

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Community and Human Development

AGENDA DATE: August 14, 2012

CONTACT PERSON: William L. Lilly, Director 541-4241

DISTRICT(S): 4

SUBJECT:

Authorize the City Manager to execute a First Amendment to the HOME Purchase and Development Agreement and any and all documents related to the Summerlin Subdivision First Time Homebuyer Program (Self-Help) between the City and Tierra Del Sol Housing Corporation. Approve an amendment to increase the maximum amount of purchasing financing assistance to qualifying low- to moderate-income First Time Homebuyers from \$40,000 to \$50,000 to assist in purchasing a newly constructed home in the Summerlin Subdivision. The additional assistance will also increase the affordability period from ten to 15 years.

BACKGROUND / DISCUSSION:

This item relates to the First Time Homebuyer New Construction Guidelines for the Summerlin Subdivision (Self-Help) in Northeast El Paso (79924). With prior Council approval, 30 lots were purchased in the Summerlin Subdivision for the purpose of developing affordable single-family homes for First time homebuyers. An RFP was issued to obtain an agency to complete the construction of 30 affordable homes and the project was awarded to Tierra Del Sol Housing Corp. Although several obstacles delayed the construction, namely a slow housing market for the sale of new housing, Tierra Del Sol is now poised to proceed and has selected a project manager, construction contractor, and is also partnering with Housing Counseling Agencies from the YWCA and El Paso Affordable Housing Credit Union to obtain eligible low- to moderate-income first time homebuyers. There are four different floor plans to select from, with one- and two-car garages, plus an accessible plan.

PRIOR COUNCIL ACTION:

Previously City Council approved funding to purchase 30 lots in the Summerlin Subdivision. On October 12, 2010 Council approved an Ordinance authorizing the City Manager to execute a HOME Program Purchase and Development Agreement, Special Warranty Deed to effectuate the sale and conveyance of the property to Tierra Del Sol for the development of 30 affordable single-family homes for low- to moderate-income households.

AMOUNT AND SOURCE OF FUNDING:

The additional first time homebuyer assistance will be funded through the CDBG Revolving Loan Fund and funds are available in account: 71150039-G710RLFCDAH-09903-505208.

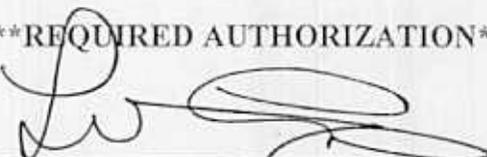
BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


William L. Lilly, Director

Information copy to appropriate Deputy City Manager

2012 AUG-6 PM 12:40
CLERK DEPT

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

- That the City Manager be authorized to execute a First Amendment to HOME Purchase and Development Agreement between the City and Tierra Del Sol Housing Corporation regarding the Affordable Housing Development Project- Summerlin Subdivision, which modifies the enforcement mechanism for the affordability requirements in order to facilitate interim construction and permanent financing for the single-family housing units, clarifies the maximum resale purchase price, extends the affordability requirements, and amends certain project deadlines;
2. That the City Manager be authorized to execute any and all documents related to the Agreement, to include the Declaration of Restrictions, the release of deed restrictions in the Special Warranty Deed, subordination agreements, and homebuyer written agreements related to the affordability period requirements, upon the City Attorney's approval; and
3. That the City Council approves amendment of the First-Time Homebuyers New Construction Program Guidelines (Self-Help Component) – Summerlin Subdivision approved on September 23, 2008, by increasing the maximum amount of purchasing financing assistance to qualifying low-to moderate income homebuyers from \$40,000 to \$50,000 in total federal grant (HOME and CDBG Revolving Loan Fund) subsidy funds.

ADOPTED this _____ day of _____, 2012.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST

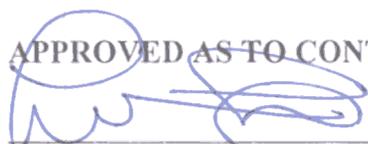
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



for Kristen L. Hamilton
Assistant City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Community and Human Development

**FIRST AMENDMENT TO HOME PROGRAM PURCHASE AND
DEVELOPMENT AGREEMENT**

(Affordable Housing Development Project- Summerlin Subdivision First-Time Homebuyer Program)

This First Amendment to HOME Purchase and Development Agreement (“Amendment”) is made this _____ day of _____, 2012, by and between the **CITY OF EL PASO, TEXAS** (the “City”) and **TIERRA DEL SOL HOUSING CORPORATION** (“Borrower”).

