAT**, an agreement for a 2008 Legislative Appropriation Grant between the City of Las Cruces and the New Mexico Department of Finance and Administration (DFA), Local Government Division, to fund various construction projects in the amount of $1,654,000 minus $11,240 for Art in Public Places be authorized.

(II)

**THAT**, as required by the DFA agreement, the City agrees to act as Fiscal Agent for the various Agencies with the appropriated legislative funding and secure when required the necessary contracts between the Agency and the City of Las Cruces.

(III)

**THAT**, City staff and officials are authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this 20th day of October 2008.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

| | |
|---|---|
| Mayor Miyagishima: | Aye |
| Councillor Silva: | Aye |
| Councillor Connor: | Aye |
| Councillor Archuleta: | Aye |
| Councillor Small: | Aye |
| Councillor Jones: | Aye |
| Councillor Thomas: | Absent |

Moved by: Jones

Seconded by: Archuleta

Approved as to Form:

City Attorney