WHEREAS, on October 12, 2010, the City and Borrower entered into a HOME Program Purchase and Development Agreement (the “Agreement”), for the purposes of conveyance to Borrower of thirty (30) vacant lots (the “lot(s)”) in the Summerlin Subdivision, El Paso, Texas for the construction of 30 affordable single-family homeownership housing units; and

WHEREAS, on April 12, 2012, the City and Borrower consummated the conveyance of the lots and now desire to amend the Agreement to modify the enforcement mechanism for the affordability requirements for each lot, to clarify the maximum resale purchase price, and to amend certain construction deadlines, all being subject to the conditions and terms stated herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

Page 3, Article I, Section 3, Subsections 3.4, 3.4.1 and 3.4.2, are deleted and replaced with the following substituted subsections:

3.4. Affordability Covenants. The parties will record a Declaration of Restrictions in the Real Property Records of El Paso County, Texas, in a form substantively similar to Exhibit “I”, incorporated by reference herein, which contains the affordability covenants that will encumber the Property and which will require the Purchaser to construct residential housing units on the Property and the immediate subsequent purchaser of any Lot to be a Qualifying Low-to-Moderate Income Homebuyer(s). A Qualifying Low-to-Moderate Income Homebuyer means a person who the City’s Community and Human Development Department has determined is a low-to-moderate income homebuyer having a household income that falls at or below 80% of the area median income (AMI), as established annually by the U.S. Department of Housing and Urban Development (HUD), and has not owned any property as his/her principal residence within the three years preceding the conveyance.

3.4.1 The parties agree to the release of the affordability covenants contained in the Special Warranty Deed conveying the Property to Purchaser with the contemporaneous filing of the Declaration of Restrictions as the substitute enforcement mechanism during the affordability period.

3.4.2 The Declaration will be subject to and subordinate to the liens against the Property or any portion of the Property for the benefit of any first lien mortgage holder. No further action will be required to give effect to the permitted subordination; provided, however, upon request of any first lien mortgage holder, City and Purchaser will join in the execution of such subordination in a recordable form.

Page 11, Article II, Section 1 Construction of Affordable Single Family Housing is revised to read as follows:

1. Construction of Affordable Single Family Housing. Borrower warrants, represents, and agrees to construct thirty (30) new detached, single family dwelling units ("HOME-Assisted Unit(s)") for subsequent conveyance to Qualifying Low-to Moderate-Income Homebuyers by September 30, 2013, in accordance with the terms and conditions of this Agreement and all applicable local, state, and federal laws and regulations (the "Project"). "HOME-Assisted Unit" refers to a detached, single family home and improvements to be constructed on each Lot. The HOME-Assisted Unit shall be the primary structure on the Lot. As the context may require, the term "HOME-Assisted Unit" includes the Lot upon which it is constructed.

Page 11, Article II, Section 2. Project Budget, is revised to substitute Exhibit "B" with the revised Project Budget attached hereto as Exhibit "B" –Revised Project Budget.

4. Page 14, Article II, Section 4. Project Schedule, is revised to substitute Exhibit "D" with the revised Project Schedule attached hereto as Exhibit "D"-Revised Project Schedule.

Page 15, Article II, Section 9, subsection 9.3 is revised to amend the last sentence in that paragraph to read as follows:

"Purchaser will assist Qualifying Low-to Moderate Income Homebuyers in taking advantage of available purchasing financing assistance from the City under its separate First-Time Homebuyer Program (up to \$20,000.00 per eligible homebuyer for principal reduction and/or down payment and closing costs at the time of closing), excluding the acquisition subsidy in the Lot."

6. Page 16, Article II, Section 10, subsection 10.4 is amended to read as follows:

10.4 Purchaser understands and agrees to communicate to all prospective homebuyers that the HOME-Assisted Unit must be maintained as the principal residence of the Qualifying Low-to-Moderate Income Homebuyer for the duration of the fifteen (15) year affordability period, subject to the recapture provisions contained in the Declaration of Restrictions. Purchaser agrees to execute a written agreement or addendum to the contract of sale (with survival provision) with each Qualifying Low-to-Moderate Income Homebuyer, which must meet the applicable requirements of 24 CFR 92.504(c)(5) and to which the City must be a signatory. The written agreement or addendum shall stipulate the fifteen (15) year affordability period property covenant and the principal residency requirement.

10.4.1 The City shall monitor compliance with the affordability period applicable to each HOME-Assisted Unit

Page 7, Article II, Section 10, subsection 10.5 is amended to read as follows:

10.5 The maximum sales price of each HOME-Assisted Unit shall not exceed \$121,000 (being 95% of the median purchase price for the area as defined by the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)). At the time of purchase, a \$24,622.00 credit will be applied against the sales price, representing the appraised value of the

land as of May 18, 2012 (being the benefit received from the HOME funds invested in the HOME-Assisted Unit for the discounted land acquisition cost). In addition, the sales price will be further reduced by a credit for the cash value of the self-help component (being up to \$3,000.00).

The following is provided as an example:

Maria Sanchez is buying the Montezuma model for \$105,000; she is receiving the maximum assistance of \$50,000.00; and she has completed her sweat equity requirement for \$3,000

Sales Price	\$105,000 (appraised value)
Credit for HOME Subsidy of land acquisition	-24,622
Credit for Sweat Equity	-3,000
Maximum Homebuyer Mortgage	\$77,378
Tierra Del Sol Development Costs	\$85,378
Qualifying Mortgage from Bank of America (1 st Lien)	65,378
City Additional Assistance – Max \$20,000 (2 nd Lien)	20,000

The total development cost of a Montezuma model is \$85,378 (with land accounted for as \$5)

Tierra del Sol has a construction loan that has paid all of these expenses except the developer fee (\$5,000) and seller closing costs of \$5,000

Tierra del Sol's side of the transaction is: Payoff to First National \$ 75,378; Developer Fee \$ 5,000; Closing Fee \$5,000. Total development Cost \$ 85,378

8. Page 26, Article V. Collateral Documents, is amended to add the following exhibit:

Exhibit "I"- Declaration of Restrictions

9. Except as amended herein, the Agreement between the City and Purchaser shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Purchaser have executed this First Amendment to the Agreement as of the date first written above.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Kristen L. Hamilton
Assistant City Attorney

William L. Lilly, Director
Community and Human Development

PURCHASER:

TIERRA DEL SOL HOUSING CORPORATION

Name (Printed)

Title: _____

[Acknowledgments on Following Page]

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2012, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas (City).

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF §

COUNTY OF EL PASO §

This instrument was acknowledged before me on the __ day of _____, 2012, by _____, as _____ of Tierra Del Sol Housing Corporation, on behalf of said entity. (Purchaser)

Notary Public, State of _____

My Commission Expires:

EXHIBIT B -- REVISED
TIERRA DEL SOL HOUSING CORPORATION
SUMMERLIN PROJECT
DEVELOPMENT PROFORMA

8/2/2012

<u>USES:</u>		<u>30 Units</u>	<u>\$105,000</u>	<u>\$115,000</u>
			<u>Unit</u>	<u>Unit</u>
Hard Costs:				
Land		150	5	5
Construction	34,969 sq ft	\$ 62	2,176,121	65,342
Construction Contingency		2.5%	54,403	1,634
SubTotal		\$ 64	2,230,674	66,980
Soft Costs:				
Architect / Geo Tech Eng		32,550	1,085	1,085
Permits	incl in const contract			
Bonding	incl in const contract			
Lender's Legal		2,500	83	83
21E / Environmental		2,565	86	86
Legal / Title		25,000	500	500
Closing Costs		150,000	5,000	5,000
Marketing Fee		30,000	1,000	1,000
Advertising		10,500	350	350
Appraisal		12,500	417	417
Lender's Fees- FNB		28,500	950	950
Carrying Costs:				
Insurance		7,500	750	750
Construction Loan Interest		58,500	1,950	1,950
Real Estate Taxes		9,000	300	300
Security/Maintenance		3,000	100	100
Cost Contingency		24,810	827	5,455
SubTotal			13,398	18,026
Developer Overhead and Fee		150,000		
SubTotal		150,000	5,000	167
Total Uses		2,777,599	85,378	95,378
<u>Construction Period Sources</u>				
First National Bank			74,378	84,378
Developer Fee/Mktg Fee/Closing Costs			11,000	11,000
			85,378	95,378
<u>Permanent Sources</u>				
HB Mortgage (w/max assist)			62,378	72,378
City HB Assistance (max of 5k closing costs + 15K prin reduction)			20,000	20,000
Sweat Equity			3,000	3,000
			85,378	95,378
City HOME Funds (Land)			24,622	24,622

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION OF RESTRICTIONS

This Declaration is made and entered into on the Effective Date by Declarant.

RECITALS

- A. Declarant is vested with fee simple title in the Property pursuant to a conveyance from the City.
- B. In conjunction with the conveyance from the City, Declarant entered into the Purchase and Development Agreement whereby the City agreed to convey the Property to Declarant and Declarant agreed to develop and convey the Property in accordance with the Affordability Covenants.
- C. Declarant is prepared to proceed with development of the Property and now desires to establish and impose the Affordability Covenants on the Property so that the same will run with the land and be binding upon Declarant's successors and assigns in title.

DECLARATION

Now therefore, Declarant hereby declares that the Property shall be held, transferred, sold, conveyed, occupied and enjoyed by all present and future owners and occupants subject to the terms of this Declaration.

ARTICLE 1 - DEFINITIONS

In addition to other capitalized terms defined elsewhere in this Declaration, the following terms, when used herein, shall have the meanings set forth below, unless context clearly requires otherwise:

"Affordability Covenants" means the Covenants described on Exhibit "B".

"City" means the City of El Paso, in the State.

"County" means El Paso County, in the State.

"Declarant" means Tierra Del Sol Housing Corporation, a New Mexico non profit corporation.

"Declaration" means this Declaration of Restrictions, as the same may from time to time be amended or supplemented.

"First Lien Mortgage Holder" means a lender for construction of improvements on a Lot or Lots or purchase of a Lot or Lots that is secured by a first lien mortgage or deed of trust on the Lot or Lots. As used herein there may be more than one First Lien Mortgage Holder with respect to the Property.

ARTICLE 5 – DURATION, AMENDMENT AND CONSENTS

5.1 Duration. Unless otherwise amended or released as provided in Section 5.4, this Declaration shall remain in effect until the Initial Term Expiration Date and shall be automatically expire as to individual Lots on the Initial Term Expiration Date applicable to such Lot, without further action; provided however, that this Declaration may be terminated on the Initial Term Expiration Date by a written instrument executed by the Owner of the applicable Lot and City.

5.2 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

5.3. Grantee's Acceptance. The grantee of any Lot or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

5.4 Amendment. The parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, only by the written consent of Declarant, the record Owner of the applicable Lot and the City. No consent to the modification, from time to time, or termination of any or all of the provisions of this Declaration shall ever be required from any persons other than Declarant, the fee simple Owner of the applicable Lot and the City.

5.5 Subordination. This Declaration is subject to and subordinate to the liens against the Property or any portion of the Property for the benefit of any First Lien Mortgage Holder. No further action will be required to give effect to this subordination; provided, however, upon request of any First Lien Mortgage Holder, City and Declarant will join in the execution of such subordination in a recordable form.

ARTICLE 6 – NOTICES

6.1 Notices. Any and all notices or other communications required or permitted by this Declaration shall be in writing and shall be deemed properly delivered, given, or served, as the case may be (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand delivery, or (ii) two business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express, Airborne Express or UPS), addressed to the party to who notice is intended and to be given at the below addresses for notice or the address of a subsequent Owner on the deed conveying a Lot to such Owner.

If to Declarant:

Attention _____

Telephone:
Facsimile:

If to City: City of El Paso, Texas
City Hall, 2 Civic Center Plaza, 8th Floor
El Paso, Texas 79901

Attention: Director, Community and Human Development Department

Telephone: (915) 541-4639
Facsimile: (915) 541-4196

Any Owner, Declarant or City may change the above notice addresses by notice to the other Owners given in the manner as above set forth.

ARTICLE 7 - MISCELLANEOUS

7.1 **Attorneys' Fees.** In the event any party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7.2 **No Waiver.** No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

7.3 **No Agency.** Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

7.4 **Separability.** Each provision of this Declaration and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

Time of Essence. Time is of the essence of this Declaration

7.6 **Entire Agreement.** This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

7.7 Headings. The section or paragraph headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration, and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

7.8 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

7.9 Interpretation. Within this Declaration, when required by the context, each number (singular and plural) shall include all numbers and each gender shall include all genders; use of the neuter shall include the feminine or the masculine, as appropriate.

7.10 Successors and Assigns. This Declaration shall be binding upon of the Owners from time to time.

7.11 Governing Law. This Declaration is being executed and delivered, and is intended to be performed, in the State, and the laws of the State shall govern the validity, construction, enforcement and interpretation of this Declaration, unless otherwise specified herein. This Declaration is performable, and the exclusive venue for any action brought with respect hereto shall be in the County.

7.12 Permitted Exceptions. This Declaration and the Easements granted herein are subject to the Permitted Exceptions.

7.12 Counterparts. This instrument may be executed in multiple counterparts with separate signature pages, and shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

7.13 Force Majeure. In the event any Owner shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's reasonable control and with respect to which, in each of the aforesaid circumstances, the party is diligently and in good faith and with reasonable dispatch seeking to abate and remove the circumstances causing the delay or hindrance or prevention from performance of the act required to be performed by such party, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform or financial or economic losses or hardship resulting from performance shall not be deemed to be a cause beyond the reasonable control of such party.

7.14 Exhibits

Exhibit "A" - The Property

Exhibit "B" - Affordability Covenant

No future merger of title in any successors or assigns shall operate to terminate this Declaration or the Easements created herein.

“Initial Term Expiration Date” means the date that is fifteen (15) years from the date of a deed conveying fee simple title to an individual Lot from Declarant to a third party Owner. The Initial Term Expiration Date may differ for each Lot.

“Lot” means individually Lots 2, 4, 5, 7, 9, 11, 13 and 14, Block 9, Lots 1, 3, 4, 6, 7, 8, 9, 11 and 14, Block 10, Lots 1, 3, 5, 7, 9, 10, 11, 13 and 14, Block 11 and Lots 2, 4, 6 and 9, Block 12, Summerlin, an addition to the City of El Paso, El Paso County, Texas.

“Lots” means more than one Lot.

“Owner” or ***“Owners”*** means the Declarant and any and all successors and assigns of the Declarant in whom fee simple title to all or any portion of the Property is vested; whether by conveyance, assignment, inheritance, operation of law, deed in lieu of foreclosure, foreclosure, or otherwise, but not including the holder of a mortgage lien, deed of trust or encumbrance on all or any portion of the Property or tenant of all or any portion of the Property. As used herein, the term ***“Owner”*** shall refer only to the party in which fee simple title to the Property or portion of the Property is vested.

“Permitted Exceptions” means matters of record as of the Effective Date or matters that would have been disclosed by an accurate survey of the Property or a particular Lot.

“Purchase and Development Agreement” means the HOME Program Purchase and Development Agreement dated October 12, 2010 between the City and Tierra Del Sol Housing Corporation.

“Property” shall collectively refer to the real estate described on Exhibit “A”.

“State” means the State of Texas.

ARTICLE 2 – AFFORDABILITY COVENANTS

2.1 Declarant hereby declares that the Property will be held and conveyed subject to the Affordability Covenants.

ARTICLE 3 – REMEDIED AND ENFORCEMENT

3.1 **All Legal and Equitable Remedies Available.** Except as otherwise provided herein, in the event of a breach by Declarant or any Owner of any of the terms, covenants, restrictions or conditions hereof, City shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. The obligations under this Declaration are separate as to each Lot so that a violation of the Affordability Covenants by Declarant or the Owner of one Lot will not be a violation of the Affordability Covenants by the Owner of another Lot.

ARTICLE 4 – ESTOPPEL CERTIFICATES

4.1 **Estoppel Certificates.** Recognizing that any Owner may find it necessary from time to time to establish to potential purchasers, lenders or the like, the current status of performance under this Declaration, City shall, upon the reasonable written request of any Owner, deliver with reasonable promptness, a written statement regarding the status of any default or other performance relating to this Declaration, or, to the extent accurate, stating that there are no existing defaults.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, City has executed this instrument as of the dates set forth in their respective acknowledgements below, to be effective for all purposes, however, as of the date set forth on the first page hereof.

CITY:

City of El Paso, Texas,
a Texas home-rule municipal corporation

By: _____

Name: Joyce A. Wilson

Title: City Manager

STATE OF TEXAS §

§

COUNTY OF EL PASO §

§

This instrument was acknowledged before me on the ____ day of _____, 20____,
by Joyce Wilson, City Manager, of the City of El Paso, Texas, a Texas home-rule municipal corporation,
on behalf of said entity.

Notary Public, State of _____

EXHIBIT A

Legal description of the property is as follows:

Lots 2, 4, 5, 7, 9, 11, 13, and 14, Block 9, Lots 1, 3, 4, 6, 7, 8, 9, 11, and 14, Block 10, Lots 1, 3, 5, 7, 9, 10, 13, and 14, Block 11, and Lots 2, 4, 6, and 9, Block 12, SUMMERLIN, an Addition, City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Clerk's File No. 20060039322, Real Property Records of El Paso County, Texas.

EXHIBIT B

AFFORDABILITY COVENANTS

10. AFFORDABILITY COVENANT.

(a) Declarant warrants, represents, and agrees to construct affordable homeownership housing on the Property in accordance with the terms and conditions contained in the HOME Program Purchase and Development Agreement dated October 12, 2010, between Declarant and City, on file in the City Clerk's Office for the City of El Paso, Texas, and to convey the Property by individual Lot to subsequent purchasers who are low to moderate-income individuals who meet the following criteria: (i) have a household income that falls at or below 80% of the area median income, as established by the U.S. Department of Housing and Urban Development (HUD); and (ii) have not owned any property as his or her principal residence within the three years preceding the conveyance.

(b) From the date of recordation of a deed or other instrument conveying any portion of the Property to a subsequent purchaser, who meets the criteria described in paragraph (a) above, the subsequent purchaser must maintain the conveyed Lot of the Property as his or her principal residence for a fifteen (15) year period (the "affordability period") pursuant to 24 C.F.R. §92.254(a)(4). In the event that: (i) the immediate subsequent purchaser of a Lot is not a subsequent purchaser that meets the criteria described in paragraph (a) above or (ii) Declarant fails to construct affordable homeownership housing on the Property by September 30, 2013, then City shall be entitled to and be owed by Declarant, its assigns, or successors-in-title, the re-conveyance of all Lots to the City for which construction has not commenced at no cost to the City, being the federal HUD fund subsidy recapture due and owing to City. Further, following the subsequent conveyance of a Lot to a subsequent purchaser who meets the criteria described in paragraph (a) above, in the event of a voluntary or involuntary sale or transfer of the conveyed Lot, or if the conveyed Lot ceases to be maintained as his or her principal residence during the fifteen (15) year affordability period, the City of El Paso, Texas shall be entitled to and be owed by that subsequent

purchaser, or its successor-in-title, as the owner of record, an amount equal to \$24,622, which is the appraised land value as of May 18, 2012, , less any proportionate reduction. The repayment rate shall consist of a loan and/or deferred payment loan up to thirty (30) years by the subsequent purchaser, or the applicable amount of shared net proceeds based on the formula contained in 24 C.F.R. 92.254(a)(5)(ii)(A)(3) as applicable, being the recapture of the federal HUD funds invested in the conveyed Lot by the City to make the conveyed Lot affordable to the subsequent purchaser. If there are no shared net proceeds, repayment of the subsidy recapture amount is not required.

(c) Any sum payable under this Section 10 shall be made payable to the City of El Paso, Texas and remitted to the City of El Paso, Community and Human Development Department, Housing Programs Division, 2 Civic Center Plaza, 8th Floor, El Paso, Texas 79901, within ten (10) business days of settlement of sale, transfer, lease, or conveyance.

(d) Upon expiration of the affordability period and satisfaction of all other requirements under these Affordability Covenants, the City will upon request promptly execute and deliver to the owner of record of the applicable Lot, a partial release instrument duly executed and in recordable form for filing in the Real Property Records, El Paso County, Texas.

After Recording Return to:

**Gordon Davis Johnson & Shane P.C.
4695 N. Mesa
El Paso, Texas 79912
Attn: Timothy D. Johnson**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER

**AMENDMENT TO SPECIAL WARRANTY DEED
BY AND BETWEEN THE CITY OF EL PASO AS "GRANTOR" AND TIERRA DEL SOL HOUSING CORPORATION AS "GRANTEE"
FOR RELEASE OF AFFORDABILITY COVENANT**

This Amendment to Special Warranty Deed by and between The City of El Paso as "Grantor" and Tierra Del Sol Housing Corporation as "Grantee" for Release of Affordability Covenant (hereinafter the "Amendment") is made this ____ day of _____, 2012, by Grantor and Grantee, in order to revise the Special Warranty Deed, executed the 12th day of April, 2012, and recorded in Document No. 20120026928, in the Real Property Records of El Paso County, Texas (the "Deed") affecting the "Property" described on Exhibit "A", attached hereto and incorporated herein.

Recitals

- a. Grantor and Grantee included an "Affordability Covenant" in Section 10 (a) through (e) of the Deed pursuant to the closing under Home Program Purchase and Development Agreement dated October 12, 2010 between Grantor and Grantee.
- b. Grantor and Grantee have agreed to release the Affordability Covenant in the Deed and to include an amended affordability covenant in a Declaration of Restrictions of even date herewith in lieu of the Affordability Covenant in the Deed.

Amendments

Pursuant to a mutual agreement between Grantor and Grantee they agree to hereby amend the Deed as follows:

The "Affordability Covenant" contained in Sections 10 (a) through (e) of the Deed is released and deleted from the Deed.

2. The Grantor and Grantee have executed a Declaration of Restrictions of even date herewith to include the revised affordability covenant in lieu of the Affordability Covenant in the Deed.

Miscellaneous

Except as to the release of the Affordability Covenant in the Deed, the Deed shall continue in full force and effect under its original terms.

2. Terms not otherwise defined herein shall have the same meaning as in the Deed.

3. This Amendment is executed and effective as of the date entered above.

[Signatures and acknowledgments are on next page]

GRANTOR:

The City of El Paso, Texas,
a Municipal Corporation

Joyce Wilson, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Marie A. Taylor
Assistant City Attorney

William Lilly, Director
Community and Human Development

STATE OF TEXAS

COUNTY OF EL PASO

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)

This instrument was acknowledged before me on the _____ day of _____, 2012, by JOYCE WILSON, as The City Manager of THE CITY OF EL PASO, TEXAS, a Texas home-ruled municipal corporation on behalf of said corporation as GRANTOR.

My Commission Expires:

Notary Public, State of Texas

GRANTEE:

Tierra Del Sol Housing Corporation,
a New Mexico corporation

By: 
Rose Garcia, Executive Director

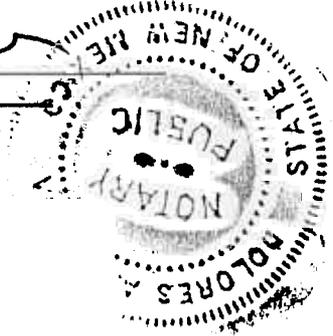
STATE OF NEW MEXICO
COUNTY OF DONANA

This instrument was acknowledged before me on the 6th day of Aug,
2012, by Rose Garcia, Executive Director of Tierra Del Sol Housing Corporation, a New Mexico
corporation, on behalf of said corporation.

My Commission Expires:

12-22-13


Notary Public, State of NM



AFTER RECORDING RETURN TO:

Gordon Davis Johnson & Shane P.C.
4695 N. Mesa
El Paso, Texas 79912
Attention: Timothy D. Johnson

EXHIBIT "A"

Lots 2, 4, 5, 7, 9, 11, 13, and 14, Block 9, Lots 1, 3, 4, 6, 7, 8, 9, 11, and 14, Block 10, Lots 1, 3, 5, 7, 9, 10, 11, 13, and 14, Block 11, and Lots 2, 4, 6, and 9, Block 12, SUMMERLIN, an Addition, City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Clerk's File No. 20060039322, Real Property Records of El Paso County, Texas.